Consensus, Legitimacy, and the Exercise of Judgement in Political Deliberation

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ABSTRACT: Deliberative Democrats have been criticised for promoting an overly consensual style of politics. Agonistic democrats argue that this is because they allow justice to displace ‘the political’ while others make the opposite charge: deliberative democrats pay insufficient attention to justice and the confrontational style of politics which may be necessary to secure social justice. I argue that the deliberative model aims at strengthening democratic legitimacy, not at producing consensus and that it is centrally concerned with stimulating the exercise of citizens’ capacity for judgement. The duty of civility should be regarded as a duty to make impartial judgements, not as a duty to seek compromises. Citizens cannot abdicate their deliberative capacities to any democratic procedure, but must, in the final analysis, judge whether to consent to or dissent from the outcomes of any procedure and an impartial assessment may positively require dissent in some circumstances.¹

Schumpeter took a dim view of the deliberative capacities of the average voter, arguing that the average citizen could not be relied upon to make responsible judgments about distant and rather abstract matters of state.² Consequently, he thought that the populace should be kept out of politics as much as possible, leaving it to political elites with the appropriate technical know-how. The resulting, minimalist, model of democracy left little room for popular participation, but was, however, presented as efficient and also fair to the extent that all voters had a formally equal chance to influence the outcome of elections. The formal equality of minimalist, vote-aggregating democracy, offers a rather slender basis for the legitimacy of the resulting laws, however. When a persistent majority succeeds in winning votes across a range of issues, the losing minority may not regard these outcomes as authoritative, on the
grounds that there is no evidence that their interests have been taken into account.

Deliberative democrats have not overlooked the poor judgement of the average voter but they regard minimalist aggregative democracy as contributing to civic thoughtlessness and not as its remedy (Fishkin 1991: 3). Instead, deliberative democrats subscribe to a model of democracy which places the exercise of citizens’ deliberative capacities at its centre with institutions designed to stimulate the exercise of these capacities. What we need, on this view, is better judgement, not the construction of institutions that seek, as far as possible, to eliminate individual judgement from democratic politics.

There are three related reasons for wanting to incorporate deliberative elements into existing democratic procedures. Firstly, it is hoped that this will produce qualitatively better decisions (Fishkin 1991; Dryzek 2000; Nino 1996). Secondly, it is argued that public deliberation, conceived as mutual justification, is a duty citizens owe to one another if they are to respect each others’ status as free and equal. This duty, to which we shall return below, is called by Rawls the ‘duty of civility’. 3 Thirdly, it is hoped that by supplementing vote aggregation with processes which encourage public justification the legitimacy of the procedure and its outcomes may be strengthened (Cohen 1997: 72). Given that there may not be complete agreement on the justice of the results of democratic procedures, it is hoped that by including within them an element of deliberation the legitimacy of
outcomes might be strengthened in the eyes of losing minorities who can at least be assured that their interests have been considered (Gutmann et al. 1996: 72).

Legitimacy is ensured by the degree to which democratic procedures embody respect for citizens as free and equal. It is vital to insist on the fact that political deliberation aims at legitimacy and is not to be thought of merely as a tool for producing consensus among citizens. Some may object to the hurly burly of party competition which minimalist democracy fosters and seek a more consensual style of politics. Deliberative democracy, however, only seeks to constrain citizens to frame claims of interest as claims of justice and it is not to be expected that effecting or at least encouraging the transformation of raw preferences into considered judgements constrained by justice will eliminate conflict from public life.

A legitimate outcome need not, of course, be regarded as substantively just.Democratic procedures aim only at producing authoritative collective decisions which have authority for the citizen not primarily, or exclusively, because they are correct, but because the decision was arrived at by a fair procedure. We do not normally conclude that on finding that a vote has gone against us, we must have made a mistake and surrender the judgements we had formed prior to the vote. To suppose that democracy is a device for telling us what we ought to believe would be to suppose that the democratic citizen must abdicate her capacity to make judgements to the procedure. This would make participation in democratic politics less a way of exercising an
aspect of one’s own autonomy and more a matter of surrendering one’s autonomy altogether, of entirely contracting out one’s deliberative capacities to a third party.  

This is not only implausible as an account of practical reasoning but also as an account of the democratic procedure itself. Contracting out one’s judgement can work in two ways. One may hold one’s beliefs conditionally, such that one forms a view on an issue and votes that view but surrenders it if one loses the vote. Note that the conditional believer is not to be confused with the fallibilist who holds a belief conditional upon being shown that it is false, or the voter who through further reflection comes to form different view of the issue following the vote. The conditional believer here does not go through any deliberative process herself: this has been contracted out entirely: she adopts the majority view without inquiring into any reasons for doing so other than the fact that it is the majority view. The second way to contract out one’s judgment is parasitic on the fact that others must form judgements of the issues, even if only conditionally. This person is the ‘fence sitter’ who refuses to form any view of the matter at hand but is resolved to adopt the majority view following voting. Clearly, the citizen body as a whole cannot be fence sitters as voting would then be impossible: someone must take a view of the matter at hand if there is to be an outcome for the fence sitter to adopt.

We may say that, from the point of view of the person who contracts out her judgement, there is no longer any real difference between voting as a decision procedure and tossing a coin: all that is required is an authoritative
decision, unsupported by any reasons other than the fairness of the procedure itself.\(^7\) An epistemic variant of this position is that of the person who, believing their own deliberative capacities to be unreliable, is resolved to endorse whatever view happens to be espoused by the resulting majority, on the grounds that it is most likely to be correct.\(^8\) Crucially, however, judgment cannot be entirely eliminated even by the conditional believer and the fence sitter, for even they take the decision to be authoritative because they judge the procedure itself to be fair and secondly, the success of their respective strategies depends entirely on others not adopting conditional or fence-sitting approaches to collective decision-making.

