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2007

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Introduction

Democratic theory has been transformed, over the past ten or fifteen years, by what has come to be called the “deliberative turn” (Dryzek 2000, p. 1).¹ At the heart of this development is the rise of a particular view about the nature and sources of legitimacy in democratic decision-making. The deliberative theory claims, in essence, that collective decisions are legitimate to the extent that they emerge from dialogical and reason-guided processes of public discussion among citizens (cf. Benhabib 1994, Cohen 1997, Dryzek 2000, Freeman 2000). Such public deliberation may take place in formal, highly structured settings established for just that purpose (Fishkin 1991), or it may unfold in informal, diffuse settings spread out across the countless associations of civil society (Habermas 1996). Either way, citizens figure in this account of democracy not so much as bearers of preferences which are expressed and aggregated by means of voting, but rather as co-participants in a process of reciprocal justification and persuasion who seek, ideally, to converge toward a rationally motivated consensus. This deliberative view has been well-described as a “talk-centric” conception of democracy (Kymlicka 2002, p. 290), a term which points to its distance not only from “vote-centric” conceptions, but also from conceptions which see social conflict, strategic interaction, the mobilization of pressure, and other such factors as centrally important in democratic politics (Shapiro 1999; Walzer 1999). But as soon as we note that many animal advocacy activists draw extensively on conflict, strategy, and pressure to advance their aims, the question immediately arises: what are the implications of the deliberative conception of democracy for understanding the place of animal advocacy activism within democratic politics?

The individuals and organizations that make up the animal advocacy movement are extraordinarily diverse in their philosophical assumptions and tactical orientations, so one rightly hesitates before attempting to generalize about the movement. Yet, it is surely true that many participants within the movement, notably those who engage in the kind of activities that I group together in this paper under the label, “direct action” animal advocacy, act and write as if they have a conception of democratic politics that is rather different from that of most deliberative democrats. In particular, direct action animal advocates are, in general, far less confident than many deliberative democrats that reasoning in the context of public discussion can be a *sufficient* vehicle for advancing social justice and the common good. To be sure, many direct action activists are deeply committed to participation in public debates about the moral status of animals and the moral permissibility of the ways in which contemporary capitalism uses and abuses them. At the same time, however, these activists also take the further step of deploying

¹ The notion of “deliberative democracy” was introduced into democratic theory in 1980 (Bessette 1980). But it did not emerge as the leading normative theory of democracy in English-language political philosophy until sometime in the 1990s. Arguably, the “deliberative turn” dates from around 1996, the year in which the two most influential statements of the theory were published in English, *viz.* Habermas (1996) and Gutmann and Thompson (1996), along with an anthology edited by Benhabib (1996), followed by further anthologies in 1997 (Bohman and Rehg, eds.), 1998 (Elster, ed.), and 1999 (Macedo, ed.)

confrontational and adversarial (as distinct from communicative and dialogical) methods, ranging along a continuum from such legally permitted and even “mainstream” practices as organizing consumer boycotts to more controversial measures like sabotage, economic disruption and even (in the atypical case of a group like Stop Huntingdon Animal Cruelty, or SHAC) campaigns of personal harassment and intimidation.

In this paper, I take up the two-sided question of how to think about direct action animal advocacy in light of the deliberative turn, and how to think about the deliberative turn in light of direct action animal advocacy. Each of these enterprises offers important insights – and poses significant challenges – for the other, and I intend this paper in part as a contribution to a potentially fruitful dialogue between them.

It is important, though, to be clear from the start about how I use this expression, “direct action.” Its use invites confusion if it is not carefully defined. Some people use the expression as a synonym for “militancy”; others use it to distinguish the “direct” approach of grassroots action from the “indirect” approach of reliance on elected officials or judges to drive social change. However, in the context of contemporary democratic theory, where so much attention is paid to the relationship between attempts to *convince one’s audience with arguments* (i.e., “deliberation”) and attempts to *exert pressure on adversaries* that are unresponsive to even the best arguments, it makes more sense to use the expression “direct action” to help mark the distinction between two modes of social activism to be found within the animal advocacy movement. On the one hand, we find a range of activities best understood as attempts at *consciousness-raising*. On the other hand, however, we find the kinds of activities that I call *direct action*.

In the first mode of activism (consciousness-raising), one aims to win people over to the cause of animal advocacy by appealing to them to reconsider their convictions about the relevant issues in light of powerful arguments that could well be convincing to them. Thus, a campaign to educate the public about the abuse of animals in zoos will utilize such measures as advertising, public interest research, teach-ins, press conferences, petition-drives, and so on. No doubt, these activities are informed by all kinds of strategic thinking about how best to have an impact on public policy. But their aim is primarily to effect change by changing people’s minds or “raising awareness.”

