

DEBATES IN CONTEMPORARY POLITICAL PHILOSOPHY

An anthology

*Edited by
Derek Matravers and
Jon Pike*

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DEBATES IN CONTEMPORARY POLITICAL PHILOSOPHY

Debates in Contemporary Political Philosophy is a comprehensive collection of influential essays that presents a balanced survey of the major ideas that have come out of this area of study in the past two decades. Each article has been carefully chosen to enable any student of political philosophy to grasp the main debates within the topic.

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DELIBERATION AND DEMOCRATIC LEGITIMACY

Joshua Cohen

In this essay I explore the ideal of a ‘deliberative democracy’.¹ By a deliberative democracy I shall mean, roughly, an association whose affairs are governed by the public deliberation of its members. I propose an account of the value of such an association that treats democracy itself as a fundamental political ideal and not simply as a derivative ideal that can be explained in terms of the values of fairness or equality of respect.

The essay is in three sections. In section I, I focus on Rawls’s discussion of democracy and use that discussion both to introduce certain features of the deliberative democracy, and to raise some doubts about whether their importance is naturally explained in terms of the notion of a fair system of social cooperation. In section II, I develop an account of deliberative democracy in terms of the notion of an *ideal deliberative procedure*. The characterization of that procedure provides an abstract model of deliberation which links the intuitive ideal of democratic association to a more substantive view of deliberative democracy. Three features of the ideal deliberative procedure figure prominently in the essay. First, it helps to account for some familiar judgements about collective decision-making, in particular about the ways that collective decision-making ought to be different from bargaining, contracting and other market-type interactions, both in its explicit attention to considerations of the common advantage and in the ways that that attention helps to form the aims of the participants. Second, it accounts for the common view that the notion of democratic association is tied to notions of autonomy and the common good. Third, the ideal deliberative procedure provides a distinctive structure for addressing institutional questions. And in section III of the paper I rely on that distinctive structure in responding to four objections to the account of deliberative democracy.

I

The ideal of deliberative democracy is a familiar ideal. Aspects of it have been highlighted in recent discussion of the role of republican conceptions of self-government in shaping the American constitutional tradition and contemporary public law.² It is represented as well in radical democratic and socialist criticisms of the politics of advanced industrial societies.³ And some of its central features are highlighted in Rawls's account of democratic politics in a just society, particularly in those parts of his account that seek to incorporate the 'liberty of the ancients' and to respond to radical democrats and socialists who argue that 'the basic liberties may prove to be merely formal'. In the discussion that follows I shall first say something about Rawls's remarks on three such features, and then consider his explanation of them.⁴

First, in a well-ordered democracy, political debate is organized around alternative conceptions of the public good. So an ideal pluralist scheme, in which democratic politics consists of fair bargaining among groups each of which pursues its particular or sectional interest, is unsuited to a just society (Rawls 1971, pp. 360–1).⁵ Citizens and parties operating in the political arena ought not to 'take a narrow or group-interested standpoint' (p. 360). And parties should only be responsive to demands that are 'argued for openly by reference to a conception of the public good' (pp. 226, 472). Public explanations and justifications of laws and policies are to be cast in terms of conceptions of the common good (conceptions that, on Rawls's view, must be consistent with the two principles of justice), and public deliberation should aim to work out the details of such conceptions and to apply them to particular issues of public policy (p. 362).

Second, the ideal of democratic order has egalitarian implications that must be satisfied in ways that are manifest to citizens. The reason is that in a just society political opportunities and powers must be independent of economic or social position – the political liberties must have a fair value⁶ – and the fact that they are independent must be more or less evident to citizens. Ensuring this manifestly fair value might, for example, require public funding of political parties and restrictions on private political spending, as well as progressive tax measures that serve to limit inequalities of wealth and to ensure that the political agenda is not controlled by the interests of economically and socially dominant groups (Rawls 1971, pp. 225–6, 277–8; 1982, pp. 42–3). In principle, these distributional requirements might be more stringently egalitarian than those fixed by the difference principle (1982, p. 43).⁷ This is so in part because the main point of these measures is not simply to ensure that democratic politics proceeds under fair conditions, nor only to encourage just legislation, but also to ensure that the equality of citizens is manifest and to declare a commitment to that equality 'as the public intention' (1971, p. 233).

Third, democratic politics should be ordered in ways that provide a basis for self-respect, that encourage the development of a sense of political competence, and that

contribute to the formation of a sense of justice;⁸ it should fix ‘the foundations for civic friendship and [shape] the ethos of political culture’ (Rawls 1971, p. 234). Thus the importance of democratic order is not confined to its role in obstructing the class legislation that can be expected from systems in which groups are effectively excluded from the channels of political representation and bargaining. In addition, democratic politics should also shape the ways which the members of the society understand themselves and their own legitimate interests.