For citizens who do hold views about what the state should do and are committed to democratic decision procedures, these procedures do not replace their judgements about what ought to be done, but rather provide an additional reason for supporting a result that one judges just, or, if one dissents, it supplies an otherwise missing reason for acquiescing. One should not disregard outcomes with which one disagrees if they are produced by fair procedures, but one is not required to surrender one’s judgement about the substantive issue, nor it is obligatory to refrain from seeking to reverse or revise this result, although the means appropriate to this endeavour will be circumscribed by legitimacy of the result. It is sometimes claimed, usually by those who have just secured a narrow victory, that any attempt to reverse a majority decision is undemocratic, and ignores the fact that ‘the people have spoken’. Clearly, however, there is a world of difference between seeking to
reverse a decision using democratic means and choosing not to abide by it or to undermine the procedures which produced it. The populist rhetoric which identifies the ‘will of the people’ with the will of a particular section of them, albeit a majority, ignores the fact that losing minorities also belong to ‘the people’ and that the propensity of the people to speak in a plurality of voices, is what prompts the construction of democratic decision-making procedures in the first place (Pettit 1999: 174).

Deliberative democracy aims, primarily at strengthening legitimacy. In the first instance, this means strengthening the reasons for acquiescing to an outcome, and, in the second, it serves to constrain the range of measures one may adopt should one choose to contest a decision. As a theory of democratic legitimacy deliberative democracy does not aim at relieving citizens of the burden of judgement and it acknowledges that they will continue to disagree after a decision has been reached. This is important, for deliberative democracy has been attacked on the grounds that it is overly consensual, committing citizens to seeking compromise above all else and precluding them from adopting confrontational forms of political activity. However, the view of deliberation presented here, one centred on the cultivation of individual judgement and the strengthening of democratic legitimacy allows that these may be appropriate with democratic politics and further, that on a correct understanding of the duty of civility, they may be positively required.
Reasonable agreement: the agonist objection

The first set of worries about the consensual character of deliberative democracy are expressed by agonistic democrats such as Chantal Mouffe (Mouffe 1993; 1996; 2000). She believes that political liberals like Rawls and Cohen have failed to grasp the heterogeneous and contestable character of the political and that they mistakenly import reason and morality into this sphere. The attempt to distinguish between reasons which may be offered in public and those which may not is just the latest version of the liberal project of depoliticising difference by expelling it from the public sphere. In place of a public sphere which is plural and is characterised by the ongoing contest of perspectives, deliberative democrats would have a public sphere which, insofar as it is governed by reason must be homogeneous insofar as the pursuit of a shared order of justification reduces the plurality of perspectives to a single perspective, that of reason itself (Young 1990: 100).

For Mouffe, by contrast, the ‘political’ is essentially characterised by conflict. For a relationship to count as ‘political’ it must presuppose a contest between the parties concerned. Citizens are not governed by the aim of reasonable agreement, but rather by the desire to win, the desire to defeat their opponents and to establish and maintain their hegemony. This is not, furthermore, an incidental feature of political life but is essential to the concept of the political and is ineliminable.

The aim of managing conflict by seeking reasonable agreement on principles of justice is not just undesirable on account of its homogenising
goal, but is in principle impossible because, she claims, the distinction
between the reasonable and the unreasonable effectively reveals that conflict
extends into reason itself as it is a product of arbitrary decision and nothing
more.\textsuperscript{13} It is not just that Mouffe wants to separate reasons, morality, and
politics, in the end, but rather that she ends up subsuming reason and
morality under the political, reducing these spheres to individual decision
and conflict.\textsuperscript{14} Consequently, the whole project of a more reasonable,
democratic, order must be regarded as misconceived.

This agonism finds itself, however, caught on the horns of a dilemma.
On the one hand, if reason and morality are expelled from the political, what
can the agonist say to the supporter of Schmitt’s more brutal conception of the
political? On the other hand, if there is to be rational, normative, or at least
ethical, response available to the agonist, then agonistic democracy is also
guilty of moralising the political. Schmitt’s conception of the political, from
which this agonism draws its inspiration, is famously premised on the
distinction between friend and enemy where another is only truly an enemy
when one is prepared to fight to the death (Schmitt 1996: 32). Not
surprisingly, Mouffe prefers not to think of politics in quite these terms and
she transforms Schmitt’s brutal antagonisms into ‘agonism’ in which parties
are engaged in a contest rather than in a war (Mouffe 2000: 117). This implies
that they recognise certain rules of the game and respect one another as
competitors. Rather than feeling contempt for the vanquished, the agonistic
citizens is supposed to show respect for the losing side in virtue of their having been worthy competitors.\textsuperscript{15}

Why should anyone be obliged to adopt a stance of agonistic respect towards ones fellow citizens? Why should they feel bound by the rules of the democratic contest? And why should they regard the outcomes of such a contest as legitimate and worthy of obedience? Mouffe can only answer these questions by providing more ethical content to the concept of agonism, but then she must relinquish the claim that she is offering a distinctively ‘political’ conception of the political. However, it might be argued that an agonistic ethic is clearly a relatively thick and controversial basis for a pluralist account of democracy by comparison with the assumptions on which political liberalism rests, relying as it does on a number of highly controversial claims about reason, morality and the nature of the person.\textsuperscript{16}

If reason is politicised in the way Mouffe suggests, then it is politicised all the way down and agonism becomes a commitment and nothing more, unsupported by reasons of any sort.\textsuperscript{17} It can be no more than the arbitrary preference of the agonistic democrat who, as a result, cannot show that a Schmittian adversary has any reason to show respect for his adversary, but can only hope to prevent him from attaining power. If others have no reason to respect their competitors, or, the rules of the contest which constitute this relationship, then they have no reason to regard the laws produced by this contest as anything more than the imposition of the victor, to be resisted and
overturned at the first tilt in the balance of power. The losers may perforce submit, but they cannot regard such outcomes as legitimate.

Expelling justice from the political also, ironically, results in a curiously bloodless conception of politics itself. Seen from a distance, the picture presented of politics as an endless struggle for hegemony between groups, the boundaries of which are continuously contested, has a certain empirical plausibility but this view is clearly problematic from the first person standpoint of the agent from which it seems unable to account for the relationship political actors have to their own projects as embodying genuine values and valid principles which others could come to recognise as such. Partisans of liberty, equality and community may manoeuvre to win support for their projects but they do not regard these projects themselves simply as means to secure power, or as the tickets which make it possible for them to enter the political arena and play the great game of politics. Rather, these are the ends for which they enter into politics and which motivate the resulting conflicts. The agonistic democrat can only reintegrate the perspective of the detached observer with that of the first person participant if she surrenders the thesis of the politicisation of reason which represents principle as preference and judgement as decision, otherwise the agonist will be unable to make sense of her own commitment to democracy let alone capture the reasons why citizens engage in politics.