In the second mode of activism (direct action, in my sense), one starts from a different set of assumptions about whom one’s activities should be “targeting.” Rather than addressing a broad public assumed to be susceptible in principle (and within limits) to reason-guided persuasion, direct action activities are aimed at largely intransigent adversaries, who are thought to be unresponsive to arguments and reason-giving: powerful agribusiness interests, responsive only to the corporate bottom line, political elites more interested in maintaining “law and order” and fostering “economic growth” than in entertaining critical objections to present social practices, or a “techno-scientific” establishment so deeply committed to certain “humanistic” ideologies and research practices that it has generated a pool of implacable opponents of the animal advocacy cause. In the face of these forces, “consciousness-raising” activities are evidently bound to be fruitless. When one concludes from considerations of this sort that *these* people and institutions can only be moved by means of the mobilization of *pressure*, one typically shifts out of the “consciousness-raising” mode, and into the “direct action” mode of activism. In direct action campaigns, one draws on an array of tactics quite different from the broadly educative methods of consciousness-raising activism. Direct action

campaigns might involve attempts to disrupt traffic, to sabotage research facilities, to use negative publicity campaigns in order cost businesses money, and so on. Argumentation and reason-giving appear here, too, but they are not addressed to the target of one's activities. Instead, one uses arguments to win over allies to join in the struggle, thereby further intensifying the pressure brought to bear on one's opponents.

The distinction between consciousness-raising and direct action is not as clear-cut as my remarks might seem to suggest. Certainly, there is overlap and interaction between these two modes of activism. Moreover, not only most organizations, but also most individuals engage in *both* kinds of activity, often in the course of a single campaign or event. It is easy to imagine a group of activists attempting to obstruct the entry of shoppers into a retail store, as a direct action tactic, and attempting at the very same time to distribute leaflets to those shoppers, as a consciousness-raising tactic. So, the contrast between consciousness-raising and direct action cannot be used to classify activists or organizations into two camps, as if one could say, "People for the Ethical Treatment of Animals (PETA) is a consciousness-raising organization, whereas the Animal Liberation Front (ALF) is a direct action group." At best, one could say that the emphasis of PETA members tends to be on consciousness-raising, while that of ALF participants is on direct action. But, precisely because saying that would be accurate, and would help to illuminate some of the political and tactical diversity among animal advocacy activists, we ought to embrace the conceptual distinction, even while we acknowledge that the distinction cannot always be sharply drawn. Accordingly, I rely on the distinction, especially the notion of "direct action," quite heavily in what follows.

In the first part (I) of this paper, I review the main ideas of the deliberative theory of democratic legitimacy. In the second part (II), I analyze the apparent tension between the primarily dialogical and communicative character of public deliberation and the primarily adversarial and strategic character of direct action animal advocacy. In the third part (III), finally, I respond in detail to the arguments of Mathew Humphrey and Marc Stears (2006) that purport to show the irreconcilability of deliberative democracy and what they call "animal rights activism." My thesis will be that – on the best interpretation of the deliberative conception and contrary to the interpretation that Humphrey and Stears put forward ostensibly on behalf of direct action animal advocacy – the deliberative theory of democracy (properly understood) does *not* imply anything which would discourage or prohibit direct action on behalf of animals, but on the contrary offers us a sophisticated justification for it.

I. The "Deliberative Turn" in Democratic Theory

Deliberative democracy, as understood within contemporary political theory, suggests a particular way of thinking about politics in a democratic society. Specifically, it implies a break with one very popular perspective among political scientists concerning the nature of political disputes and the contribution that democratic politics can make to their effective resolution. This competing view of politics, classically formulated (although in different ways) by both Machiavelli and Hobbes, is characterized by a kind of single-minded attentiveness to the strategic rationality of conflict. The same narrow focus on strategic interaction persists in some varieties of recent political theory, notably in the form of reliance on game theory as a framework for analyzing political life. One of the

effects of the popularity of this emphasis on strategic rationality has been the displacement from the center of political thought of an important counter-tradition, which constitutes a leading source of inspiration for deliberative democrats, but tends to be dismissed as naïve and moralistic by neo-Hobbesian theorists. This other tradition received its classical statements in the late 18th century, in the ideal notions of moral reasonableness and impartial universalism elaborated in the ethical and political theories of Kant and Rousseau.

Deliberative democrats tend to draw much more on the Kant/Rousseau conception of politics than the Machiavelli/Hobbes tradition. But it is important to see that what deliberative democrats really reject is only the one-sidedness of the latter perspective, that is, they deny that politics is *only* or *above all else* a matter of strategic conflict. They don't deny that it is a matter of strategy, *among other things*. To put the point more bluntly, deliberative democrats view the political process as having a kind of dual character: on the one hand, there are conflicts of interest, differences of power, political alliances that vie with one another for influence, and so on. On the other hand, there are arguments, reasons, attempts to persuade one's fellow citizens of the rational superiority of certain public policies, by appealing to nothing but (what deliberative democrats call) the "unforced force of the better argument."² In short, politics has an adversarial and strategic aspect, but also a dialogical and deliberative aspect (Young 2003, p. 119; cf. Estlund 1993; Elster 1986). This, however, is not the controversial part of the deliberative conception. What *is* controversial is the deliberative democrat's further claim that it is only the second, dialogical and deliberative, aspect of the political process that confers legitimacy on public decisions. In Seyla Benhabib's formulation, "legitimacy in complex modern democratic societies must be thought to result from the free and unconstrained public deliberation of all about matters of common concern" (1994, p. 26). This, surely, is a thought that should raise serious concerns among those who rightly see direct action as central to what is *most* democratic in contemporary politics. (I address these concerns in part III, below.)