When properly conducted, then, democratic politics involves *public deliberation focused on the common good*, requires some form of *manifest equality* among citizens, and *shapes the identity and interests* of citizens in ways that contribute to the formation of a public conception of common good. How does the ideal of a fair system of social co-operation provide a way to account for the attractiveness and importance of these three features of the deliberative democratic ideal? Rawls suggests a formal and an informal line of argument. The formal argument is that parties in the original position would choose the principle of participation⁹ with the proviso that the political liberties have their fair value. The three conditions are important because they must be satisfied if constitutional arrangements are to ensure participation rights, guarantee a fair value to those rights, and plausibly produce legislation that encourages a fair distribution according to the difference principle.

Rawls also suggests an informal argument for the ordering of political institutions, and I shall focus on this informal argument here:

Justice as fairness begins with the idea that where common principles are necessary and to everyone’s advantage, they are to be worked out from the viewpoint of a suitably defined initial situation of equality in which each person is fairly represented. The principle of participation transfers this notion from the original position to the constitution . . . [thus] preserv[ing] the equal representation of the original position to the degree that this is feasible.

(Rawls 1971, pp. 221–2)¹⁰

Or, as he puts it elsewhere: ‘The idea [of the fair value of political liberty] is to incorporate into the basic structure of society an effective political procedure which *mirrors* in that structure the fair representation of persons achieved by the original position’ (1982, p. 45; emphasis added). The suggestion is that, since we accept the intuitive ideal of a fair system of co-operation, we should want our political institutions themselves to conform, in so far as it is feasible, to the requirement that terms of association be worked out under fair conditions. And so we arrive directly at the requirement of equal liberties with fair value, rather than arriving at it indirectly, through a hypothetical choice of that requirement under fair conditions. In this informal argument, the original position serves as an *abstract model* of what fair conditions are, and of

what we should strive to mirror in our political institutions, rather than as an initial-choice situation in which regulative principles for those institutions are selected.

I think that Rawls is right in wanting to accommodate the three conditions. What I find less plausible is that the three conditions are natural sequences of the ideal of fairness. Taking the notion of fairness as fundamental, and aiming (as in the informal argument) to model political arrangements on the original position, it is not clear why, for example, political debate ought to be focused on the common good, or why the manifest equality of citizens is an important feature of a democratic association. The pluralist conception of democratic politics as a system of bargaining with fair representation for all groups seems an equally good mirror of the ideal of fairness.

The response to this objection is clear enough: the connection between the ideal of fairness and the three features of democratic politics depends on psychological and sociological assumptions. Those features do not follow directly from the ideal of a fair system of co-operation, or from that ideal as it is modelled in the original position. Rather, we arrive at them when we consider what is required to preserve fair arrangements and to achieve fair outcomes. For example, public political debate should be conducted in terms of considerations of the common good because we cannot expect outcomes that advance the common good unless people are looking for them. Even an ideal pluralist scheme, with equal bargaining power and no barriers to entry, cannot reasonably be expected to advance the common good as defined by the difference principle (1971, p. 360).

But this is, I think, too indirect and instrumental an argument for the three conditions. Like utilitarian defences of liberty, it rests on a series of highly speculative sociological and psychological judgements. I want to suggest that the reason why the three are attractive is not that an order with, for example, no explicit deliberation about the common good and no manifest equality would be unfair (though of course it might be). Instead it is that they comprise elements of an independent and expressly political ideal that is focused in the first instance¹¹ on the appropriate conduct of public affairs – on, that is, the appropriate ways of arriving at collective decisions. And to understand that ideal we ought not to proceed by seeking to ‘mirror’ ideal fairness in the fairness of political arrangements, but instead to proceed by seeking to mirror a system of ideal deliberation in social and political institutions. I want now to turn to this alternative.

II¹²

The notion of a deliberative democracy is rooted in the intuitive ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens. Citizens in

such an order share a commitment to the resolution of problems of collective choice through public reasoning, and regard their basic institutions as legitimate in so far as they establish the framework for free public deliberation. To elaborate this ideal, I begin with a more explicit account of the ideal itself, presenting what I shall call the ‘formal conception’ of deliberative democracy. Proceeding from this formal conception, I pursue a more substantive account of deliberative democracy by presenting an account of an *ideal deliberative procedure* that captures the notion of justification through public argument and reasoning among equal citizens, and serves in turn as a model for deliberative institutions.

The formal conception of a deliberative democracy has five main features:

- D1 A deliberative democracy is an ongoing and independent association, whose members expect it to continue into the indefinite future.
- D2 The members of the association share (and it is common knowledge that they share) the view that the appropriate terms of association provide a framework for or are the results of their deliberation. They share, that is, a commitment to coordinating their activities within institutions that make deliberation possible and according to norms that they arrive at through their deliberation. For them, free deliberation among equals is the basis of legitimacy.
- D3 A deliberative democracy is a pluralistic association. The members have diverse preferences, convictions and ideals concerning the conduct of their own lives. While sharing a commitment to the deliberative resolution of problems of collective choice (D2), they also have divergent aims, and do not think that some particular set of preferences, convictions or ideals is mandatory.
- D4 Because the members of a democratic association regard deliberative procedures as the source of *legitimacy*, it is important to them that the terms of their association not merely be the results of their deliberation, but also be *manifest* to them as such.¹³ They prefer institutions in which the connections between deliberation and outcomes are evident to ones in which the connections are less clear.
- D5 The members recognize one another as having deliberative capacities, i.e. the capacities required for entering into a public exchange of reasons and for acting on the result of such public reasoning.