Without a vision of the goal of politics – a vision of the just order one hopes to construct - political activity would be no more than an end in itself –
a contest for the sake of contestation. How should this contest be conducted if those engaged in it participated without some goal in mind which lay outside this contest itself? Citizens of a purely contestatory democracy would be like members of a debating society – adopting positions in order to have a debate, not in order to establish the truth or justice of their case. Winners and losers can shake hands at the conclusion of such a context because nothing is at stake here, whereas in politics the conflict is real in the sense that the vital interests, principles and values are at stake and the losers may judge that they cannot live with the outcomes in question.

The deliberative democrat’s attempt to distinguish public from non-public reasons is not premised on a failure to appreciate the depth of conflict between different outlooks, but rather is premised on the view that these conflicts are much deeper than is presupposed by a purely ‘political’ conception of politics. It is because citizens cannot regard their projects as mere preferences or decisions, that the decision-making procedure must be rendered deliberative in the hope that the strain between personal belief and public commitment can be diminished by aiming at outcomes justifiable to all.

Mouffe’s error, ironically, is the one which liberal ‘neutrality’ is typically accused of, that is to say, she wants a view of politics which is, somehow, not a view. Her account of ‘the political’ purports to be a perspective which is not itself a perspective, but rather transcends perspective altogether, a view from nowhere as it were. But this is impossible. The contrast between justice and politics is real enough of course: the point of
view of justice does indeed invite us to adopt a single vision of society as a
unified order governed by a single set of values and principles, while politics
is usefully thought of in terms of the clash between a plurality of visions of
the just social order. However, if one wants to say more than this, the relation
between the two becomes more complex, for this involves taking a view of the
right order of politics, such that politics becomes included within one’s view
of justice when one seeks to find the right way to handle conflicts about
justice. One wants to preserve the distinction between fair procedures and
just outcomes, but yet, once one develops a normative account of political
institutions then a certain circularity enters one’s account.

Liberals have repeatedly been accused of posing as ‘neutral’ while in
fact presupposing a set of liberal values and principles, but it is hard to seem
how they, or anyone else, could do otherwise, for how else could a liberal
conception of politics be liberal?20 This circularity is not exclusive to liberalism
however, but must be inescapable for all conceptions of politics.21 Agonistic
democracy presupposes an agonist ethic every bit as much as liberalism
presupposes respect for the freedom and equality of individuals. No
interesting view of politics can cease to be a view, a perspective which can be
taken up from within the moral outlook of the individual agent. The attempt
of the agonist to separate justice and politics, which overlooks this complex
relationship between legitimacy and justice, either relies on an implicit
account of justice, into which her conception of the political fits, or it robs this
view of the political of any practical value by refusing to present it as
providing reasons for the individual agent to guide her actions in any particular direction, as a view that she can adopt. Agonism fails to unseat the deliberative ideal of reasonable agreement because it can only expel reason and morality from the political at the cost of abandoning any claim on the practical standpoint of the citizen.

**Is there a duty to compromise?**

A second strand of criticism attacks deliberative democracy from the opposite angle. While the agonist claims that justice and reason do not belong in the political, others fear that justice does not figure prominently enough in deliberative democracy and that a commitment to deliberation will frustrate attempts to secure justice for the disadvantaged through imposing on citizens an obligation to be moderate and reasonable and to engage in fruitless ‘dialogue’ with those in positions of power over them. On this view deliberative democrats care more about the conduct of deliberative politics than about the justice of its outcomes. Anne Phillips worries that deliberative democrats’ opposition to simple appeals to sectional interest and points out that including women and ethnic minorities in politics will not further the interests of these groups if, once these representatives are elected, they find themselves under pressure to be ‘moderate’ and ‘reasonable’ in advancing the interests of their constituents (Phillips 1995: 162; 1999: 118-23). These pressures stem from deep-seated ways of thinking about what constitutes a ‘good citizen’. It is argued, in effect, that the ideal of an ‘impartial’ public
sphere operates to the disadvantage of the marginalized because their attempts to have their interests addressed are easily represented as the special pleading of sectional interests who are not sufficiently devoted to the common good (Young 1990: 110-16). It is not difficult to imagine how a biased public sphere may indeed encourage the marginalized to engage in self-censorship.

Those at the sharp end of social inequalities cannot, however, afford to be too altruistic. Iris Young worries, in particular, that, in contrast, to the ‘activist’ who is primarily committed to social justice, the deliberative democrat may have fallen into the trap of believing herself to have a duty to participate in deliberative procedures regardless of their likely outcome (Young 2001). In fact the just claims of certain groups may best be furthered by engaging in a range of non-deliberative, non-parliamentary forms of political activity such as strikes, sit-ins and civil disobedience. By contrast, the deliberative democrat appears to be committed to participating in dialogue whenever this is possible, even when it is likely that this dialogue may take the form of ‘consultations’ which are structured with the aim of garnering the appearance of legitimacy for policies that will not be significantly transformed by the consultative process (Dryzek 2000: 85-8). If the deliberative citizen has, as appears to be the case, a duty to engage in public dialogue whenever possible then she will be easily co-opted by powerful groups which have no intention of conceding any major point. On this view, the duty of civility
appears to obligate citizens to pursue agreement at the expense of their interests and purchases easy legitimacy at the expense of justice.

The response to these concerns has two parts. Firstly, we will need to distinguish different aspects of the ‘reasonable’ in order to head off the charge that accepting the restraints imposed by public reason might produce consensus by demanding that minorities sacrifice their interests for the greater good. Secondly, we need to insist upon the need to keep the ideal of public reason distinct from the idea of public dialogue. Worries about the consensual culture of deliberation stem largely from neglect of this distinction which is necessary if we are to answer the charge that the duty to accept the constraints of public reason, the duty of civility, imposes a duty to seek consensus. Instead, I will argue, it can impose on citizens a positive duty to dissent, that is compatible with democratic legitimacy. It is not participation in dialogue that is central to deliberative democracy but our duty to make certain sorts of judgement.

Must the ‘reasonable’ citizen be prepared to sacrifice their personal interests to the greater good? There is, of course, the view the deliberative democracy requires its citizens to be altruistic in the sense that they must put the common good before their private interests (Barber 1984: 208). Communitarian inclined democrats think of the good citizen as someone with an altruistic devotion to the polis and deliberative democrats’ opposition to the grubby consumerism of the political marketplace may encourage the
notion that they are concerned with ameliorating the anomie and selfishness of modern life by establishing mechanisms which will transform consumers into virtuous and public spirited citizens (Villa 2001).