Another feature of the deliberative conception, related to those already discussed, is its shift of democratic theory's focus from voting and preference aggregation to reason-guided discussion in advance of decision-making as such. The received view of democracy assumes that voting is a crucial moment in the political process, during which the voice of the people is finally heard. This view finds its most sophisticated academic expression in the discourse of "social choice theory," which is concerned with (among other things) the rational aggregation of public preferences. By contrast, the deliberative conception of legitimacy views democracy not as a vehicle for revealing public preferences, but as a mode of *inquiry*, a collaborative search for rational insight into the common good. Voting, distorted as it may often be (Ackerman and Fishkin 2003, pp. 7-8; cf. Bohman 1996) by self-interest or by strategic calculations about how to promote a private agenda, may have *some* role to play in a democratic political process, according to many deliberative democrats (see, for example, Habermas 1996, p. 442). But its role

² The phrase, "unforced force of the better argument" (Habermas 1998, p. 37), was introduced into deliberative-democratic theory via Habermas's discourse ethics, a crucial reference point for many deliberative democrats. For a detailed elaboration of the idea, see the "excursus on the theory of argumentation" in Habermas 1984, pp. 22-42. Habermas's version of deliberative democracy is elucidated in systematic detail in Habermas 1996.

cannot be central to the legitimation of public policies. After all, the fact that most people endorse a policy proposal is only morally interesting if the basis upon which they formed this conviction was itself informed by rational deliberation and accurate information. The fact that the public reached a decision founded upon misinformation, deception, or the “manufacturing of consent” (Chomsky and Herman 1988) hardly offers a sound reason to accept the authoritativeness of the majority’s will. From this, deliberative democrats conclude that the only direct source of legitimacy in a democratic polity is discussion, argumentation, dialogue – in short, public deliberation (Cohen 1997, pp. 72-73).

This deliberative theory of democratic legitimacy has become, very quickly, enormously influential (Chambers 2003, p. 307). Appalled by the vacuous and cynical character of (elite) public policy discussion in the present age, many defenders of democracy (including conservatives like Bessette 1980, liberals like Gutman and Thompson 1996, and radicals like Young 2003) are drawn to deliberative democracy as a means to rescue democracy as a source of legitimacy from the discredit that threatens it by association with the cynical manipulation of public opinion by elites and the undue influence of money over public policy-making (Simon 2002, pp. 8-10). There *must* be more to democracy, one is inclined to say, than the cynical deployment, by public relations firms, of focus groups and public opinion research to help power-hungry politicians and elite interest groups manipulate the public with advertising campaigns that are effective at molding and manufacturing consent, but contribute nothing in the way of insight into the common good or the requirements of social justice (Ackerman and Fishkin 2003, p. 10). Identifying discussion, argumentation and collaborative inquiry into the public interest as the moral core of democracy as a normative ideal allows theorists to do two things at once that might otherwise seem incompatible. On the one hand, one can condemn the cynicism and manipulation that pervade society’s public debates about political issues. And on the other hand, one can simultaneously uphold the idea that the laws and policies by which we are governed owe whatever legitimacy these might have to their origins in ongoing public discussion. The key to this possibility is the distinction made in the deliberative theory between the *strategic* and the *deliberative* elements of the political process (Estlund 1993): when the communicative, dialogical dimension of democratic debate is infiltrated and colonized by the strategic rationality of adversarial manipulation and elite stratagems for the exercise of power, majoritarian decision procedures cease to function fully as vehicles for reason-guided deliberation. To that extent, they cease also to confer legitimacy on the laws and policies that issue from the political process.

II. The Animal Advocacy Movement and Deliberative Democracy

Although the deliberative theory is appealing for supporters of democracy, it does raise some difficult questions that need to be addressed. One of these is an issue first explored in a paper published by the late Iris Marion Young, called “Activist Challenges to Deliberative Democracy” (Young 2003). The paper is written as a kind of dialogue between two, seemingly incompatible positions: that of a deliberative-democratic theorist, advocating that rational discussion rather than pressure or bargaining be made the key factor in political decision-making, and a that of a social activist, suspicious of a political system stacked against the disadvantaged or those advocating structural social

change. In the past few years, Young's paper has generated a significant amount of debate among democratic theorists (cf. Smith 2004, Medearis 2005, Talisse 2005, Fung 2005). And the concern that she raised has considerable significance for the question of the relationship between democratic deliberation and animal advocacy (see Humphrey and Stears 2006). In particular, it is easy to see that Young's "activist" is committed to what I've been calling "direct action." And, while Young unfortunately ignores the case of animal advocacy activism, we can use her work as a point of departure for looking at direct action animal advocacy as it relates to deliberative democracy.