A theory of deliberative democracy aims to give substance to this formal ideal by characterizing the conditions that should obtain if the social order is to be manifestly regulated by deliberative forms of collective choice. I propose to sketch a view of this sort by considering an ideal scheme of deliberation, which I shall call the ‘ideal deliberative procedure’. The aim in sketching this procedure is to give an explicit statement of the conditions for deliberative decision-making that are suited to the formal conception, and thereby to highlight the properties that democratic institutions should

embody, so far as possible. I should emphasize that the ideal deliberative procedure is meant to provide a model for institutions to mirror – in the first instance for the institutions in which collective choices are made and social outcomes publicly justified – and not to characterize an initial situation in which the terms of association themselves are chosen.¹⁴

Turning them to the ideal procedure, there are three general aspects of deliberation. There is a need to decide on an agenda, to propose alternative solutions to the problems on the agenda, supporting those solutions with reasons, and to conclude by settling on an alternative. A democratic conception can be represented in terms of the requirements that it sets on such a procedure. In particular, outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals. The ideal deliberative procedure is a procedure that captures this principle.¹⁵

- I1 Ideal deliberation is *free* in that it satisfies two conditions. First, the participants regard themselves as bound only by results of their deliberation and by the preconditions for that deliberation. Their consideration of proposals is not constrained by the authority of prior norms or requirements. Second, the participants suppose that they can act from the results, taking the fact that a certain decision is arrived at through their deliberation as a sufficient reason for complying with it.
- I2 Deliberation is *reasoned* in that the parties to it are required to state their reasons for advancing proposals, supporting them or criticizing them. They give reasons with the expectation that those reasons (and not, for example, their power) will settle the fate of their proposal. In ideal deliberation, as Habermas puts it, ‘no force except that of the better argument is exercised’ (1975, p. 108). Reasons are offered with the aim of bringing others to accept the proposal, given their disparate ends (D3) and their commitment (D2) to settling the conditions of their association through free deliberation among equals. Proposals may be rejected because they are not defended with acceptable reasons, even they could be so defended. The deliberative conception emphasizes that collective choices should be *made in a deliberative way*, and not only that those choices should have a desirable fit with the preferences of citizens.
- I3 In ideal deliberation parties are both formally and substantively *equal*. They are formally equal in that the rules regulating the procedure do not single out individuals. Everyone with the deliberative capacities has equal standing at each stage of the deliberative process. Each can put issues on the agenda, propose solutions, and offer reasons in support of or in criticism of proposals. And each has an equal voice to the decision. The participants are substantively equal in that the existing distribution of power and resources does not shape their chances to contribute to deliberation, nor does that distribution play an authoritative role in their deliberation. The participants in the deliberative procedure do not regard themselves as

bound by the existing system of rights, except in so far as that system establishes the framework of free deliberation among equals. Instead they regard that system as a potential object of their deliberative judgement.

- I4 Finally, ideal deliberation aims to arrive at a rationally motivated *consensus* – to find reasons that are persuasive to all who are committed to acting on the results of a free and reasoned assessment of alternatives by equals. Even under ideal conditions there is no promise that consensual reasons will be forthcoming. If they are not, then deliberation concludes with voting, subject to some form of majority rule.¹⁶ The fact that it may so conclude does not, however, eliminate the distinction between deliberative forms of collective choice and forms that aggregate non-deliberative preferences. The institutional consequences are likely to be different in the two cases, and the results of voting among those who are committed to finding reasons that are persuasive to all are like to differ from the results of an aggregation that proceeds in the absence of this commitment.

Drawing on this characterization of ideal deliberation, can we say anything more substantive about a deliberative democracy? What are the implications of a commitment to deliberative decisions for the terms of social association? In the remarks that follow I shall indicate the ways that this commitment carries with it a commitment to advance the common good and to respect individual autonomy.

Common good and autonomy

Consider first the notion of the common good. Since the aim of ideal deliberation is to secure agreement among all who are committed to free deliberation among equals, and the condition of pluralism obtains (D3), the focus of deliberation is on ways of advancing the aims of each party to it. While no one is indifferent to his/her own good, everyone also seeks to arrive at decisions that are acceptable to all who share the commitment to deliberation (D2). (As we shall see just below, taking that commitment seriously is likely to require a willingness to revise one's understanding of one's own preferences and convictions.) Thus the characterization of an ideal deliberative procedure links the formal notion of deliberative democracy with the more substantive ideal of a democratic association in which public debate is focused on the common good of the members.