This seems to be at odds, however, with the liberal tenor of the central versions of deliberative democracy, those of Rawls, Cohen, and Habermas (Rawls 1993; Habermas 1996; Cohen 1997). For these writers, deliberative democracy is not just the revival of classical participatory democracy and the assumption that participation is the keystone of the good life. This view is rejected as ‘sectarian’ as deliberative democracy is premised rather on the notion of an association of free and equal persons and as such is precluded from imposing any particular model of the good life, still less that of the citizen who is prepared to give up his life for his city (Cohen 1997: 81). That view clearly requires altruism, albeit the confined altruism of the patriot, however, the sort of transformation which is really central to deliberative democracy is not the transformation of characters, but the transformation of preferences into judgements, supported by the right reasons.22

Acceptance of the constraints of public reason does not necessarily require self-sacrifice, but only that one remain open to the possibility that one may have to make sacrifices. This is because deliberation is to be impartial and not altruistic in the sense that it requires displays of supererogatory virtue. Because public deliberation is concerned with the employment of our common coercive power, judgements about how this power is to be used must pass the test of impartiality, i.e. if we are to respect our fellow citizens as
free and equal persons, we must not seek to use this power simply for our own ends but rather must offer reasons for our judgement that it should be used in the way that we think best, judgements which our fellow citizens could reasonably adopt as their own (Rawls 1993: 217). The test of impartiality here does not necessarily exclude reference to personal or group interests, but rather discourages their assertion in public simply as sectional interests and no more (Barry 2001: 301). It requires us rather to present our demands, say for a greater share of resources, as claims of justice, grounded in reasons accessible to all.23

It may happen that when viewed impartially, I see that my claim is ill-founded – that I am demanding more than my fair share, in which case, I must go back and either find better reasons to support my claim, or modify that claim. However, it may also be the case that I find that my claim is sound, considered impartially, in which case I can press others to sacrifice their interests for the sake of my, just, claim (a sacrifice which they now have a reason to make, which they did not have when it was presented as simply ‘my’ claim). It is misleading then, to suppose that contemporary deliberative ideals are organised around the old eighteenth century opposition between private interest and civic virtue (Pocock 1985). On the contrary, in contrast with traditional majoritarian democracy it is sensitive to the claims of justice made by marginalized and minority groups, employing a conception of impartial public reason to distinguish between legitimate and illegitimate interests.24
Impartiality, on this view, is not to be identified with simple altruism, in that it need not require individuals or groups to sacrifice their interests for the public good. It merely imposes a constraint upon our judgements about our interests, including those arising from ethical ideals. The constraint is simply that of requiring us to assess our judgements as if they were those of third person, and to see whether we could endorse them once their ‘mineness’ has been removed from the picture (Nagel 1986). The notion of reasonable agreement models this impartial judgement by inviting us to think of ourselves as proposing our judgements and their supporting reasons to all those potentially affected. Now this is a species of altruism, in that we are required to weigh the interests of others on the same scale as we weigh our own and to prioritise the interests of others when the scale doesn’t tip in our favour, but it is distinct from the superogatory virtue: sacrifice is not mandatory.25

It has been argued, however, that impartiality is not the most appropriate principle to guide political deliberation. Instead, we should view the test of reasonable agreement as embodying the principle of reciprocity. Rawls, for example, rejects impartiality, understanding it to entail simple altruism. Gutmann and Thompson also reject impartiality in favour of reciprocity because of the supposedly morally 'absolutist' character of impartiality (Rawls 1993: 54; Gutmann et al.: 52-5). As they see it, public deliberation in conditions of deep moral disagreement can only successfully manage this sort of conflict if citizens are prepared to engage in a
little give and take in order that they may be able to ‘accommodate’ each other’s concerns even where they cannot reach an agreement on the substantive issue in which they are divided. Impartiality, however, is too inflexible to facilitate the politics of accommodation. Of course, this may be a virtue if we wish to avoid an overly consensual politics.

Gutmann and Thompson are right to note the difference between reciprocity and impartiality, i.e. the flexible character of the former and the unconditional quality of the latter, but wrong to suppose that this distinction shows impartiality to be unfit for the task of regulating political deliberation. It is the unconditional character of impartiality that places it at the heart of morality per se, and on which its claim to be the moral point of view rests. Gutmann and Thompson seem to believe that this unconditionality prevents the impartial deliberator from recognising that there may be two, equally legitimate, sides to a dispute. The impartial reasoner is bound to insist that one is indubitably moral and the other immoral. We should however, separate the unconditionality which impartiality requires of us with respect to the application of moral rules from the notion that impartiality also provides us with certainty about how and when to apply those rules.

Where morality is complicated by value pluralism and the contestability of concepts, it will indeed be difficult to determine what to do. The impartial reasoner however, makes no pretence that forming an impartial judgment is a guarantee of certainty, nor is it supposed that impartiality delivers substantive moral judgements unaided by other ethical
considerations: as the moral point of view it merely offers us a point of view from which we can see moral dilemmas as dilemmas in the first place. Gutmann and Thompson seem to believe that the impartial reasoner occupies a view from nowhere from which she can deliver canonical moral judgements, whereas the reasonable person, moved by reciprocity has no such metaphysical vantage point, but rather places himself in the shoes of the other and tries to view the conflict in question from the other’s point of view. This, however, is an equally good description of what impartiality requires of us. To make an impartial judgment necessarily requires us to engage in just such a process of ideal role taking and then make a judgment about the claims as one has come to understand them. In this last moment the ‘view from nowhere’ clearly surfaces, but not as a ground for infallible judgement, but rather as reflection upon one’s own claims as those of another. Is the impartial reasoner thereby prevented from appreciating that others may have good reasons for their dissenting view? It seems not, and on the contrary, it is the requirement to be impartial that restrains the impartial reasoner from simply forcing through their own view because it is her own, and enjoins her to seek an accommodation of some sort, perhaps by submitting to a procedure which will issue in an authoritative decision that both parties can regard as legitimate. We have no reason, then, to reject impartiality in favour of reciprocity and may, indeed, have grounds to reject the latter.