What Young noticed, in effect, was a tension between the understanding of democratic politics *implicit* in much of the political behavior of social activists committed to direct action and the understanding of democratic politics *explicit* in the deliberative theory of legitimacy. Whereas the deliberative theory tends to discourage confrontation, in favor of dialogue, the direct action activist tends to despair of dialogue and, facing the intransigence of powerful adversaries, resorts – out of an apparent necessity – to intentionally cultivated confrontation, as a routine and normal form of political activity (Young 2003, p. 104), as illustrated by the activities of a group like the A.L.F. And whereas the deliberative theory regards reasons and arguments as the proper vehicle for securing political influence, the direct action activist looks instead to the mobilization of pressure, which is to say a force that owes little to argumentation, and a great deal to the capacity to disrupt current practices and/or penalize in various ways those who uphold the status quo. In short, Young saw that the deliberative theory seemed to discount the "democratic" credentials of direct action, at least in many of its typical forms (Young 2003, pp. 105-06). Thus, the deliberative theory of democracy can easily explain what is democratic about the *arguments* offered by animal advocates; but it is not at all clear that the theory can explain what is democratic about the boycotts, sit-ins, disruptions, or property damage organized by those same advocates.

In the present context, the details of Young's paper, and most of the responses and interventions in the debate it spawned, are less important than one particular contribution: a paper from August 2006 which takes up Young's line of questions with specific reference to the modes of activism typical of the animal advocacy movement. The paper, called, "Animal Rights Protest and the Challenge to Deliberative Democracy," is written by Mathew Humphrey and Marc Stears (2006). In it they pursue Young's general line of inquiry, concerning the role of direct action in a deliberative democracy. In the course of their discussion, moreover, they endorse – as do I – one of Young's key assumptions, namely that a democratic theory which cannot account for the contribution to democratic politics made by egalitarian direct action in general, and direct action animal advocacy in particular, is *by that very fact*, unacceptable. On this view, the democratic character of justice-seeking grassroots social movements is one of the *facts* that a democratic theory must account for. So the question isn't, *are social movements democratic?* It is, rather: *given* that egalitarian social movements generally *are* democratic, *in what does their democratic character consist?* There are certainly arguments to be made by way of elaborating and justifying this assumption, and Humphrey and Stears offer a few of them (e.g., on p. 419; cf. Young 2003, p. 107). Perhaps the most compelling argument, though, is historical: one need only point to the profoundly democratic character of the impact of, say, the labor movement, the women's movement, the U.S. Civil Rights Movement, and so on. The effect of such movements has been consistently to challenge the hegemony of

economic and political elites and to open up spaces in public life for elements of grassroots participation and political contestation. To depict these egalitarian social movements as undemocratic is simply not credible. In any case, since whatever controversy there might be (if any) about the claim that egalitarian social movements, including ones relying in substantial ways on direct action, it is a shared and uncontroversial premise among myself, Young, and Humphrey and Stears. So, within the present discussion, the assumption can be taken as a given.

The important implication of this assumption is that: (1) *if* the animal advocacy movement relies crucially on adversarial and strategic modes of civic engagement (direct action), and (2) *if* it is true that the deliberative theory of democracy urges citizens to forgo those forms of direct action and denies legitimacy to any outcome produced by them, *then it follows* that (3) the deliberative theory suffers from a sort of Achilles heel, that is, a fatal defect that decisively undermines its viability. This is just the kind of argument that Humphrey and Stears try to make. They try to show, in short, that there must be something wrong with the deliberative theory, because it denies the democratic credentials of any civic engagement relying crucially on adversarial and strategically oriented behavior, and it thereby – implausibly – denies democratic credentials to animal advocacy activism. Indeed, as Humphrey and Stears see it, the deliberative theory implies a rejection of not only the most controversial forms of animal liberation militancy (SHAC, ALF, etc.), but virtually *all* animal advocacy that makes use of direct action (in the relevant sense). If true, this would clearly be a major failing for a theory of democratic politics (Humphrey and Stears 2006, p. 417).

To make plausible this analysis of the implications of deliberative democracy for direct action animal advocacy, Humphrey and Stears need to show three things: first, that the animal advocacy movement is crucially reliant on adversarial and strategic methods, rather than confining itself strictly to dialogical and deliberative methods; second, that this recourse to non-deliberative (direct action) methods is quite justifiable, in the contexts in which it occurs; and third, that the deliberative theory denies the permissibility of this reliance on non-deliberative means. I will try to give a clear account of the case they make for each of these claims.

III. The Three Claims

First, in what sense is the animal advocacy movement crucially reliant on non-deliberative modes of political action? Note that Humphrey and Stears are not suggesting that the movement is devoid of deliberative activity, or reason-giving more generally. That would be false about all sectors of the animal advocacy movement, even those associated mainly with confrontational, militant forms of direct action. The claim that is being made is just that many of the movement's organizations and individual activists do not confine themselves to consciousness-raising, mediated by argumentation. Rather, say Humphrey and Stears, animal advocacy activists engage routinely in attempts to mobilize pressure in order to influence people deemed by them to be unresponsive to mere argumentation.