Of course, talk about the common good is one thing: sincere efforts to advance it are another. While public deliberation may be organized around appeals to the common good, is there any reason to think that even ideal deliberation would not consist in efforts to disguise personal or class advantage as the common advantage? There are two responses to this question. The first is that in my account of the formal idea of a

deliberative democracy, I stipulated (D2) that the members of the association are committed to resolving their differences through deliberation, and thus to providing reasons that they sincerely expect to be persuasive to others who share that commitment. In short, this stipulation rules out the problem. Presumably, however, the objection is best understood as directed against the plausibility of realizing a deliberative procedure that conforms to the ideal, and thus is not answerable through stipulation.

The second response, then, rests on a claim about the effects of deliberation on the motivations of deliberators.¹⁷ A consequence of the reasonableness of the deliberative procedure (I2) together with the condition of pluralism (D3) is that the mere fact of having a preference, conviction or ideal does not by itself provide a reason in support of a proposal. While I may take my preferences as a sufficient reason for advancing a proposal, deliberation under conditions of pluralism requires that I find reasons that make the proposal acceptable to others who cannot be expected to regard my preferences as sufficient reasons for agreeing. The motivational thesis is that the need to advance reasons that persuade others will help to shape the motivations that people bring to the deliberative procedure in two ways. First, the practice of presenting reasons will contribute to the formation of a commitment to the deliberative resolution of political questions (D2). Given that commitment, the likelihood of a sincere representation of preferences and convictions should increase, while the likelihood of their strategic misrepresentation declines. Second, it will shape the content of preferences and convictions as well. Assuming a commitment to deliberative justification, the discovery that I can offer no persuasive reasons on behalf of a proposal of mine may transform the preferences that motivate the proposal. Aims that I recognize to be inconsistent with the requirements of deliberative agreement may tend to lose their force, at least when I expect others to be proceeding in reasonable ways and expect the outcome of deliberation to regulate subsequent action.

Consider, for example, the desire to be wealthier come what may. I cannot appeal to this desire itself in defending policies. The motivational claim is the need to find an independent justification that does not appeal to this desire and will tend to shape it into, for example, a desire to have a level of wealth that is consistent with a level that others (i.e. equal citizens) find acceptable. I am of course assuming that the deliberation is known to be regulative, and that the wealth cannot be protected through wholly non-deliberative means.

Deliberation, then, focuses debate on the common good. And the relevant conceptions of the common good are not comprised simply of interests and preferences that are antecedent to deliberation. Instead, the interests, aims and ideals that comprise the common good are those that survive deliberation, interests that, on public reflection, we think it legitimate to appeal to in making claims on social resources. Thus the first and third of the features of deliberative democracy that I mentioned in the discussion of Rawls [. . .] comprise central elements in the deliberative conception.

The ideal deliberative scheme also indicates the importance of autonomy in a deliberative democracy. In particular, it is responsive to two main threats to autonomy. As a general matter, actions fail to be autonomous if the preferences on which an agent acts are, roughly, given by the circumstances, and not determined by the agent. There are two paradigm cases of ‘external’ determination. The first is what Elster (1982) has called ‘adaptive preferences’.¹⁸ These are preferences that shift with changes in the circumstances of the agent without any deliberate contribution by the agent to that shift. This is true, for example, of the political preferences of instinctive centrists who move to the median position in the political distribution, wherever it happens to be. The second I shall call ‘accommodationist preferences’. While they are deliberately formed, accommodationist preferences represent psychological adjustments to conditions of subordination in which individuals are not recognized as having the capacity for self-government. Consider Stoic slaves, who deliberately shape their desires to match their powers, with a view to minimizing frustration. Since the existing relations of power make slavery the only possibility, they cultivate desires to be slaves, and then act on those desires. While their motives are deliberately formed, and they act on their desires, the Stoic slaves do not act autonomously when they seek to be good slaves. The absence of alternatives and consequent denial of scope for the deliberative capacities that defines the condition of slaves supports the conclusion that their desires result from their circumstances, even though those circumstances shape the desires of the Stoic slaves through their deliberation.

There are then at least two dimensions of autonomy. The phenomenon of adaptive preferences underlines the importance of conditions that permit and encourage the deliberative formation of preferences: the phenomenon of accommodationist preferences indicates the need for favourable conditions for the exercise of the deliberative capacities. Both concerns are met when institutions for collective decision-making are modelled on the ideal deliberative procedure. Relations of power and subordination are neutralized (I1, I3, I4), and each is recognized as having the deliberative capacities (D5), thus addressing the problem of accommodationist preferences. Further, the requirement of reasonableness discourages adaptive preferences (I2). While preferences are ‘formed’ by the deliberative procedure, this type of preference formation is consistent with autonomy, since preferences that are shaped by public deliberation are not simply given by external circumstances. Instead they are the result of ‘the power of reason as applied through public discussion’.¹⁹

Beginning, then, from the formal ideal of a deliberative democracy, we arrive at the more substantive ideal of an association that is regulated by deliberation aimed at the common good and that respects the autonomy of the members. And seeking to embody the ideal deliberative procedure in institutions, we seek *inter alia*, to design institutions that focus political debate on the common good, that shape the identity and interests of citizens in ways that contribute to an attachment to the common good,

and that provide favourable conditions for the exercise of deliberative powers that are required for autonomy.

III

I want now to shift the focus. While I shall continue to pursue the relationship between the ideal deliberative procedure and more substantive issues about deliberative democratic association, I want to do so by considering four natural objections to the conception I have been discussing, objections to that conception for being sectarian, incoherent, unjust and irrelevant. My aim is not to provide a detailed response to the objections, but to clarify the conception of deliberative democracy by sketching the lines along which a response should proceed. Before turning to the objections, I enter two remarks about what follows.

First, as I indicated earlier, a central aim in the deliberative conception is to specify the institutional preconditions for deliberative decision-making. The role of the ideal deliberative procedure is to provide an abstract characterization of the important properties of deliberative institutions. The role of the ideal deliberative procedure is thus different from the role of an ideal social contract. The ideal deliberative procedure provides a model for institutions, a model that they should mirror, so far as possible. It is not a choice situation in which institutional principles are selected. The key point about the institutional reflection is that it should *make deliberation possible*. Institutions in a deliberative democracy do not serve simply to implement the results of deliberation, as though free deliberation could proceed in the absence of appropriate institutions. Neither the commitment to nor the capacity for arriving at deliberative decisions is something that we can simply assume to obtain independent from the proper ordering of institutions. The institutions themselves must provide the framework for the formation of the will; they determine whether there is equality, whether deliberation is free and reasoned, whether there is autonomy, and so on.

Second, I shall be focusing here on some requirements on 'public' institutions that reflect the ideal of deliberative resolution. But there is of course no reason to expect as a general matter that the preconditions for deliberation will respect familiar institutional boundaries between 'private' and 'public' and will all pertain to the public arena. For example, inequalities of wealth, or the absence of institutional measures designed to redress the consequences of those inequalities, can serve to undermine the equality required in deliberative arenas themselves. And so a more complete treatment would need to address a wider range of institutional issues (see Cohen and Rogers 1983, chs 3, 6; Cohen 1988).

Sectarianism

The first objection is that the ideal of deliberative democracy is objectionably sectarian because it depends on a particular view of the good life – an ideal of active citizenship. What makes it sectarian is not the specific ideal on which it depends, but the (alleged) fact that it depends on some specific conception at all. I do not think that the conception of deliberative democracy suffers from the alleged difficulty. In explaining why not, I shall put to the side current controversy about the thesis that sectarianism is avoidable and objectionable, and assume that it is both.²⁰

Views of the good figure in political conceptions in at least two ways. First, the *justification* of some conceptions appeals to a notion of the human good. Aristotelian views, for example, endorse the claim that the exercise of the deliberative capacities is a fundamental component of a good human life, and conclude that a political association ought to be organized to encourage the realization of those capacities by its members. A second way in which conceptions of the good enter is that the *stability* of a society may require widespread allegiance to a specific conception of the good, even though its institutions can be justified without appeal to that conception. For example, a social order that can be justified without reference to ideals of national allegiance may none the less require widespread endorsement of the ideal of patriotic devotion for its stability.

A political conception is objectionably sectarian only if its *justification* depends on a particular view of the human good, and not simply because its stability is contingent on widespread agreement on the value of certain activities and aspirations. For this reason the democratic conception is not sectarian. It is organized around a view of political justification – that justification proceeds through free deliberation among equal citizens – and not a conception of the proper conduct of life. So, while it is plausible that the stability of a deliberative democracy depends on encouraging the ideal of active citizenship, this dependence does not suffice to show that it is objectionably sectarian.

Incoherence

Consider next the putative incoherence of the ideal. We find this charge in an important tradition of argument, including Schumpeter's *Capitalism, Socialism, and Democracy* and, more recently, William Riker's work on social choice and democracy. I want here to say a word about the latter, focusing on just one reason that Riker gives for thinking that the ideal of popular self-government is incoherent.²¹

Institutionalizing a deliberative procedure requires a decision rule short of consensus – for example, majority rule. But majority rule is globally unstable: as a general

matter, there exists a majority-rule path leading from any element in the set of alternatives to any other element in the set. The majority, standing in for the people, wills everything and therefore wills nothing. Of course, while anything can be the result of majority decision, it is not true that everything will be the result. But, because majority rule is so unstable, the actual decision of the majority will not be determined by preferences themselves, since they do not constrain the outcome. Instead decisions will reflect the particular institutional constraints under which they are made. But these constraints are 'exogenous to the world of tastes and values' (Riker 1982, p. 190). So the ideal of popular self-government is incoherent because we are, so to speak, governed by the institutions, and not by ourselves.