This is because the difference between the two turns out to lie, not in their capacity to require us to imaginatively enter into the perspective of
another, but rather in their conditionality. The give and take aspect of reciprocity is what actually distinguishes it from impartiality, which enjoins me to refrain from giving priority to my beliefs and my interests, simply in virtue of their being mine. This give and take quality of reciprocity is not to be confused with the process of ideal role taking however. On the impartial view of public reason we must unconditionally engage in this process, as it is required by the duty of civility, i.e. the duty to respect our fellow citizens as free and equal. Similarly, we are unconditionally required to abide by the results of this impartial deliberation once we have made our impartial judgement of the matter at hand. If we find our arguments deficient we must abandon them, and if our claims cannot be supported, they must be surrendered.

This is not conditional on the reactions of our interlocutors as the model of reciprocity suggests, such that if they were unwilling to try to engage in ideal role taking, we would no longer be obliged to seek justifications for our positions that would, ideally, be acceptable to others. Regardless of the reactions of our actual interlocutors, we are not free to simply disregard their interests and their judgments about them. What actually distinguishes reciprocity is not the notion of ideal role taking but rather the conditional character of our obligation to accept the restraints of public reason. Reciprocity suggests that faced with persons who are unwilling to engage in deliberation and unwilling to compromise, the deliberative citizen is released from their obligation to consider their claims. This seems to
be wrong at least as a full account of the duty of civility: we are not freed from our obligations to consider the interests of others simply because they refuse to reciprocate. Criminals may forfeit certain of their rights when they commit crimes, but they do not lose all of their rights. Despite their apparent refusal to accept the burdens of government and to live under shared laws with the fellow citizens we are not therefore released from our obligation to treat them with equal concern and respect.

So, from the point of view of morality reciprocity is simply too weak. There is also a sense, however, in which it is too strong i.e. when our interlocutor is willing to compromise, it appears that we are obliged to continue to seek agreement rather than to hold to our initial claims, even if these are (impartially) justified. This is the problem that Young rightly draws attention to: the danger that some understandings of deliberation may impose an obligation on citizens to participate in consultative processes even if these appear to be little more than strategies to buy off dissent rather than genuine attempts to arrive at a fair resolution of the matter at hand. To conceive of deliberation and the duty of civility in this way would appear to lock citizens into deliberative processes which are insensitive to justice, and which are themselves not obviously fair but permit those with superior bargaining power to exploit their position as long as they display a willingness to talk.³²

The lure of this view for deliberative democrats, lies, I think, in the way that the reciprocity model of reasonableness appears closer to genuine dialogue than the more abstract idea of impartial judgement. The duty of
civility as reciprocity seems better at capturing the ethical quality of dialogue which deliberative institutions are meant to promote. The role reversals of actual dialogue, where one switches over and back between the active role of the speaker and the passive role of the listener, seem to reflect reciprocity in action. In actual conversations, as opposed to the imagined ones which an impartial reasoner may conduct in her head, the direction of exchanges is entirely unpredictable – one cannot say in advance where the conversation will be led as each interlocutor checks the argument and assumptions of the other, affirming or denying their judgements, and introducing new topics into the discussion. In this process of mutual adaptation neither directs the dialogue, but each is prepared to be led in new and unexpected directions. Unlike a Platonic ‘dialogue’ masterminded from above, an actual dialogue cannot be second-guessed by its participants, but is only made possible by the separateness of the perspectives of the participants.

Furthermore, there is an important ethical quality to dialogue, i.e. the business of talking to, or rather, with, another, rather than about them. In dialogue we relate to our interlocutor as a partner in a common concern, we are open to their views and this openness to correction by the other is a precondition of the possibility of dialogue. In being open to the other, a listener as well as a speaker, we enter into an ethical relationship with the other that manifests our respect for them as an equal subject. By contrast, to be talked about renders you simply an object of discourse, placing you on a par with any inanimate object of discourse, a thing to be manipulated.
consideration appears to provide an important reason for us to aim at inclusive deliberative procedures, so that persons who would otherwise be the objects of a variety of administrative and therapeutic discourse and treated as patients, problems and children, might be allowed to exercise their autonomy as subjects of the laws and policies to which they are subjected.

However, while actual dialogue has a genuine ethical appeal, it can have a downside too. Too often, ‘conversations’ do not approximate to this ideal of equality and spontaneity but are dominated by bores and hypocrites who talk but do not listen. They may pause to permit us to speak, but do not actually attend to what we have said. There are cranks whose views are too crazy to warrant serious consideration, proselytisers who merely aim to induce a conversion and, of course, Machiavellians, who seek only to further their own ends and who merely pretend to respect the reciprocity of genuine dialogue. In short, there are many exchanges which fall so short of this ideal that it is hard to see why we should be obliged to participate in them at all.

Faced with persons who are not willing to genuinely consider our points of view, to deliberate about our arguments and interests, we are not, I think, obliged to engage in discussion with them. To do so would simply be a vexation to the spirit. While reciprocity is rendered attractive as a model of the duty of civility in virtue of its ties to dialogue, it also provides us with a justification for refusing to participate in discussion. Having walked away, however, our duty of civility is not thereby extinguished, for the manner in
which we encounters a view is one thing, and consideration of the reasoning which supports that view is another. Faced with an impassioned opponent who is unwilling to consider whether there may be any merit to the other side of the argument, we may legitimately walk away, but we may not simply disregard the view this person holds, but are instead obliged to impartially consider the reasons which may be offered for it and assess our own position accordingly.

The duty of civility conceived as impartiality requires us to go beyond what may be actually said by those we speak with because it requires us to consider what reasons could be offered for their views regardless of whether the persons concerned are themselves fully in possession of those reasons. Consider also the case of the person whose views have been formed as a result of adaptation to unequal circumstances: the battered wife who believes that men may legitimately employ violence in their domestic relations. Here we may not only have to go beyond what this person says, but we may actually have to disregard it entirely as a view that no-one could reasonably hold. 34

It has been claimed that we owe the powerless a duty of deference, on the grounds and that it is offensive to require them to provide justifications for their claims. 35 While liberals are hesitant about intervening to prevent individuals from acting on their best view of their interests, this restraint is only justified where actions are consistent with justice, and where a person’s interests will be harmed by their imperfect view of their best interests, it is not
implausible to suggest that onlookers have a duty to point out the error, if error it be. Certainly, we should no more accept at face value the claims of the those with apparently accommodationist preferences than we should accept the claims of those who are manifestly unconcerned with justice (McBride 2003).