Humphrey and Stears analyze the activities of the animal advocacy movement in terms of two "tactics" which, though they do not exhaust the tactical repertoire of the movement, figure centrally in that repertoire. The first is a family of measures which they

bring together under the heading, “cost-levying” (Humphrey and Stears 2006, p. 405). Cost-levying is a form of political action which, starting from the observation that the conduct of political actors is responsive to incentives, that is, to cost/benefit analysis, undertakes to *increase the costs* and/or to *decrease the benefits* associated with conduct opposed by the activists. As Humphrey and Stears (2006, p. 405) put it, “cost-levying is a relatively simple political device, one premised on the assumption that the incentive structures for particular courses of action can be directly altered by a politically engaged group of citizens if those citizens target their behaviors in the right sort of way.” To see that cost-levying is relied upon by animal advocacy activists, one need only list a few of its most characteristic forms: consumer boycotts, negative publicity campaigns, property damage, disruption of business activities, sit-ins and occupations, and so on. Clearly, to repeat, such direct action tactics do not exhaust the repertoire of methods deployed by the diverse strands of the animal advocacy movement, since we know that consciousness-raising also plays a central role. But this does nothing to change the fact that direct action methods do undoubtedly figure prominently within the movement – so much so, in fact, that in the absence of such tactics, we would be dealing with a movement of a very different, perhaps unrecognizably different kind. So far, so good. Later, I take up the question of whether such activity is antithetical to deliberative democracy. But there can be no doubt that it is *non-deliberative* activity, since its aim is not to persuade with arguments, but to pressure forces that are unresponsive to arguments. That is to say, when one engages in cost-levying, one is exerting pressure, hence (in a broad sense) coercion. One is relying, in that sense, on forces other than the force of the better argument, and though one does make use of arguments, these are largely aimed at winning over third parties, *not* at the people or institutions targeted by the actions. One appeals, not to the deliberative capacities of one’s fellow citizens, that is, their responsiveness to reasons and arguments, but to the susceptibility of powerful persons and organizations to certain kinds of pressure. In the jargon of contemporary political philosophy, one appeals to their (instrumental) *rationality*, not to their (moral) *reasonableness* (Rawls 2000, pp. 6-7).

But there is more. Not only is cost-levying typical of animal advocacy activism. So, too, is another ostensibly non-deliberative tactic, which Humphrey and Stears label, “exaggeration of moral disagreement” (Humphrey and Stears 2006, p. 404). By this they mean, in simpler terms, *polarizing rhetoric*. Though, in the course of their paper, Humphrey and Stears seem unable to decide whether polarizing speech is an expression of earnest sensitivity to the moral urgency of considerations of animal welfare and/or liberation, or a strategically motivated rhetorical device. However, it is not important to resolve this ambiguity, since there is no reason to assume that all animal advocates use such formulations for the same reasons. Here, I’ll assume, as Humphrey and Stears usually do, that it is *at least* a tactical device, albeit a morally motivated one.

What is crucial to see is this: one characteristic of the animal advocacy movement has been the recurrent deployment, in public debate, of polarizing rhetoric. For instance, to use the main example discussed by Humphrey and Stears, many animal advocates have publicly compared the systematic mistreatment and wrongful killing of animals in contemporary capitalism to *genocide* in general, or even to the Holocaust in particular (Humphrey and Stears 2006, p. 411). To be sure, say Humphrey and Stears, this is a controversial claim. But that is precisely the *point* of making the claim, they suggest: it is

intended to wake people up, they say, to disrupt their habitual ways of thinking, which tend to normalize practices that ought to shock us.

Once again, this characterization seems plausible. Certainly, not all animal advocacy activists would endorse this comparison, either as a description, as an evaluation, or as a rhetorical device. But there is little doubt that many would, and that many in fact *do*. Humphrey and Stears mention Charles Patterson's book, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (2002), as an example. It is, however, only one instance of a recurring, though not universal, tendency: to make use of rhetoric that *polarizes* the discussion, notably by *vilifying* opponents.³ As Humphrey and Stears point out, moreover, such polarization works against deliberative efforts to foster value convergence and consensual conflict resolution, in the short term. The latter process generally proceeds, at least according to some deliberative democrats (Gutmann and Thompson 1996, p. 377, n.43), in accordance with something akin to the "universal norm of rational dialogue" proposed by Charles Larmore. According to this norm:

When two people disagree about some specific point, but wish to continue talking about the more general problem they wish to solve, each should prescind from the beliefs that the other rejects, (1) in order to construct an argument on the basis of his other beliefs that will convince the other of the truth of the disputed belief, or (2) in order to shift to another aspect of the problem, where the possibilities of agreement seem greater. In the face of disagreement, those who wish to continue the conversation should retreat to *neutral ground*, with the hope either of resolving the dispute or of bypassing it (Larmore 1987, p. 53).