I want to suggest one difficulty with this argument that highlights the structure of the deliberative conception. According to the argument I just sketched, outcomes in majority-rule institutions reflect 'exogenous' institutional constraints, and not underlying preferences. This suggests that we can identify the preferences and convictions that are relevant to collective choices apart from the institutions through which they are formed and expressed. But that is just what the deliberative conception denies. On this conception, the relevant preferences and convictions are those that could be expressed in free deliberation, and not those that are prior to it. For this reason, popular self-government *premises* the existence of institutions that provide a framework for deliberation; these arrangements are not 'exogenous constraints' on the aggregation of preferences, but instead help to shape their content and the way that citizens choose to advance them. And, once the deliberative institutions are in place, and preferences, convictions and political actions are shaped by them, it is not clear that instability problems remain so severe as to support the conclusion that self-government is an empty and incoherent ideal.

Injustice

The third problem concerns injustice. I have been treating the ideal of democracy as the basic ideal for a political conception. But it might be argued that the ideal of democracy is not suited to the role of fundamental political ideal because its treatment of basic liberties is manifestly unacceptable. It makes those liberties dependent on judgements of majorities and thus endorses the democratic legitimacy of decisions that restrict the basic liberties of individuals. In responding to this objection I shall focus on the liberty of expression,²² and shall begin by filling out a version of the objection which I put in the words of an imagined critic.²³

'You embrace the ideal of a democratic order. The aim of a democratic order is to maximize the *power of the people* to secure its wants. To defend the liberty of expression you will argue that that power is diminished if the people lack the information

required for exercising their will. Since expression provides information, you will conclude that abridgements of expression to be barred. The problem with your argument is that preventing restrictions on expression also restricts the power of the people, since the citizens may collectively prefer such restrictions. And so it is not at all clear as a general matter that the protection of expression will maximize popular power. So while you will, of course, not want to prevent everyone from speaking all the time, you cannot defend the claim that there is even a presumption in favour of the protection of expression. And this disregard for fundamental as is unacceptable.'

This objection has force against some conceptions on which democracy is a fundamental ideal, particularly those in which the value of expression turns exclusively on its role as a source of information about how best to advance popular ends. But it does not have any force against the deliberative conception, since the latter does not make the case for expression turn on its role in maximizing the power of the people to secure its wants. That case rests instead on a conception of collective choice, in particular on a view about how the 'wants' that are relevant to collective choice are formed and defined in the first place. The relevant preferences and convictions are those that arise from or are confirmed through deliberation. And a framework of free expression is required for the reasoned consideration of alternatives that comprises deliberation. The deliberative conception holds that free expression is required for *determining* what advances the common good, because what is good is fixed by public deliberation, and not prior to it. It is fixed by informed and autonomous judgements, involving the exercise of the deliberative capacities. So the ideal of deliberative democracy is not hostile to free expression; it rather presupposes such freedom.

But what about expression with no direct bearing on issues of public policy? Is the conception of deliberative democracy committed to treating all 'non-political expression' as second-class, and as meriting lesser protection? I do not think so. The deliberative conception construes politics as aiming in part at the formation of preferences and convictions, not just at their articulation and aggregation. Because of this emphasis on reasoning about preferences and convictions, and the bearing of expression with no political focus on such reasoning, the deliberative view draws no bright line between political speech and other sorts of expression. Forms of expression that do not address issues of policy may well bear on the formation of the interests, aims, and ideals that citizens bring to public deliberation. For this reason the deliberative conception supports protection for the full range of expression, regardless of the content of that expression.²⁴ It would violate the core of the ideal of free deliberation among equals to fix preferences and convictions in advance by restricting the content of expression, or by barring access to expression, or by preventing the expression that is essential to having convictions at all. Thus the injustice objection fails because the liberties are not simply among the topics for deliberation; they help to comprise the framework that makes it possible.²⁵

Irrelevance

The irrelevance objection is that the notion of public deliberation is irrelevant to modern political conditions.²⁶ This is the most important objection, but also the one about which it is hardest to say anything at the level of generality required by the present context. Here again I shall confine myself to one version of the objection, though one that I take to be representative.

The version that I want to consider starts from the assumption that a direct democracy with citizens gathering in legislative assemblies is the only way to institutionalize a deliberative procedure. Premising that, and recognizing that direct democracy is impossible under modern conditions, the objection concludes that we ought to be led to reject the ideal because it is not relevant to our circumstances.

The claim about the impossibility of direct democracy is plainly correct. But I see no merit in the claim that direct democracy is the uniquely suitable way to institutionalize the ideal procedure.²⁷ In fact, in the absence of a theory about the operations of democratic assemblies – a theory which cannot simply stipulate that ideal conditions obtain – there is no reason to be confident that a direct democracy would subject political questions to deliberative resolution, even if a direct democracy were a genuine institutional possibility.²⁸ In the absence of a realistic account of the functioning of citizen assemblies, we cannot simply assume that large gatherings with open-ended agendas will yield any deliberation at all, or that they will encourage participants to regard one another as equals in a free deliberative procedure. The appropriate ordering of deliberative institutions depends on issues of political psychology and political behaviour; it is not an immediate consequence of the deliberative ideal. So, far from being the only deliberative scheme, direct democracy may not even be a particularly good arrangement for deliberation. But, once we reject the idea that a direct democracy is the natural or necessary form of expression of the deliberative ideal, the straightforward argument for irrelevance no longer works. In saying how the ideal might be relevant, however, we come up against the problem I mentioned earlier. Lacking a good understanding of the workings of institutions, we are inevitably thrown back on more or less speculative judgements. What follows is some sketchy remarks on one issue that should be taken in this spirit.

At the heart of the institutionalization of the deliberative procedure is the existence of arenas in which citizens can propose issues for the political agenda and participate in debate about those issues. The existence of such arenas is a public good, and ought to be supported with public money. This is not because public support is the only way, or even the most efficient way, of ensuring the provision of such arenas. Instead, public provision expresses the basic commitment of a democratic order to the resolution of political questions through free deliberation among equals. The problem is to figure out how arenas might be organized to encourage such deliberation.

In considering that organization, there are two key points that I want to underscore. The first is that material inequalities are an important source of political inequalities. The second point – which is more speculative – is that deliberative arenas which are organized exclusively on local, sectional or issue-specific lines are unlikely to produce the open-ended deliberation required to institutionalize a deliberative procedure. Since these arenas bring together only a narrow range of interests, deliberation in them can be expected at best to produce coherent sectional interests, but no more comprehensive conception of the common good.

These two considerations together provide support for the view that political parties supported by public funds play an important role in making a deliberative democracy possible.²⁹ There are two reasons for this, corresponding to the two considerations I have just mentioned. In the first place, an important feature of organizations generally, and parties in particular, is that they provide a means through which individuals and groups who lack the ‘natural’ advantage of wealth can overcome the political disadvantages that follow on that lack. Thus they can help to overcome the inequalities in deliberative arenas that result from material inequality. Of course, to play this role, political organizations must themselves be freed from the dominance of private resources, and that independence must be manifest. Thus the need for public funding. Here we arrive back at the second point that I mentioned in the discussion of Rawls’s view – that measures are needed to ensure manifest equality – though now as a way of displaying a shared commitment to deliberative decisions, and not simply as an expression of the commitment to fairness. Second, because parties are required to address a comprehensive range of political issues, they provide arenas in which debate is not restricted in the ways that it is in local, sectional or issue-specific organizations. They can provide the more open-ended arenas needed to form and articulate the conceptions of the common good that provide the focus of political debate in a deliberative democracy.

There is certainly no guarantee that parties will operate as I have just described. But this is not especially troubling, since there are no guarantees of anything in politics. The question is how we can best approximate the deliberative conception. And it is difficult to see how that is possible in the absence of strong parties, supported with public resources (though, of course, a wide range of other conditions are required as well).

IV

I have suggested that we take the notion of democratic association as a fundamental political ideal, and have elaborated that ideal by reference to an ideal deliberative procedure and the requirements for institutionalizing such a procedure. I have sketched

a few of those requirements here. To show that the democratic ideal can play the role of fundamental organizing ideal, I should need to pursue the account of fundamental liberties and political organization in much greater detail and to address a wide range of other issues as well. Of course, the richer the requirements are for institutionalizing free public deliberation, the larger the range of issues that may need to be removed from the political agenda; that is, the larger the range of issues that form the background framework of public deliberation rather than its subject matter. And, the larger that range, the less there is to deliberate about. Whether that is good news or bad news, it is in any case a suitable place to conclude.

NOTES

I have had countless discussions of the subject matter of this paper with Joel Rogers, and wish to thank him for his unfailingly sound and generous advice. For our joint treatment of the issues that I discuss here, see Cohen and Rogers (1983), ch. 6. The main differences between the treatment of issues here and the treatment in the book lies in the explicit account of the ideal deliberative procedure, the fuller treatment of the notions of autonomy and the common good, and the account of the connection of those notions with the ideal procedure. An earlier draft of this paper was presented to the Pacific Division Meetings of the American Philosophical Association. I would like to thank Loren Lomasky, Alan Hamlin and Philip Pettit for helpful comments on that draft.

- 1 I originally came across the term 'deliberative democracy' in Sunstein (1985). He cites (n. 26) an article by Bessette, which I have not consulted.
- 2 For some representative examples, see Sunstein (1984, 1985, 1986), Michelman (1986). Ackerman (1984, 1986).
- 3 I have in mind, in particular, criticisms which focus on the ways in which material inequalities and weak political parties restrict democracy by constraining public political debate or undermining the equality of the participants in that debate. For discussion of these criticisms, and of their connections with the ideal of democratic order, see Cohen and Rogers (1983), chs 3, 6; Unger (1987), ch. 5.
- 4 In the discussion that follows, I draw on Rawls (1971, esp. sections 36, 37, 43, 54; 1982).
- 5 This rejection is not particularly idiosyncratic. Sunstein, for example, argues (1984, 1985) that ideal pluralism has never been embraced as a political ideal in American public law.
- 6 Officially, the requirement of fair value is that 'everyone has a fair opportunity to hold public office and to influence the outcome of political decisions' (Rawls 1982, p. 42).
- 7 Whatever their stringency, these distributional requirements take priority over the difference principle, since the requirement of fair value is part of the principle of liberty; that is, the first principle of justice (Rawls 1982, pp. 41–2).
- 8 The importance of democratic politics in the account of the acquisition of the sense of justice is underscored in Rawls (1971), pp. 473–4.
- 9 The principle of participation states that 'all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply' (Rawls 1971, p. 221).

- 10 I assume that the principle of participation should be understood here to include the requirement of the fair value of political liberty.
- 11 The reasons for the phrase ‘in the first instance’ are clarified below.
- 12 Since writing the first draft of this section of the paper, I have read Elster (1986) and Mania (1987), which both present parallel conceptions. This is especially so with Elster’s treatment of the psychology of public deliberation (pp. 112–13). I am indebted to Alan Hamlin for bringing the Elster article to my attention. The overlap is explained by the fact that Elster, Manin and I all draw on Habermas. See Habermas (1975, 1979, 1984). I have also found the discussion of the contractualist account of motivation in Scanlon (1982) very helpful.
- 13 For philosophical discussions of the importance of manifestness or publicity, see Kant (1983), pp. 135–9; Rawls (1971), p. 133 and section 29; Williams (1985), pp. 101–2, 200.
- 14 The distinction between the ideal procedure and an initial-choice situation will be important in the later discussion of motivation formation and institutions.
- 15 There are of course norms and requirements on individuals that do not have deliberative justification. The conception of deliberative democracy is, in Rawls’s term, a ‘political conception’, and not a comprehensive moral theory. On the distinction between political and comprehensive theories, see Rawls (1987), pp. 1–25.
- 16 For criticism of the reliance on an assumption of unanimity in deliberative views, see Maxim (1987), pp. 359–61.
- 17 Note the parallel with Elster (1986) indicated in note 12. See also the discussion in Habermas (1975), p. 108, about ‘needs that can be communicatively shared’, and Habermas (1979), ch. 2.
- 18 For an interesting discussion of autonomous preferences and political processes, see Sunstein (1986, pp. 1145–58; 1984, pp. 1699–1700).
- 19 *Whitney vs. California*, 274 US 357 (1927).
- 20 For contrasting views on sectarianism, see Rawls (1987); Dworkin (1985), pt 3; MacIntyre (1981); Sandel (1982).
- 21 See Riker (1982); for discussion of Riker’s view see Coleman and Ferejohn (1986); Cohen (1986b).
- 22 For discussion of the connection between ideals of democracy and freedom of expression, see Meiklejohn (1948), Tribe (1978; 1985, ch. 2) and Ely (1980, pp. 93–4, 105–16). Freedom of expression is a special case that can perhaps be more straightforwardly accommodated by the democratic conception than liberties of conscience, or the liberties associated with privacy and personhood. I do think, however, that these other liberties can be given satisfactory treatment by the democratic conception, and would reject it if I did not think so. The general idea would be to argue that other fundamental liberties must be protected if citizens are to be able to engage in and have equal standing in political deliberation without fear that such engagement puts them at risk for their convictions or personal choices. Whether this line of argument will work out on the details is a matter for treatment elsewhere.
- 23 This objection is suggested in Dworkin (1985), pp. 61–3. He cites the following passage from a letter of Madison’s: ‘And a people who mean to be their own Governors, must arm themselves with *the power which knowledge gives*’ (emphasis added).
- 24 On the distinction between content-based and content-neutral abridgements, the complexities of drawing the distinction in particular cases, and the special reasons for hostility to content-based abridgements, see Tribe (1978), pp. 584–682; Stone (1987), pp. 46–118.

- 25 I am not suggesting that the deliberative view provides the only sound justification for the liberty of expression. My concern here is rather to show that the deliberative view is capable of accommodating it.
- 26 For an especially sharp statement of the irrelevance objection, see Schmitt (1985).
- 27 This view is sometimes associated with Rousseau, who is said to have conflated the notion of democratic legitimacy with the institutional expression of that ideal in a direct democracy. For criticism of this interpretation, see Cohen (1986a).
- 28 Madison urges this point in the *Federalist Papers*. Objecting to a proposal advanced by Jefferson which would have regularly referred constitutional questions 'to the decision of the whole of society', Madison argues that this would increase the danger of disturbing the public tranquillity by interesting too strongly the public passions'. And 'it is the reason, alone, of the public that ought to control and regulate the government . . . [while] the passions ought to be controlled and regulated by the government'. I endorse the form of the objection, not its content. (*Federalist Papers* 1961, pp. 315–17.)
- 29 Here I draw on Cohen and Rogers (1983), pp. 154–7. The idea that parties are required to organize political choice and to provide a focus for public deliberation is one strand of arguments about 'responsible parties' in American political-science literature. My understanding of this view has been greatly aided by Perlman (1987), and, more generally, by the work of my colleague Walter Dean Burnham on the implications of party decline for democratic politics. See, for example, Burnham (1982).

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