In any actual deliberation, then, we are presented with a range of arguments which we cannot simply accept, but rather must assess for ourselves. We may find that our pre-deliberative judgements must be revised in the light of any discussion that takes place, but equally, we may judge that it is the judgements of our interlocutors which stand in need of revision. In such cases we may disregard what they say and concentrate rather on seeing whether it is possible to reconstruct their claim in order to provide better supporting reasons than those we have actually been offered, or, if such a reconstruction is not possible, to see what account we can give of the position they ought to have adopted consistent with public reason. Such second guessing is unavoidable if we are to discharge our obligations to our interlocutors.

**Reflection, procedure, and individual judgment**

To suppose that we are confined to considering the claims actually made and the reasons actually offered in actual discussion is to misinterpret the duty of civility as if it were a matter of good manners rather than an account of our obligations to our fellow citizens. In particular, this appears to suggest that the primary relationship to be considered is that between
ourselves and our partners in dialogue. On any plausible account of political deliberation this relationship is not identical to that which we have to our fellow citizens, that is to say, the number of people to whom we owe a duty of civility will always be greater than the number of those with whom we can actually engage in dialogue. As deliberative citizens we belong to an ‘imagined community’ and the vast majority of our fellow citizens can realistically only be participants in an imagined dialogue, one that is geographically and temporally dispersed, being conducted serially in a range of sites and media and in which actual discussions figure only as one element. If deliberation is to be ‘public’ then it can only be so to the extent that it is imagined as such.36

This may appear to give too great a role to what Goodin calls ‘internal reflective’ deliberation, in contrast to ‘external-collective’ deliberation (Goodin 2003: 169). Deliberative democracy, on this view, revolves ultimately around the private reflection of the armchair citizen rather than the public engagement of the active citizen. We have purchased the possibility of dissenting judgment at the price of the public character of deliberation. Goodin points out, however, that deliberative democrats have failed to show that mass democracy can ever successfully institutionalise the sort of external collective deliberation which seems to be required (Goodin 2003: 178). Not only is it more practical to think of deliberation in terms of internal reflection rather than collective dialogue, it is also the case that it is not necessarily deficient in that actual dialogue may simply reinforce citizens’ prejudices,
failing to prompt any transformation of their judgments, while internal reflection, stimulated by a culture which, through novels, plays, and films encourages individuals to imaginatively project themselves into the perspectives of distant others may, by contrast, produce better judgements.

We can go further than this, however. It is not only the case that internal reflective deliberation can be a useful ‘supplement’ to our imperfect institutionalisation of collective discussion, but rather that the latter simply makes no sense without the former, i.e. we can conceive of internal reflective deliberation without any external collective element, but the converse is not true. If public deliberation is to be genuinely deliberative it must centre on reasoning, not merely talking and to this extent participants must necessarily engage in internal deliberation (Cohen 1997: 193). Actual dialogue may present us with unexpected claims and arguments, but these must nonetheless be considered and judged by us individually as we weigh whether we think these claims are sound, self-serving, or even self-harming. We have no choice but to go beyond what people actually say and to work this into our own private dialogue with ourselves.

Placed in perspective then, actual dialogue does not play a central role even in external collective deliberation. That is to say the collective aspect of deliberation cannot privilege any particular instance of discussion, given its dispersed quality. A collective deliberation in a modern democracy cannot be thought of on the model of the Athenian agora, still less on the model of a jury deliberation in which the parties are all present at the table. Such a
deliberation is in fact constituted by innumerable interactions which we bring into relation with one another in our imaginations. Only by abstracting from their concrete circumstances do we see a collection of persons who may never have met as making ‘the same’ point and as representing a particular point of view in the public deliberation which we construct in our heads.

In addition to this, we are gravely misled if we allow the notion of actual, face to face discussion to dominate our understanding of the duty of civility, for this is a duty which we owe to persons not actually present, persons only present in our imaginations when we engage in actual collective deliberation. Our duty to consider their interests and judgement is at least on a par with our duty to consider the claims made by those with whom we are actually in dialogue. The duty of civility, then, is a duty first of all to consider, impartially, the interests of all those potentially affected by the proposed measure and then to consider the claims actually made and those which could have been made in the light of reasons which have been or could have been articulated. Whether the duty of civility dictates compromise depends then on a full consideration of all these elements and we cannot plausibly give priority to the claims and reasons offered in actual discussion without the risk of threatening the impartiality of our personal judgment.

What this means is that the duty of civility, far from dictating the pursuit of compromise may actually turn out to dictate dissent from any actual stretch of collective deliberation and indeed, withdrawal from any actual process of deliberation or consultation which we judge to be interfering
with the impartiality of imagined public deliberation. Sometimes this is the only way to discharge our duty to our fellow citizens. What is at stake here is the obligation to refrain from using the common coercive force for private ends as this is inconsistent with respect for those potentially affected as free and equal. The ban on using political power in this way dictates, on the one hand, that we ought to attempt to justify our proposals for its use to others, but on the other hand, it also places us under duty to prevent others from using our common power for their private interests. This is a duty we owe to those who may not be actually present at the table, and whose interests may be harmed by our acquiescence in a flawed process. The duty of civility is not a threat to justice, on this view, for it positively requires us to dissent so that justice may be done.

On this view, there is a complex interaction between ideal deliberation and actual discussion and a separation of the levels at which the norms of impartiality and reciprocity apply. The core of the duty of civility is provided by the obligation to make impartial judgements about the one’s own political projects and those of others. This is a matter of individual internal reflection. A secondary aspect of the duty of civility is covered by reciprocity and this imposes a purely conditional obligation to engage in discussion where others are similarly motivated to engage in genuine dialogue. Where they are not, we may withdraw from dialogue although we are still obliged to act on reasons which we sincerely believe to be, in principle, acceptable to others.
The Public Dimensions of ‘Private’ Reflection

This clarification of the relations between impartiality and reciprocity and their respective roles in internal and external deliberation provides the deliberative democrat with an answer to the charge that deliberative democracy is necessarily a consensual style of politics. However, this may seem to have swung the pendulum too far in the direction of individual conscience, threatening to undermine the authority of democratic procedures. If it’s left to individuals to choose whether to participate in procedures and whether or not to try to overturn their results, then we seem to risk abandoning democracy for the anarchy of individual conscience. We shouldn’t, however, overlook the way in which individual judgement must be guided by a conception of public reason, on the one hand, and the way in which deliberative and aggregative procedures can be fruitfully combined in such a way as to provide authoritative decisions in circumstances of disagreement.