Gutmann and Thompson formulate the point somewhat differently, by saying that effective deliberation requires that co-deliberators "economize" on moral disagreement by arguing as much as possible from premises that could be endorsed by their adversaries (Gutmann and Thompson 1996, pp. 84-85). Clearly, the introduction of analogies between meat and fur production industries and the Holocaust will tend to move things in the opposite direction, i.e., *toward* conflict and controversy (Humphrey and Stears 2006, p. 411).

So, Humphrey and Stears make this first case (*viz.*, that animal advocacy activists rely on non-deliberative methods) quite convincingly. The second claim they try to defend is that the animal advocacy movement's reliance on non-deliberative methods is quite justifiable, in the relevant contexts. This, too, is easy for them to demonstrate. Cost-levying is justified, not only on pragmatic grounds, as an effective strategy, although it is often that. More importantly, it is justifiable, in a moral sense, by reference to one of the crucial values to which the deliberative theory of legitimacy also appeals: the value of inclusiveness, and the related principle of political equality. Cost-levying, Humphrey and Stears point out, is often the only way for relatively marginal political forces, above all persistent minorities like animal advocates, to insert their concerns into the public debate. They write: "small, or relatively unpopular, groups of political activists must find ways of placing their issues on the political agenda; they must somehow find leverage out of their otherwise uninfluential political position. . . . It is in this regard that a particular set of cost-

³ By "vilifying," I mean depicting opponents as engaged in morally repugnant behavior. Vilifying depictions of people, in this sense, may be perfectly accurate and reasonable. But there can be no doubt, it seems to me, that equating a person's conduct with the conduct of Holocaust perpetrators counts as vilification.

levying strategies have become the hallmark of an enormous number of relatively poorly situated political groups” (pp. 406-407). About this they are no doubt quite correct.

As for polarizing rhetoric, this too is justifiable by reference to leading deliberative-democratic values. Specifically, the background condition that necessitates such rhetorical strategies is what Humphrey and Stears call “the ‘stickiness’ of cognitive frames” (2006, p. 416), by which they mean the recalcitrance of conventional modes of thought in the face of evidently reason-guided criticism. In a cultural context in which, say, the eating of animals is taken for granted as reasonable and just, or rather as so unproblematic that the very question as to its justness does not even arise, the position that killing animals and eating them is morally impermissible cannot be expected to find a large, receptive audience, open to the force of the better argument. Rather, such unconventional critical perspectives are likely to meet considerable psychological resistance, for the simple reason that such views defy the “frames” that constrain conventional thinking, which frames tend to invalidate non-conforming points of view.

The deliberative value that justifies the use of shocking rhetoric, in order to provoke and polarize, is the value of reason-guided discussion. The deliberative theory suggests that a legitimate decision will be taken after, and be informed by, an inclusive public discussion, and that the discussion in question will be reason-guided, in the sense that the convictions of participants will tend to track the quality of arguments offered on behalf of proposed positions. In short, opinions formed by the discussion will be guided by the force of the better argument. But this idealizing assumption implies a critical stance toward forces *other* than that of the better argument: not only physical coercion, but also manipulation, deceit, threats, ignorance or prejudice. The recalcitrant cognitive frames, to which Humphrey and Stears rightly point, belong on this list as well. Indeed, they are no doubt covered already by the term, “prejudice.” If, as Humphrey and Stears suggest (2006, p. 415-16), and which there is no good reason to doubt, the shock value of polarizing rhetoric can have the “perlocutionary”⁴ effect of provoking an audience into entertaining alternative “cognitive frames,” i.e., unconventional modes of thought and evaluation, then this looks like the basis for a *prima facie* justification for engaging in such modes of civic engagement, just as animal advocates currently do.

Thus, Humphrey and Stears are able to show, not only that some forms of animal advocacy activism relies crucially on adversarial and strategic methods (notably, cost-levying and polarizing rhetoric), but that such reliance is, on its face, justifiable. The third point they need to establish is that such reliance is ruled out by a consistent adherence to the moral and political principles of deliberative democracy.

It is at this point, I want to argue, that Humphrey and Stears go astray.

The argument they try to make hinges on an assumed link between two distinct elements of a comprehensive theory of democracy, namely, between, first, a theory of democratic legitimacy, and second, a theory of civic virtue in a democratic polity. I have described in some detail the core ideas of the deliberative-democratic theory of legitimacy. I take myself, however, to have said nothing in particular about the deliberative-democratic theory of civic virtue. What Humphrey and Stears believe,

⁴ In speech act theory, a “perlocutionary” effect is any impact that a speech act has upon an audience, such as frightening, persuading, amusing, and so on. The term was introduced by Austin (1962). It is to be distinguished especially from the “illocutionary force” of a speech act, such as asking a question, telling a joke, making a promise, and so on.

however, is that it is possible to extract, in a direct and unmediated way, a theory of civic virtue *from* the theory of legitimacy. That is to say, they assume that, if the deliberative perspective regards legitimacy as a function of communicative discussion and reason-guided dialogue, then good citizens will confine their political conduct to precisely these modes of civic engagement. The ideal or “model” citizen, the very embodiment of civic virtue, is in this way pictured as a reasonable interlocutor, joining her fellow citizens in the effort to address moral conflict by seeking mutually acceptable accommodations, based on a shared commitment to giving and asking for reasons.

I have to say, this assumption on the part of Humphrey and Stears is no arbitrary leap in logic. It is a view encouraged by *some* deliberative democrats, including some very prominent ones. Amy Gutmann and Dennis Thompson, two of the most visible and influential deliberative democratic theorists, speak freely about “the virtue of mutual respect” (1996, p. 79), which they regard as symptomatic of “a distinctively deliberative kind of character” (79). They describe this deliberative virtue as “an excellence of character that permits a democracy to flourish in the face of fundamental moral disagreement” (79). They describe its content as follows: “It is the character of individuals who are morally committed, self-reflective about their commitments, discerning of the difference between respectable and merely tolerable differences of opinion, and open to the possibility of changing their minds or modifying their positions at some time in the future if they confront unanswerable objections to their present point of view.” (79-80). A very similar view has been advanced by Paul Weithman, in his 2005 paper, called “Deliberative Character” (Weithman 2005). He puts the point like this: “Citizens must have certain dispositions or qualities of character if they are to take part well in well-conducted deliberation....[They] should be willing to offer considerations in favor of their positions that will enable others to see what reasons they have for them. They must be appropriately responsive to the reactions and replies those considerations evoke....These dispositions are ingredients of a deliberatively democratic character” (Weithman 2005, pp. 282-83). In short, the respectful co-deliberator is depicted as being willing to give reasons, responsive to the reasons of others, and open to rational persuasion by strong arguments offered by those with whom she now disagrees.

So, there is some plausibility to the claim that the deliberative theory of legitimacy has direct and unmediated implications for our understanding of civic virtue. And yet, there are even stronger grounds for skepticism about this unmediated derivation. Indeed, Humphrey and Stears themselves draw attention to this fact. It is a striking and, in my view, symptomatic feature of the Humphrey and Stears article that they assert at one point, five pages into the text, that “all deliberative democrats are firm in their opposition to politics of this [non-deliberative] sort” (p. 405), and then, five pages later, seem flatly to contradict this claim, saying that “it is a constant refrain of much deliberative theory that non-deliberative means may be justified when they ‘promote mutual respect in the long run,’ or, as with cost-levying, ‘lead to future occasions for deliberative criticism of injustice’” (p. 410).

What has gone wrong in this account? What is it about the deliberative theory of democracy that Humphrey and Stears are missing? The answer, I think, is this: Humphrey and Stears fail to see that a theory of legitimacy (or at any rate one which specifies conditions that a legitimate decision must satisfy) by its very nature implies – as a matter of logical necessity – a corresponding theory of *illegitimacy*. If a collective

decision clearly fails to satisfy the conditions stipulated by the theory of legitimacy, it is, to precisely that extent, an *illegitimate* decision.

But what significance does the judgment that a decision is illegitimate have? That is, why do we care whether a particular decision is legitimate or illegitimate? It seems clear that legitimacy is conceptually tied to the social practice of *majoritarian deference*. If I acknowledge that a decision is *legitimate*, it follows that even if I disagree with its substance, I ought to concede that it is binding on me, not just in the sense that I can expect it to be coercively enforced, but in the sense that I have reason to acknowledge its moral authoritativeness in relation to my prospective conduct.

Habermas points to this aspect of legitimacy when he says, “since it is internally connected to a practice of deliberation, majority rule justifies the presumption that the decision adopted may be considered acceptable until further notice, namely, until the minority convinces the majority of the correctness of its own views” (Habermas 1996). Here majoritarianism is not to be understood in numerical terms (50% plus 1), but in terms of established (presumably, constitutionally specified) conventional decision-making procedures of some kind (e.g., parliamentary, republican, etc.). The question addressed by theories of legitimacy is, in practical terms, a question about the moral force (or lack thereof) associated with the norm of majoritarian deference: minorities, even persistent minorities like animal advocacy activists, have good reasons, and specifically moral reasons, to defer to majorities if *and only if* the decisions taken by the majority satisfy the relevant conditions of legitimacy.⁵ But majoritarian deference is properly (or at least permissibly) *suspended* whenever those conditions are *not* satisfied.

When Humphrey and Stears look at the deliberative conception of democracy, however, they fail to consider this “flip side” of the deliberative theory of legitimacy. As a result, once they notice that, according to the deliberative theory, decisions are not legitimate unless they are preceded and informed by inclusive and reason-guided discussion, they immediately conclude that *only* modes of civic engagement directly consistent with such processes are permitted by the theory, and that therefore non-deliberative tactics must be ruled out by it. But, as Humphrey and Stears themselves make clear, deliberative theorists do *not* believe this. “It is,” to again cite their own words back to them, “a constant refrain” among deliberative democrats that non-deliberative means are permissible, if such means might be expected to make possible, at some later point, an authentically deliberative process of legitimate decision-making.

Notice that this position, contrary to Humphrey and Stears, explicitly does allow non-deliberative, direct action tactics, presumably including the cost-levying and polarizing rhetoric used by some sections of the animal advocacy movement. True, the position concedes (implicitly, at least) that outcomes achieved by activists directly through cost-levying or polarizing rhetoric are not *per se* legitimate, in the sense that animal advocacy victories won via cost-levying do not issue from public, reason-guided discussion. However, insofar as such tactics are designed not to impose an animal-friendly outcome, but to provoke rational discussion, to introduce neglected arguments into the public debate, and to insist that certain considerations no longer be ignored in decision-making processes, such political action is positively encouraged by the

⁵ I hasten to add, as an aside, the qualification that, in presumably exceptional cases, even “good...moral reasons” of this kind can be overridden, should there exist *even better* moral reasons *not* to defer to a majority.

deliberative theory. This is not because it directly legitimates decisions, but because it is part of a strategy that, in the long run, increases the prospects for arriving at legitimate decisions. The whole point of the deliberative theory of legitimacy is to deny that *any* outcome can be fully legitimate in the absence of an inclusive, reason-guided public discussion.

The third point that Humphrey and Stears needed to establish was that the deliberative theory rejects non-deliberative, direct action activism, and consequently many approaches to animal advocacy activism. If this could be shown, then the deliberative theory of democracy would be vulnerable to the criticism that it fails to account for the democratic credentials of a manifestly democratic social movement. But this Humphrey and Stears fail to show. The deliberative theory of legitimacy is also a theory of illegitimacy, and therefore the implications of the theory for developing an account of *civic virtue* vary in accordance with variations in the extent to which collective decision satisfy the criteria of legitimacy. Civic virtue calls for – or at least permits – resistance or even civil disobedience when counter-deliberative factors like elite intransigence or the so-called ‘stickiness’ of cognitive frames get in the way of reason-guided public discussion subject only to the force of the better argument. This is not an argument *against* the deliberative theory of democracy; it is an argument *from* deliberative democracy. And it implies a defense of the direct action methods often used by animal advocacy groups, not a rejection of it.

Conclusion

The conclusion that I draw from this discussion is that, properly understood, the deliberative theory is compatible with the embrace of the non-deliberative, direct action tactics typical of many forms of animal advocacy activism. What makes these two very different modes of civic engagement (deliberation and confrontation) compatible with one another is the fact that the deliberative theory of *legitimacy* is also a theory of *illegitimacy*. It is thereby also a theory of the proper conditions under which it is reasonable to suspend majoritarian deference, and to engage in forms of resistance that use pressure, shock effects or other direct action tactics in order to combat illegitimate decisions, notably decisions that have relied crucially on deception or coercion or ignorance, and so on. Such decisions would not have been taken were it not for counter-deliberative background conditions, such as the irrational influence of conventional “cognitive frames” and stark imbalances of power. The deliberative theory of democracy therefore accounts for and justifies the unwillingness of democratic minorities, like the persistent minority who engage in animal advocacy activities, to defer provisionally (in practice, until the decision can be revisited) to the majority’s judgment. In essence, the theory withholds moral authority from majority decisions that rely crucially on counter-deliberative features of the decision-making process, and in that sense, it is a theory that tells us why non-deliberative resistance to such majority decisions is reasonable.

Of course, the theory does not imply that the circumstances under which a suspension of majoritarian deference is appropriate also license unconstrained uses of power by minorities to impose decisions on majorities. But that is not an aspiration of the vast majority of animal advocacy activists, including those making extensive use of direct action. What the theory does allow, however, is precisely the kind of activity that is often

used by animal advocates: non-deliberative attempts to resist present practices whose legitimacy is in doubt, and to challenge people and institutions to face up to the real character, morally speaking, of their own conduct, and to rethink it in light of the powerful arguments against its permissibility. The aims of such action are deliberative aims, even though the means are not (directly) deliberative means. And the appropriateness of this, as Humphrey and Stears concede (five pages after they deny it), is “constantly” affirmed by deliberative theorists. Direct action animal advocacy, on this view, is a deliberative mode of activism in a broad sense, even though it is not deliberative activity *per se*: it is activism that works to promote authentic deliberation, but does so – necessarily – in non-deliberative ways.

One implication of this analysis is that the deliberative theory of legitimacy, contrary to the skepticism of Humphrey and Stears, offers us a new, appealing way of articulating a morally compelling defense of the direct action tactics used by many animal advocates, and does so in a way that makes explicit the movement’s contribution to democratic politics. In the absence of a political process that is in fact, and not just in principle, responsive to the strongest arguments, legal conformism and deference to majority opinion are by no means always democratic modes of civic participation, and resistance employing direct action is by no means always *undemocratic*.

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