

The Norms and Ethics of Deliberative Democracy beyond Liberalism

Draft

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Abstract

The perennial question of just how we can best reconcile the individual rights enshrined in liberal philosophy with the requirements of democracy has generally been answered by prioritising one or other position, with the favoured position upheld as prior or even essential in moral philosophy. Indeed, liberalism's understanding of democracy as essentially a procedural means of upholding its core values – and the consequent analytical separation of democratic theory and moral philosophy – has, it will be argued, concealed not only the normative content of democracy, but also been guilty of maintaining an unnecessary distinction which has served to limit democracy to a bi-directional relationship, ignoring thus the complexity of social relations inherent in its meaning. Nevertheless, the recent deliberative turn has given new impetus to a more complex democratic discourse, and forced liberals to re-conceptualise liberalism's procedures while retaining the prior status of their underlying values – a project, it will be argued, which is inherently flawed. This paper will seek to critically assess attempts to forge a new understanding of the relationship between democratic procedures and substantive norms, and to sketch out the practical consequences entailed by my findings both for liberalism today and for the future of discursive democracies.

The basic structure and premises of this paper are fairly simple: having first argued that democracy is not itself a norm-free construct, and therefore that attempts to analytically separate 'substance and procedure in separate theories of justice and democracy' are likely to distort both roles;² reviewing critiques of liberal theories of justice will elucidate some normative assumptions more compatible with a deliberative democratic theory. Passing from the realm of theory to that of practice will demonstrate further the extent to which liberal institutions as the embodiment of moral rights engender further inconsistencies, both theoretical and practical;

¹ Paper first submitted towards a Masters degree in Political Theory at the University of Manchester, 2003.

² Amy Gutmann & Dennis Thompson, "Deliberative Democracy Beyond Process", *The Journal of Political Philosophy*, 10(2), November 2002: 163

and I will argue that even discourse ethics fail adequately to legitimate these institutions through its focus on civil society or the public sphere. Although any attempt to elaborate a more complex, interactional theory of justice is beyond the scope of this article, I will in concluding endeavour to provisionally tie justice to deliberative democracy, and finally to conditionally situate this debate in an arena more consistent with its aims than has been the case with liberal institutions, and that is by extension more legitimate.

I

In dealing with essential and contested political themes we must remember that no definition is ever 'a mere definition; the definition itself already articulates the normative theory that justifies the term'.³ My focus here on deliberative democracy immediately invokes a body of norms that prioritises democratic means over any other form of political model. No theory of deliberative democracy can ever then just be procedural, and although it forms my starting point here, so as to avoid privileging exogenous norms, it does not follow that its procedural characteristics take precedence over its associated normative precepts, nor over its empirical and assessable outcomes. For 'although critics of deliberative democracy sometimes write as if they reject moral reasoning in politics, they rarely face up to what such a rejection would entail either in practice or in theory'.⁴

Other critics maintain a role for morality, albeit as resulting from 'standards that are not only procedure-independent, but also independent of deliberation'.⁵ Bohman's argument is that deliberative democracy, in establishing its criteria of legitimacy via an ideal procedure 'cannot underwrite its epistemic claims',⁶ although he fails to recognise that 'to say that the principles are integral to the process is not to deny that they may be justifiable outside of that process'.⁷ Whether this justification comes in the form of a normative theory of justice, or is perhaps grounded in a social epistemology, we see that the kinds of claims deliberative democrats make might be immanently supported and simultaneously refer to other bases. Indeed for Gutmann and Thompson no artificial segregation of substance and procedure is tenable.⁸

³ Seyla Benhabib, "Democratic Legitimacy and Public Goods", in *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton: Princeton University Press, 1996: 68

⁴ Gutmann & Thompson, 168. Their answer is that it would inevitably entail a distortion of both spheres.

⁵ James Bohman, "The Coming Age of Deliberative Democracy", *The Journal of Political Philosophy*, 6(4), 1998: 403

⁶ Bohman, 403

⁷ Gutmann & Thompson, 162

⁸ Gutmann & Thompson, 163

What then, is wrong with the moral claims liberals make for individual goods? If these are key components of justice, surely they are entitled to their privileged status? Of course such an argument requires that we accept the way in which the theory of justice is argued. Radical critiques of the Rawlsian vision have been expressed in both procedural and normative terms, with the former embodied in claims that Rawlsian public reason does not fulfil the criteria for authentic deliberation – that is deliberation *through a process of communication* ‘that encourages reflection upon preferences without coercion’.⁹ For Dryzek, ‘public reason’ is ill-named as it is singular and reflective, with the individual as the site for deliberation.¹⁰ In addition, the role of the philosopher in setting out the rules of the game ensures that ‘public reason is a set of commitments that individuals must adopt before they enter the public arena, not what they will be induced to discover once they are there’¹¹ and is in contrast to truly deliberative theory which understands its role in relation to justice, and at the other end of the spectrum, its role in relation to the evaluation of specific goods.

If Rawls has been critiqued in procedural terms from a deliberative standpoint, he has also, perhaps more damningly, faced criticism in terms of the internal contradictions of his liberally premised theory. Sandel has claimed that ‘the difference principle is based on some notion that we are ‘mutually indebted and morally engaged to begin with’, and that this base is denied to the liberal self as it necessarily undercuts the priority of the right.’¹² In reference to deliberative democracy, Benhabib ponders the state whereby ‘discourses, even to get started, presuppose the recognition of one another’s moral rights among discourse participants; on the other hand, such rights are said to be specified as a result of the discursive situation’.¹³ In fact, this problem appears more applicable to liberalism, whose ‘unencumbered self’¹⁴ cannot easily be made into a ‘participant’, nor into the necessary follower of institutionally embodied rights.

Communitarians like Sandel fundamentally challenge liberalism’s base unit of the ‘unencumbered self’, claiming that: ‘the liberal vision is not morally self-sufficient but ‘parasitic on a notion of community it officially

⁹ After Habermas; Dryzek, 8

¹⁰ Dryzek, 15

¹¹ Dryzek, 15

¹² Sandel, Michael, “The Procedural Republic and the Unencumbered Self”, Robert E. Goodin & Philip Pettit (eds.), *Contemporary Political Philosophy: an anthology*, Oxford: Blackwell, 1997: 251

¹³ Benhabib, 79

¹⁴ This term from Michael Sandel, “The Procedural Republic”.

rejects'.¹⁵ This 'shadowy figure of *Homo economicus*, with his rational preference orderings and strangely unencumbered and universalised identity',¹⁶ will be argued throughout to be epistemically suspect. My main contention is that if liberalism's best minds have failed to reconcile the claims to justice a normative political theory requires with their asocial and ahistorical notion of the self; then it is this notion of the self and its derived norms that need readdressing, and that this incompatibility between its norms and procedures is fatefully damaging to the liberal project.

II

Returning to our prior focus on democracy per se, it will be of interest to assess liberalism's own attempts to prioritise democracy. Though, as we will see, the failure within such attempts to positively embrace what is inherent in democracy leave them open to the same charges of incompatibility levelled above. Attempts to assimilate liberal institutions with a more deliberative proceduralism have been many and varied. Fishkin and Ackerman's influential essay calling for a national day of deliberation is a practical and workable model, a point to be kept in mind when assessing its deliberative scope.¹⁷ Nevertheless, it could be argued that this model retains the conceptual problems for liberty elaborated above being as it institutionalises a minimum level of participation for the average citizen, who, though speaking as part of a collective can still only hope to have a very moderate and indirect influence on established political parties. For some however, this concern with feasibility is paramount, and a positive step in the debate,¹⁸ still radical inasmuch as it embodies new goals, here: 'information, dialogue, deliberation', and apparently invokes a new basis; that is 'community'.¹⁹ It might well be argued however that first three are essentially procedural, and though key to deliberative democracy, offer no substantial challenge to either the structure of liberal institutions, nor consequently any of their practical injustices. As I hope to argue in continuation, deliberation and discourse, if seen as a basis for action *by* groups might even empower the individual more than has been the case with liberal representation.

¹⁵ Sandel, 254

¹⁶ Ricardo Blaug, "Users guide to discursive democracy", *Philosophy and Social Criticism*, 22, 1996: 51

¹⁷ Dryzek has three measures for authentic deliberation, of which 'scope' is arguably the most important.

¹⁸ See especially Bohman, 1998.

¹⁹ Bruce Ackerman & James S. Fishkin, "Deliberation Day", *The Journal of Political Philosophy*, 10(2), 2002: 138

Even within the critical theory canon, one witnesses the express fear that deliberative democracy might privilege a common identity, which subsumes the particularity of the individual.²⁰ This critique is similar to liberal fears regarding the tyranny of the majority, and reinforces liberalism's ingrained dichotomy between 'common' and individual notions of identity, and thus of the good, which I believe may be open to significant redress. In institutional terms, it may be that empirical evidence of less formal arrangements refutes these fears, especially if our model is of voluntary and local deliberation, a form which almost certainly exerts less coercion towards individual freedoms than a centralised and morally autonomous liberal state. A clear, although as Blaug argues limited, defence of the reconcilability of social complexity and deliberative democracy, and indeed their compatibility, is found in Dryzek.²¹

John Dryzek has made the essential claim that: 'Deliberative democracy should involve a continued quest for democratic authenticity, rather than easy accommodation with the prevailing liberal political economy',²² and traces in his book *Deliberative Democracy and Beyond*, the contrast between 'liberal constitutionalist' notions of deliberative democracy and more discursive notions. Emphasising again the conditional nature which is vital to discursive notions he reminds us of the value inherent in seeing democracy as an unfinished project 'rather than a settled order of any sort'.²³ As a challenge to views that remain bound up with the normative discourses of liberalism, Dryzek asserts that 'while discourses do indeed help to condition the way people think, individuals are not necessarily prisoners of the discourses that have helped to create their identities'.²⁴ This participatory-constructivism refers as much to politics as to identity, and invokes a wider concept of rationality than Benhabib's institutional notion, vitally shifting the discourse away from the abstraction of concrete principles and distant institutions, situating it with the individual *as participant*. This reflective notion of politics once again highlights the need for Gutmann and Thompson's synthesis of normative and procedural theories as he argues that 'politics conceived as purely strategic action is an incoherent mess, as rational choice theory has proved so well'.²⁵

²⁰ For example, Iris Marion Young who contrasts deliberative and communicative democracy in an attempt to emphasise particular identities and forms of discourse. Cf. Iris Marion Young, "Communication and the Other: Beyond Deliberative Democracy", in Benhabib (ed.), 1996.

²¹ This attribution is from Benhabib, 87

²² Dryzek, 8

²³ Dryzek, 86

²⁴ Dryzek, 111

²⁵ Dryzek, 176

One model that seeks to deal with the problem of reconciling substance and procedures is to be found in a Habermasian separation of the spheres of communicative and instrumental rationality, across whose boundaries the norms emerging from deliberation transform into legislated rights. Despite working with a social form of reason, this separation has been questioned, with Blaug insisting that if 'rights are to be valid empirico-legal instantiations of the normative principles of discourse ethics, then they must not be the result of a shortcut',²⁶ thereby arguing for a more thorough legitimation of the manner in which norms become embedded. Nevertheless, departing from the Habermasian ideal speech situation, various theorists have undertaken to recontextualise the ideal, with Wellmer positing it as a centre of gravity, 'an attractive force which becomes proportionately stronger'.²⁷ Ingram expands this idea suggesting that the pull is stronger at the local and occupational level engendering 'more social rationality', and weaker at the level of party politics and administration where there is 'hence less social rationality'.²⁸

It appears as if this social rationality might be the explanatory model for deliberative democracy; demonstrating hence the illusory nature of any attempts to situate it within the logic of formalised institutions. What is more, it is quite possible that a deliberative process at this 'local' level actually 'lowers the propensity to, and the benefit of, strategic behaviour',²⁹ an interesting counter to institutional modes of logic, and rational choice models at the level of the individual. Pellizzoni remains tested by the question as to what we have to prevent discussion and deliberation from becoming entangled in 'the web of strategy', focusing throughout on the 'cognitive virtue' of deliberation.³⁰

In more contextual terms, Schlosberg looks to an emphasis 'on both diversity and process' as 'integral parts of the liberation from the encroachment of the more instrumental legal system and other forms of poor communication'.³¹ Referring back to this diversity, Bohman criticises deliberation as being inextricably bound

²⁶ Blaug, 67

²⁷ Cited by Blaug, 77

²⁸ David Ingram, "The Limits and Possibilities of Communicative Ethics for Democratic Theory", *Political Theory*, 21(2), 1993: 316

²⁹ Luigi Pellizzoni, "The Myth of the Best Argument: Power, Deliberation and Reason", *The British Journal of Sociology*, 52(1), 2001: 59. According to this line of argument, it also 'increases knowledge, enhancing the quality of decisions'.

³⁰ Pellizzoni, 60

³¹ David Schlosberg, "Communicative Action in Practice: Intersubjectivity and New Social Movements", *Political Studies*, 43, 1995: 303

up in different and conflicting principles, failing to recognise that this is an empirical and not political fact, which the apparent unity of purpose in a liberal state only serves to conceal, thus itself supplying only a 'very general account of political justification'.³² Similar charges are laid with Rawls's 'overlapping consensus', which does not extend beyond 'points of contact among systems of thought',³³ and remains therefore with a conflict of discourses, failing to see the real world level at which 'the incommensurability of cognitive frames and value systems is not total, where cautious, open and imaginative dialogue may highlight an overlapping of world views',³⁴ especially where an underlying logic, however basic, is shared.

III

If, as I hope to have shown, liberalism's key definitions of individual rights and liberties are incompatible with a meaningful definition of democracy, then we must look anew for a normative theory which might better fit the myriad definitions of deliberative democracy to be analysed here. At the outset I would like to suggest a normative theory incorporating a substantive ideal of justice – albeit preliminary – which might be more concomitant with democracy than a liberal theory prioritising above all individual liberties and rights.³⁵ This in no way seeks to devalue the essential nature of such claims in their totality, but rather to show that in and of themselves in their liberal variant, they do not and cannot fulfil even their own objectives, let alone any broader moral claims to justice. With this in mind, it is worth considering at the outset Dryzek's claim that 'there are also mechanisms endogenous to deliberation that can effectively protect those values that liberals enshrine as rights',³⁶ and that there may be traits inherent in a social concept of deliberation that do away with the need for legal rights as protection. The issue may be however that these cannot be universalised. If we are indeed able to do away with the democracy/liberty dichotomy which has paralysed liberalism, might we not be able to more legitimately defend, at least provisionally, a more collective notion of the just?

At this juncture I wish, as a participant in the social values and acts of the communities of which I am part, to reflect on the norms best represented in the deliberative democracy we have arrived at. Initially, there are

³² Bohman, 403

³³ Pellizzoni, 72

³⁴ Pellizzoni, 81

³⁵ Discourse as to the just has a lengthy precedent in political theory, and it is widely accepted as a legitimate goal in its different incarnations. I believe that this allows for its general acceptance as a worthwhile model to be debated within a lively and engaged discursive arena.

³⁶ Dryzek, 172

several claims we can make regarding the precepts upon which deliberative democracy is based. Firstly, it understands the individual in relation to its social state with the individual/collective dichotomy understood as a false dualism. If public deliberation is therefore grounded on a pre-political level of co-operation,³⁷ then a purely individual base of rights and liberties is not going to suffice. Secondly, we see that the decisive norms of individuals in collective deliberation and action have more claim to legitimacy than the set rules of formalised institutions being based on this pre-political state. Thirdly, we can argue for an elaborative conception of justice based on the two prior claims, which will necessarily be less counterintuitive than strictly liberal understandings, for although 'deliberation is not sufficient to establish justice [...] a finding of justice in political ethics requires reciprocity, which calls for public deliberation'.³⁸

This notion of justice is central to my beliefs regarding deliberative democracy, in which I see the promise of 'a political project to counter post-'historical' social injustice'.³⁹ And with Blaug I am confident that no move – theoretical or practical – towards a substantive justice can be made in 'conditions where unfairness is the tradition', and therefore that 'an appeal to criteria outside that tradition is required in order to show that it is unjust'.⁴⁰ In addition, and as will be seen in the last section, situating the theory locally allows for an immanent legitimacy not afforded liberal constitutionalism, as in most cases, individuals will themselves have chosen to cooperate, and agreed on some set of shared values or outcomes, and on an appropriate procedure.

Finally, it can be understood that whatever the norms upheld as most important, these must have the potential to be carried through into practice without the need to resort to any concepts exogenous to the process. This eye on the future is vital to the sane functioning of deliberative democracy; for if we believe it to be just, its continuation is central to justice. That is to say that within a deliberative democratic model, 'good decisions are those which preserve the capacity to make good decisions',⁴¹ although this must not end in stagnation, or a state where a social movement or other deliberative forum focuses solely on accomplishment and 'is thereby transformed into a mere instrument of its own continuation'.⁴²

³⁷ Cf. Pellizzoni, 59

³⁸ Gutmann & Thompson, 158

³⁹ Blaug, 49

⁴⁰ Blaug, 53

⁴¹ Blaug, 68

⁴² Schlosberg, 308

IV

I will turn in the last section of this paper to the search for more apt sites for recontextualising deliberative norms, hoping by now to have significantly argued the case against the inherent legitimacy of extant institutional procedures and to have stressed the need to retrieve 'a truly critical deliberative democracy'.⁴³ By its very nature, deliberative democracy requires a close interaction with practice and cannot do its work as an entirely abstract theoretical construct. At this stage, it is worth reviewing the models illustrated in the course of this paper in terms of where in the real world they would situate their deliberation. Despite their other strengths, Gutmann and Thompson's model is limited, as they remain convinced by the power of institutions, when their emphasis on revision and rejection would fit better with less formalised procedures.⁴⁴

In a similar vein to Cohen and Bohman's models is that of Benhabib; a distinctly pluralist model. And although it is hard to argue with her defence of 'a medium of loosely associated, multiple foci of opinion formation and dissemination which affect one another in free and spontaneous processes of communication',⁴⁵ the assumption that the background institutions are open to influence, and more importantly change, is not evidently well-founded. Benhabib's liberal bias comes through in her claims that the deliberative democracy model transcends 'the stark opposition between *liberal* and democratic theory', connoting as it does a prior interest in reconciling two particular theories rather than elaborating a single normative theory by which to analyse deliberative democracy. It is my belief that this a priori commitment to liberal values limits her understanding of the model as it fails, in its attempts at bridge-building with an established normative theory, to properly understand what is different from liberalism and particular to deliberation. And when she suggests a deliberative model whereby 'the normative conditions of discourses [...] are to be viewed as rules of the game that can be contested within the game but only insofar as one first accepts to abide by them and play the game at all',⁴⁶ although we see the outline of a voluntary associationalism, it appears instantly incompatible with the institutions of the liberal state, whose rules we have no meaningful legal choice but to follow.

⁴³ Dryzek, 26

⁴⁴ See Gutmann & Thompson, 165

⁴⁵ Benhabib, 74

⁴⁶ Benhabib, 80

The extent to which Benhabib's account retains a legitimate role for such arrangements clearly highlights the conceptual and practical limits she seeks to place on deliberation. If we eradicate this commitment to liberal arrangements, it is not clear what imperatives there are to proceed in such a constrained manner. While they might all argue with Cohen for the necessity of a democratic state protecting basic liberties and ensuring equal protection,⁴⁷ we might well ask whether specific institutions protect as much as they stifle, and who gets to decide whether this trade off is worth it. This 'who?' question firmly locates our concerns throughout this paper in the context that we face, for while 'the theorist faces the problem of making something ideal more real', a distinctly abstract endeavour, 'participants must make something real more ideal'.⁴⁸ Given my interest in this more situated endeavour, I feel bound in my conclusion to engage finally with 'the real', or the political order participants face. I believe that the conclusions drawn in this article privilege localised, small-group forms of deliberation as representing the most just and immanently legitimate modes, although it would be inescapably naïve to perceive these as operating without limits.

Dryzek in particular has contemplated the relationship between social movements and the states under (or over) which they must operate. For while the activities of politicised aspects of civil society are at least partially determined by state activities,⁴⁹ two counterintuitive correlations appear; for as excluded groups move for inclusion, they equally require a degree of exclusion in order to maintain their exceptional status.⁵⁰ Dryzek intuits that there are four compass points between which states are situated, with passive exclusion the state most conducive to the successful establishment of discursive arena, although some will inevitably be assimilated or institutionalised.⁵¹ Yet we have seen that a model of social rationality is dually complementary: it not only requires deliberation, but is also reinforced by it. And furthermore, Pellizzoni believes that deliberative democracy shows that 'the rational pursuit of the common good is possible, that barriers to dialogue may worsen the quality of decisions', and 'that resistance to external power is provided by the quest for mutual understanding'.⁵² This 'mutual understanding' should not appear as an elusive point

⁴⁷ See Joshua Cohen, "Procedure and Substance in Deliberative Democracy", in Benhabib, (ed.), 1996: 113

⁴⁸ Blaug, 66. My emphasis.

⁴⁹ Dryzek, 23

⁵⁰ Dryzek, 104

⁵¹ Dryzek, 108

⁵² Pellizzoni, 69

fixed in the distance at the end of some deliberative path, however. It will instead require aspects of reflexivity. This idea has a long history in Republican thought, as J. S. Mill explained that we are capable of rectifying mistakes, 'by discussion and experience. Not by experience alone. There must be discussion, to show how experience is to be interpreted. Wrong opinions and practices gradually yield to fact and argument; but facts and arguments, to produce an effect on the mind, must be brought before it'.⁵³

Ricardo Blaug's most important contribution is a positive acknowledgement of the entropic nature of many deliberative arenas, including 'autonomous public spheres operating at the periphery of the state, functional demarchies [... and] new social movements'.⁵⁴ He adroitly points out that participants 'seek normative validity *within particular actions*', and it is this fact that enables socially effective participation and constitutes a grave threat both practically and in terms of legitimacy to liberal procedures. It is indeed the case, especially with social movements, that deliberation can occur within artificially constructed arenas, whose participants are 'not afraid of permanently partial identities and contradictory standpoints',⁵⁵ and that this emphasis on diversity, far from weakening the political justification of deliberative democracy, is a positive virtue.

The process by which we can agree on what is desirable without necessarily agreeing on why, yet within which 'all of these different 'whys' are generally expressed, recognized, and respected',⁵⁶ benefits from an immanent legitimacy which is perhaps the ultimate challenge to liberalism's unencumbered, rational calculator. For it is here, and not in liberal institutions that the individual enjoys substantive *positive* liberties,⁵⁷ and where collectivities of humans have the autonomous potential to realise their own collective goals; an autonomy derived from the theory's inherent justice, and the like of which has not been delivered by the procedures accompanying a liberal discourse prioritising the right.

⁵³ J. S. Mill, "On Liberty," 231, cited Stephen Holmes, "Precommitment and the Paradox of Democracy," in Jon Elster and Rune Slagstad (eds.), *Constitutionalism and Democracy*, (Cambridge: Cambridge University Press, 1988): 240.

⁵⁴ Blaug, 57

⁵⁵ Schlosberg, 306

⁵⁶ Schlosberg, 306

⁵⁷ An idea, of course, first elaborated by Isaiah Berlin, cf. e.g. *Four Essays on Liberty*, (London: Oxford University Press, 1969).

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