The first issue can be thought of in terms of the contrast between monological and dialogical conceptions of reason. The view advanced here, while it downplays the significance of actual discussion by insisting on the centrality of internal reflective deliberation and the ineliminability of individual judgement is, nonetheless, a dialogical rather than monological conception and as such does not threaten to elevate individual conscience above public reason. The difference between monological and dialogical
conceptions of reason lies, of course, in their treatment of the grounds of judgement, the former claiming to find indubitable grounds for belief in the subject’s capacity for reflection, while the latter takes a fallibilist line, regarding the truth of belief and validity of norms as inseparable from our ability to justify our epistemic and moral beliefs to others. For reasons already touched on above, this process of justification is best thought of as ideal, with the consequence that it opens the possibility that we may have to accept that we must overturn any judgement about the soundness of our beliefs at any given point in time, even if our actual interlocutors are disposed to regard these as justified, our beliefs can only be held provisionally. If one thought internal reflection provided indubitable grounds for belief then insisting on the centrality of individual judgement would indeed be problematic, but the view advanced here regards individual judgement as guided by considerations of public justifiability. While we must individually judge what counts as reasonable agreement in the final analysis, it is clear that on the dialogical view our view of what counts as reasonable must be held to be always in principle open to correction and is not thought to be guaranteed by subjective self-certainty. While my judgements are my responsibility, a responsibility I cannot surrender without giving up my autonomy, I judge responsibly when I accept the constraints of public reason.39

Even if the citizen body unanimously consented to accepting the constraints of public reason, we should not expect consensus to follow. Differences of judgement would presumably still produce significant
divergences in what citizens judge to be plausible candidates for reasonable agreement (Rawls 1999: 241). While it may be hoped that accepting public reason’s constraints will narrow the range of disagreement in a polity by screening out certain sorts of argument as inappropriate to political matters, the burdens of judgement will still produce disagreement about what may be reasonably agreed to (Dryzek 2000: 43). Public reason is not a device for producing consensus, but a way to guide the judgements of persons resolved to treat their fellow citizens as free and equal. The institutions of deliberative democracy likewise, do not aim to produce consensus on substantive issues, but to strengthen the legitimacy of democratic procedures, a concern that presupposes ongoing dissent.

Deliberative institutions then, are best thought of as devices to prompt citizens to exercise and improve their judgements in order that the quality of collective decisions be improved on the one hand, and that politics be conducted in a way that manifests respect for one’s fellow citizens on the other hand. To the extent that this latter aim is realised, we should expect the outcomes of these procedures to be regarded as legitimate even if they are not the subject of universal agreement. While participatory democrats may regard vote aggregation as an inherently inferior way to conduct politics insofar as it aims at producing authoritative decisions without creating consensus on substantive issues, the view of deliberative democracy set out here regards this not as a weakness, but as a strength (Waldron 1999: 234). If deliberation won’t produce consensus, then voting is still clearly necessary if we are to
have a collective decision (Cohen 1997: 75). The fact that losers are not required to surrender their first order judgement of the matter at hand but merely to acquiesce on the grounds that the procedure producing this result was fair is fully congruent with a deliberative conception of politics. It would be strange indeed if we were to argue that citizens should take greater care to exercise their judgement and to propose a style of politics which sought to stimulate their exercise of deliberative capacities, but then were to argue that these judgements, arrived at through discussion, reading, etc and produced by a careful assessment of the relevant facts and reasons, should then be surrendered either because one encountered disagreement and/or lost a vote. To the extent that aggregative procedures can preserve dissent, they are compatible with the ideal of deliberative democracy.

While we should be critical of the tendency to overemphasise the value of actual discussion over the exercise of individual judgement on conceptions of political deliberation, we should not, of course, underestimate the importance of developing institutions which encourage dialogue, and hopefully, as a consequence, deliberation. Without the appropriate institutional incentives, citizens will not be provoked to exercise their deliberative capacities in the first place. These institutional devices should be thought of, however, not as alternatives to aggregative procedures, but as ways of improving on the minimalist models of democracy. Without prior deliberation, these procedures themselves risk being judged unfair, and their results, both unjust and illegitimate. What we cannot, of course, hope for is
any procedure that can exclude this possibility once and for all, i.e. which
would relive us of the responsibility of making judgements in the first place.
In democratic politics, consensus may not achievable, and may often be
undesirable, but the need to exercise judgement is ineliminable.
Endnotes

1 An earlier version of this paper was presented at the Association for Legal and Social Philosophy annual conference at the University of Newcastle. I would like to thank Peter Jones, Jurgen De-Wispelaere, and those who participated in the ALSP conference for their valuable comments.

2 Indeed, he wasn’t much more confident in their capacity to make sound judgements about something as simple as buying a pair of shoes, given the ease with which advertisers could sway the average consumer (Schumpeter 1965: 258).

3 (Rawls 1993: 217). This is also a guiding thought in Habermas’ discourse theory of democracy, although not presented by him in terms of a moral duty (Habermas 1996).

4 This is akin to Rousseau’s view, for whom the general will is always right (albeit not on particular matters of fact) (Rousseau 1913: 25-8).

5 This is what happens when one adopts a view ‘on’ authority, but acceptance of political authority should not entail the same abdication of judgement (Friedman 1973). Of course, in choosing political representatives we do contract out the exercise of our political judgements, but not, however, to the extent that we bind ourselves ever after to accept the judgements they make on our behalf as correct, in the manner of the creators of the Hobbesian sovereign.

6 This appeared to be the position of those who were unsure whether an attack on Iraq was just, but were, however, prepared to support such a move were it to be ratified by a UN vote.

7 This purely procedural model of decision-making is criticised by Estlund in the name of an epistemic conception of democracy (Estlund 1997: 176-7).

8 Both Estlund and Goodin note that while Condorcetian considerations may strengthen the case for inclusive decision-making, they tend to prove too much, i.e. they appear to render majority decisions virtually infallible and undermine the rationality of dissent. Goodin argues that one way to avoid this conclusion is to recall that many collective decisions, involving values and principles, have no clearly ‘correct’ answer (Estlund 1997: 173-204). (Goodin 2003: 91-108).

9 ‘To think politics in terms of moral language, as Rawls does, necessarily leads to neglect of the role played by conflict, power, and interest,’ (Mouffe 1993c: 49).

10 ‘Rawls and Habermas want to ground adhesion to liberal democracy on a type of rational agreement that would preclude the possibility of contestation. That is why they need to relegate pluralism to a non-public domain in order to insulate politics from its consequences.’ (Mouffe 2000: 92).

11 She endorses, although not without some modification, the view of the political espoused by Carl Schmitt. (Mouffe 1993a: 117-34), (Mouffe 2000: 36-59). According to Schmitt, ‘The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.’ (Schmitt 1996: 26).

12 This claim rests on her view of personal identity as multi-layered, such that one finds oneself identified with some groups and against others. To the extent that we may be identified in a multiplicity of ways we have a potentially limitless number of possible political allegiances and antagonisms open to us and the astute politician, Mouffe thinks, will seek to win support by manipulating the relations of equivalence and of difference in which our complex identities make available. No system of differences is immune to being overturned however, for the very same reason. The possibility of conflict cannot be eliminated from political life, or social life more generally. (Laclau et al. 1985).

13 ‘In politics, the very distinction between ‘reasonable’ and ‘unreasonable’ is already the drawing of a frontier; it has a political character and is always the expression of a given hegemony.’ (Mouffe 1993b: 143).

14 We must, she argues, ‘come to terms with the constitutive nature of power’ (Mouffe 2000: 105).


16 Arguably, the most intractable difficulties faced by modern democracies are those posed by competing moral universalisms, not by the academic clash between universalism and post-
Nietzschean ethical positions. Mouffe’s response to this dilemma is, effectively to gesture towards an ‘ethic’ of the political, without saying much about what this might consist in, over and above a certain existential resolve to accept responsibility for the ‘violence’ necessarily entailed in taking freedom and equality to be the founding values of a pluralist democratic order (Mouffe 2000: 134-7), (Mouffe 1993a: 130).

17 In Habermas’s words ‘we can say that if rational citizens were to describe their practices in empiricist categories, they would not have sufficient reason to observe the democratic rules of the game.’ (Habermas 1996: 295).

18 Elster is rightly critical of participatory models of democracy which regard participation as an end in itself (Elster 1997). Arendt makes essentially the same mistake when she argues that the concerns of the social have no place in the public sphere (Arendt 1958).

19 While there is a sense in which all objective perspectives on the world are views from nowhere, this metaphor should not be taken to imply that these are without presuppositions. The impartial reasoner adopts a view from nowhere when reflecting on her claims in relation to those of others, but this is still a view: the point of view of morality. While we should deny the possibility of a view that is not a view, we would not want to deny the possibility of reflective awareness.

20 This may not sound very ‘neutral’ but it doubtful that liberals have ever claimed to be neutral in the sense that they purport to be value-free. The impartiality of the state vis à vis conceptions of the good is, by contrast, regarded as a requirement of respect for the freedom and equality of citizens.

21 A multiculturalism which required us to take a positive attitude to plurality per se would equally be open to the charge that it may be imposing an alien view on those cultures which are not disposed to value diversity.

22 Fishkin and Ackerman suggest that there is something unsettling about the idea that a round of discussions could produce dramatic changes in participants’ characters (Ackerman et al. 2003: 22).

23 Young has come round to this view, despite her earlier attack on impartiality. While still shying away from endorsing impartiality, her conceptions of justice and ‘communicative’ democracy clearly operate within the framework of contractualist impartialism (Young 2000: 115-20).

24 Phillips’s treatment of interest must rely on an implicit distinction between interests giving rise to just claims and those which do not. Inclusive politics would serve little purpose otherwise (Phillips 1999: 118-9).

25 Contractualist versions of impartiality while demanding should, in virtue of the way they build the separateness of persons into their model of impartial deliberation, permit the moral agent to refuse certain sacrifices as unreasonable, a move not available within the aggregative framework of utilitarianism.

26 They propose that citizens practise an ‘economy of moral disagreement’ and support policies likely to produce convergence. While they deny that this is simply an injunction to seek compromise, it is hard to see why not, unless, of course, reciprocity is to be combined with some other principle which will help citizens to determine when they may or may not compromise (Gutmann et al. 1996: 65).

27 This echoes Mouffe’s charge that justice requires a single unified view of society and it therefore unfit to recognise the plurality of perspectives which a plausible account of democracy must grapple with (Gutmann et al. 1996: 59).

28 Given what Rawls calls the ‘burdens of judgement’ this seems unlikely (Rawls 1993: 56-7).

29 Impartiality could be said to be parasitic upon other ethical concerns. See Mendus for an attempt to manage the conflict between partial concerns and impartiality by grounding impartiality in them (Mendus 2002).

30 A term he borrows from G. H. Mead (Habermas 1990: 65).

31 As such, it is still a view: that of morality.

32 This duty, is on this view, reciprocal, i.e. conditional, rather than categorical (Barry 1995: 46-51).
We say that we ‘conduct a conversation’ but the more fundamental a conversation is, the less it lies within the will of either partner.’ (Gadamer 1979: 345).

The problem of accommodationist preferences is raised by Cohen, who rightly argues that sensitivity to this problem is a particular strength of deliberative democracy. (Cohen 1997: 78).

Jaggar endorses ‘moral deference’ but then insists that this doesn’t entail the uncritical acceptance of the views of the marginalized, but only a certain open-mindedness, in which case it seems misleading to present this as ‘deference’ of any sort (Jaggar 1999: 324), (Sanders 1997: 354).

See Habermas on the necessary abstraction from ‘simple interactions’ that is required to form a public sphere (Habermas 1996: 361).

Public deliberation takes place in this view with an ‘imagined public’ in the same way that a nation is an ‘imagined community’ (Anderson 1991).

It’s not unusual to find Rawls contrasted with Habermas as an exponent of monological reasoning in contrast with Habermas’ dialogical approach. See, for example (O’Neill 1997: 134).

See Pettit on ‘discursive freedom’ and the link to being able to be called to account by others (Pettit 2001: 86).

Gerald Gaus argues that encouraging citizens to sincerely engage in processes of mutual justification will, more often than not, produce principled disagreements which must then be ‘umpired’ by a majoritarian decision procedure, so that deliberation and voting can be seen as essential to deliberative politics (Gaus 1997: 111).

References:


