

The Place of Self-Interest and the Role of Power in Deliberative Democracy*

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I. THE DELIBERATIVE DEMOCRATIC IDEAL REFORMULATED

DELIBERATIVE democracy has traditionally been defined in opposition to self-interest, to bargaining and negotiation, to voting, and to the use of power. Our assessment differs in two ways from the traditional one. First, we contend that self-interest, suitably constrained, ought to be part of the deliberation that eventuates in a democratic decision. Indeed, some forms of negotiation involving self-interest meet all of our criteria for ideal deliberation, in particular the criterion that in their ideal form deliberative methods eschew coercive power. We thus include such constrained self-interest and these forms of negotiation in our reformulation of the deliberative ideal, that is, the regulative standard to which real deliberations should aspire. Second, we argue for a complementary rather than antagonistic relation of deliberation to many democratic mechanisms that are not themselves deliberative. These non-deliberative mechanisms, such as aggregation through voting as well as fair bargaining and negotiation among cooperative antagonists, involve coercive power in their mechanisms of decision. Yet they can and must be justified deliberatively. Our ideal polity is diverse and plural. Its members both strive for

*This article was primarily written by Jane Mansbridge, drawing on ideas and concerns common to the group of co-authors shared through meetings, conversation, correspondence, and (yes) deliberation. It was revised on a rolling basis to incorporate the suggestions of co-authors. Although each co-author would, if writing independently, put things in his or her own way, the paper represents a direction of thought the co-authors collectively endorse. The process began at a Workshop on the Role of Bargaining, Negotiation, Compromise, and Voting in Deliberative Democracy, following a workshop in Granada organized by Samantha Besson and José Luis Martí (see Besson and Martí 2006). We thank the Ash Institute for Democratic Innovation at the Kennedy School of Government at Harvard University and the Safra Center for Ethics, also at the Kennedy School, for supporting this deliberatively innovative workshop. We thank Bettina Scholz, who helped with the analytic preparatory work and took notes during the proceedings. We particularly thank Samantha Besson, Joshua Cohen, Philip Pettit, and Dennis Thompson for their participation in the workshop and comments on the manuscript, and thank as well for their comments on the manuscript André Bächtiger, Geoffrey Brennan, Mara Hernández Estrada, James Fishkin, Roberto Gargarella, Robert Goodin, Faviola Rivera, Debra Satz, participants at a Stanford University workshop and participants at a seminar sponsored jointly by the University of Pennsylvania and Temple University.

the common good and, recognizing that diversity produces irresolvable conflicts in opinions and interests, deliberatively authorize certain non-deliberative democratic mechanisms.

II. FORMS OF DELIBERATION

Although *deliberation* might be defined broadly as “communication that induces reflection on preferences, values and interests in a non-coercive fashion,”¹ *deliberative democracy* involves a decision binding on the participants or those for whom the participants are authorized to speak.² There is considerable consensus among theorists on many of the regulative ideals of deliberative democracy.³ The deliberation should, ideally, be open to all those affected by the decision.⁴ The participants should have equal opportunity to influence the process, have equal resources, and be protected by basic rights. The process of “reason-giving” is required and central.⁵ In that process, participants should

¹Adapted from Dryzek 2000, p. 76. For other definitions see also, inter alia: Gutmann and Thompson 2004; Chambers 2003; Goodin 2008; Fishkin 2005; Stokes 1998; Przeworski 1998; Knight and Johnson 1994; and Manin 2005.

²On the requirement for the concept of deliberative democracy that it aim at a binding decision see Gutmann and Thompson (1996), Thompson (2008) and others. Deliberation aimed at a binding decision may produce a decision not to decide, in which case the status quo is binding. This article does not discuss what some consider deliberation more broadly, which may take place outside the forum of a binding decision in other arenas of the larger “deliberative system” (Mansbridge 1999) in civil society, ideally producing mutual clarification and enlightenment that should then affect the authoritative allocation of values either formally through authorized political bodies or informally through social decision. See Fraser (1992) on “weak” (opinion-creating) and “strong” (binding) public spheres and Habermas ([1992] 1996) on the two deliberative “tracks” of “opinion-formation” in the larger public sphere and “will-formation” in the formal body that produces a binding decision. For an alternate formulation see Bohman (1996; 1998; 1999). The article also does not discuss the role that deliberation, hypothetical or actual, may play in anchoring or defining a philosophical concept like “justice” (as in Lafont 2004). Our subject is the ideal to which actual political bodies, trying to make a democratic decision binding on the members, should strive. Our use of the word “deliberation” henceforth will refer, unless otherwise specified, to deliberation aimed at such a binding decision.

³We define a “regulative” ideal, unachievable in its full state, as an ideal to which, all else equal, a practice should be judged as approaching more or less closely. See Kant ([1781] 1998, p. 552, A569/B597; also A570/B598) on a “regulative principle” as a standard “with which we can compare ourselves, judging ourselves and thereby improving ourselves, even though we can never reach the standard.” For the “rationality of pursuing unattainable goals” see Rescher (1987, p. 114). See also: Nozick 1989, ch. 24; Martí 2006a, pp. 24–31; and for a caveat Habermas [1990] 1993, p. 164. We assume a plurality of regulative ideals that may sometimes conflict. An ideal may be unachievable in its full state for practical reasons (e.g., the ideals of absence of coercive power or completely equal power) or because in specific instances it conflicts with other ideals (e.g., the ideal of equality sometimes conflicts with that of liberty). For reasons of “the second best,” it may in some instances be appropriate to act contrary to the ideal (see below note 51 and accompanying text).

⁴The question of what input into democratic decision on a policy affected parties outside the deciding polity should have is currently highly contested. One possibility conceives of affected non-citizens as having a right to some input into deliberation without the full panoply of deliberative rights (e.g., the background equal resources) or the right to equal power in a non-consensual decision. Unborn affected parties pose further questions. On this issue see, e.g.: Gould 2004; Dryzek 2006; and Goodin 2007. This analysis is restricted to living adult members of the polity.

⁵Thompson 2008, p. 498. As we point out below in section B, the concept of “reasons” in “reason-giving” can include non-cognitive “considerations” that others can accept.

treat one another with mutual respect and equal concern. They should listen to one another and give reasons to one another that they think the others can comprehend and accept. They should aim at finding fair terms of cooperation among free and equal persons. They should speak truthfully. The criterion that most clearly distinguishes deliberative from non-deliberative mechanisms within democratic decision is that in the regulative ideal, coercive power should be absent from the purely deliberative mechanisms. Participants should not try to change others' behavior through the threat of sanction or the use of force.

Within these criteria, democratic deliberation can take several forms: a) classic deliberation, b) more recently expanded versions of the classic ideal, and c) the newly reformulated ideal that we propose here. The new ideal includes four forms of communicative agreement—convergence, incompletely theorized agreements, integrative negotiations, and fully cooperative distributive negotiations—that, while accommodating suitably constrained forms of self-interest, derive from non-coercive processes.

A. CLASSIC DELIBERATION

The classic ideal of deliberation, we believe, is insufficient for a polity ideally based on diversity in opinions and interests. In the classic ideal, individuals enter a deliberation with conflicting opinions about what is good for the polity, but after voicing and hearing the reasons for different options, converge on one option as the best, for the same reasons. Ideally, the deliberation is based on reason. It aims at consensus and the common good. In most formulations it explicitly excludes negotiation and bargained compromise. It excludes self-interest.

In the classic antithesis between deliberation and aggregation, the rejection of self-interest is a central part of the larger rejection of aggregation, negotiation, and interest-group pluralism.⁶ Iris Marion Young summarizes the classic contrast between deliberative and “interest-based” models of democracy as follows: “Democratic processes are oriented around discussing [the] common good rather than competing for the promotion of the private good of each. Instead of reasoning from the point of view of the private utility maximizer, through public

⁶See Habermas (1989, p. 45) on the necessity of “overcoming” one’s “egocentric viewpoint.” For the antithesis between deliberation and aggregation, see, e.g.: Habermas [1962] 1989 (reason versus will), Elster 1986 (the forum versus the market); Michelman 1988 (strategic action versus deliberation); Sunstein 1988 (rejecting the conception of the electoral process “as a self-interested struggle”); Cohen 1989 (rejecting the aggregative model); Estlund 1993 (deliberative versus strategic models); Cohen 1996 (deliberative politics versus a politics of bargaining); Martí 2006a, pp. 41–52, 2006b, p. 28 (deliberation versus bargaining and voting); and Mansbridge 1980 (unitary and adversary democracy, for different contexts). See also: Manin 1987; Miller 1992, pp. 182–3; Gutmann and Thompson 1996, pp. 1–4, and 2004, pp. 13–21; Knight and Johnson 1994; Bohman 1998; Johnson 1998. Fishkin (2005) notes that some versions of the antithesis confound contrasts between methods of preference formation (deliberation versus raw preferences) and methods of decision (consensus versus majority rule).

deliberation, citizens transform their preferences according to public-minded ends, and reason together about the nature of those ends and the best means to realize them.”⁷

Indeed, in Jürgen Habermas’s early work (and that of earlier scholars in this tradition), public and legislative deliberation should ideally rest only on “the standards of ‘reason’ ” and “the authority of the better argument” on matters of “common concern.”⁸ This view is inseparable from a concept of “law as an expression of reason,” in contrast to will.⁹ Laws ideally embody “the reasonable consensus of publicly debating” persons, not a “compromise between competing private interests.”¹⁰ This definition excludes from deliberation not only self-interest but also all forms of negotiation.

B. EXPANSIONS OF THE CLASSIC IDEAL

Contemporary deliberative theorists have moved away from the language of “reason,” with its Enlightenment overtones of a unitary and knowable entity, to a focus on mutual justification. Participants in deliberation advance “considerations” that others “can accept”—considerations that are “compelling” and “persuasive” to others and that “can be justified to people who reasonably disagree with them.”¹¹ This criterion of “mutual justifiability” has become central to the concept of deliberation.¹²

Other features of an expanded understanding of deliberation are more contested. The term “mutual justifiability,” for example, opens the door to storytelling and the non-cognitive evocation of meanings and symbols that can appeal to actual or imagined shared experiences. Stories can establish credibility, create empathy, and trigger a sense of injustice, all of which contribute directly or indirectly to justification. Not all deliberative theorists have accepted storytelling or other such methods as compatible with deliberative ideals, particularly excluding from deliberation any form of “irrational” persuasion. Yet the stance of mutual respect required for good deliberation almost always requires extending toward the other participants an empathy that attends to commonalities and differences. Acts of empathy, which require trying to put

⁷Young 1996, pp. 120–1, citing earlier theorists.

⁸Habermas [1962] 1989, pp. 28, 36, 37.

⁹Habermas ([1962] 1989, p. 81), citing Schmitt ([1928] 1957, p. 148): the “law is not the will of one or of many people, but something rational-universal; not *voluntas*, but *ratio*.”

¹⁰Habermas [1962] 1989, p. 132; also p. 195. Schmitt also contrasts “discussion”—an “exchange of opinion” on “the truth or justice of something,” characterized by “freedom from selfish interests”—with “negotiation,” arguing that laws should “arise out of a conflict of opinions (not out of a struggle of interests)” ([1926] 1988, pp. 4–6, parentheses in original). See also Arendt ([1963] 1965, pp. 272–3) and Mansbridge (1996) for critique. Martí (2006b, p. 28, n. 2) points out that many theorists explicitly distinguish between deliberation and negotiation, including: Sunstein 1988; Cohen 1989, pp. 17–18; Gutmann and Thompson 1996, pp. 1–4; 2004; Bohman 1998, p. 400; Knight and Johnson 1997; Barber 1984, pp. 136–7; and Pettit 2003, pp. 139–40; but cf. Bohman 1996, p. 282.

¹¹Cohen 1989, pp. 101–4; 1996, pp. 100, 2.

¹²See Scanlon 1982; Gutmann and Thompson 1996 and 2004; Bohman 1998; Lafont 2006.

oneself in another's place, usually engage the non-cognitive faculties and require non-cognitive forms of communication. The role of these non-cognitive faculties in deliberation is contested.¹³

The very goal of the common good admits of several meanings. The classic ideal implied a relatively unitary conception, discoverable through reason. Expanded theories point out that the giving of good reasons will not always, even ideally, lead to a unique result. Thus expanded theories entertain plural conceptions of the common good, ranging from agreement on the structure of conflict to aggregative understandings of the common good. The definition and meaning of the common good remains highly contested.¹⁴

Finally, when interests or values conflict irreconcilably,¹⁵ deliberation ideally ends not in consensus but in a clarification of conflict and structuring of disagreement, which sets the stage for a decision by non-deliberative methods, such as aggregation or negotiation among cooperative antagonists. We assume that the goal at the outset of deliberation ought not necessarily to be a substantive consensus. Indeed, when the more powerful actors have previously unequally

¹³Sanders (1997) and Young (1996) favor storytelling on the grounds that disadvantaged participants are more likely to use this form and use it successfully (per contra, Benhabib 1996, p. 83). See Bohman (1996, esp. pp. 7 and 45), Dryzek (2000, pp. 64–70), Chambers (2003, p. 322) and Thompson (2008, p. 503) for an expansive construal of reason-giving, and Krause (2008), Hall (2007) and Nino (1996, pp. 124 ff.) for emotional communication in deliberation. Galinsky, Ku and Wang (2005) advance experimental evidence that cognitive “perspective taking” may be more effective than emotional empathy in producing joint gains in negotiation. The arguments in this essay do not require a position on this point.

¹⁴For analyses of different meanings of the common good, see Held (1970) and Mansbridge (1998); for interests held qua member of the public see Barry (1965); for cooperatively avowable considerations and common avowable interests see Pettit (2000; 2001b, esp. pp. 156–8). For the good of agreement on the structure of conflict, see Miller (1992), List (2003) and Pettit (2006, p. 99) (for critique, see McGann 2006, pp. 130 ff.); and for an empirical demonstration that deliberation can structure preferences in a more single-peaked fashion appropriate for majority voting, see List et al. (2006). For an aggregative understanding, see Steiner et al. (2004). An aggregative understanding of the common good (the common good in an aggregative form), as in utilitarianism, differs from aggregation through a decision procedure like majority rule, which we do not conceptualize as “the common good.” (We thank James Fishkin for noting the possible confusion.)

¹⁵We use the word “interest” here to mean an “enlightened” preference, that is, what hypothetically one would conclude after ideal deliberation was one's own good or one's policy preference, including other-regarding and ideal-regarding commitments. Any guess as to what such a conclusion would be is necessarily open to further thought, testing through practice, and political struggle. The word “interest” connotes objective, static or eternal states discoverable through revolutionary action or through reason, and revealed by removing the sources of oppression or repression. We want to discard these connotations, while retaining some distinction between surface preferences, opinions, or prereflective understandings, and understandings of self and commitments that are more considered, emotionally and rationally, and more thoroughly tested in action. Using this definition, transforming one's “interests” requires transforming one's self, including one's identity, in contrast to transforming only one's preferences or one's perceptions of one's interests (see note 40 below). In this sentence we use the phrase “interests or values” not to imply that interests cannot include values but to clarify to the casual reader, who might not use the word “interests” inclusively, that we intend both material and less tangible interests, including other-regarding and ideal-regarding interests. When we specify “self-interest,” however, we exclude other-regarding and ideal-regarding interests, except in the important cases when a representative is arguing against the interests of others for the “self”-interest of a constituency or an individual for the “self”-interest of her family or other subgroup with which she is deeply identified. (We thank Amy Gutmann for comments leading to this clarification.)

influenced the definition of the situation and its appropriate norms, deliberation ought to make less powerful actors more aware of their interests and, when interests conflict, increase their perception of the conflict.¹⁶ Deliberation that has clarified and structured conflict well appropriately ends with majority rule or other non-deliberative democratic methods such as negotiation among cooperative antagonists.

In all deliberative theories, disagreement, conflict, arguing, and the confrontation of reasons pro and con are crucial to the process.¹⁷ Deliberative democrats have always placed a high value on contestation. Conflict in opinion was the very stuff of politics in the classic theory of Jürgen Habermas, for example. It is not conflict *per se* but the conflict of self-interests that for such theorists contaminated the “political.” We argue, by contrast, in a further expansion of the deliberative ideal, that any ideal of the political, of legitimate democracy, and of deliberative democracy must include self-interest and conflicts among interests in order to recognize and celebrate in the ideal itself the diversity of free and equal human beings.

C. DELIBERATIVE NEGOTIATION

As we incorporate both self-interest and conflicts of interest (including material self-interest) in the deliberative ideal, we deploy the classic distinction between coercive and non-coercive interactions to draw an analytic line not, as in classic theory, between deliberation and negotiation, but between two categories of negotiation: the non-coercive forms of negotiation, which we consider deliberative, and those forms that in one or another way intrinsically employ power in the decision process itself and are thus not deliberative. Non-coercive forms of negotiation, based on mutual justification, fit solidly within our reformulation of the deliberative democratic ideal. We distinguish such *deliberative negotiations* both from forms of democratic negotiation that permit some forms of threat and from the mechanisms of democratic aggregation such as majority rule whose legitimacy is based at least in part on the equal power ideally inherent in each vote. We also argue later, however, that certain *non-deliberative* forms and mechanisms that intrinsically employ coercive power are legitimate and necessary procedures of democracy more broadly conceived

¹⁶Others who have criticized the classic ideal for over-emphasizing consensus include: Knight and Johnson 1997; Przeworski 1998; Shapiro 1999, p. 31; Bell 1999; Besson 2005, pp. 228–33; and Thompson 2008. Bachrach (1974) early argued that when underlying conflict has previously been obscured (usually by the hegemony of the more powerful), participation in politics should increase conflict.

¹⁷For recent treatments of conflict in deliberation, see: Thompson 2008; Gutmann and Thompson 1996; Bohman 1996; Estlund 2001; and Manin 2005. Chambers (2003, p. 321, citations omitted) concludes that deliberative theory is now “more sensitive to pluralism” and “has moved away from a consensus-centered teleology—contestation and indeed the agonistic side of democracy now have their place.”

to the degree that they and their procedures emerge from and withstand deliberative, mutually-justificatory, scrutiny.

Four forms of communicative agreement that we consider non-coercive and thus part of “deliberative” democracy—the processes of convergence, incompletely theorized agreements, integrative negotiation, and fully cooperative distributive negotiation—all incorporate self-interest without deviating from the criteria for good deliberation. Each of these processes ends in a kind of consensus, that is, a genuine agreement among participants that the outcomes are right or fair.¹⁸ Each contrasts, however, with classic deliberative theory, in which participants enter a deliberation with conflicting opinions on the common good, but after hearing others’ judgments and reasons, adopt one understanding or option as the best, for the same reasons.

In what we call *convergence*, deliberation concludes with participants agreeing on a single outcome for the same reasons, but begins without significant conflicts of opinion or interest. Although the participants enter the deliberation with interests or opinions on what is good for the polity that do not greatly diverge, these opinions are often not fully formed or known to one another. The participants bring together facts and insights from their various sources of information, and after deliberation converge on one option as the best for all. The participants need to consider what information and interests each brings to the table and sort out what they think is best by talking with and listening carefully to one another. They need to reflect together, perhaps in depth, on their mutual preferences, values and interests. Moments of convergence, frequent in most political bodies, may engage self-interests that turn out to be compatible, similar opinions on the common good, or both. Deliberation to convergence often generates mutual respect, trust, collective agency, satisfaction, and goodwill. It forges bonds on the basis of common insight and common action. Defining politics to require conflict and relegating moments of convergence to the category of “administration” denies the complexity of political processes, which properly include convergence without significant conflict on a common good.¹⁹

Incompletely theorized agreements originate with conflicting opinions on the common good and conclude with participants agreeing on a single outcome, but for different reasons. Cass Sunstein formulated this concept to describe and commend many decisions in the U.S. Supreme Court, but rightly claims that it applies to other deliberations as well. He argues that because incompletely theorized agreements rest on participants’ different reasons, such agreements are more likely than fully theorized ones to preserve openness for future evolution,

¹⁸Earlier theorists have also suggested that in some circumstances deliberative democracy appropriately includes some form of negotiation and compromise on matters of self-interest; see, e.g., Habermas ([1992] 1996), Gutmann and Thompson (1996, esp. pp. 69–73, permitting bargaining constrained by moral reciprocity), and Bohman (1996, esp. p. 91). For more on deliberative and non-deliberative negotiations, see Mansbridge (2009).

¹⁹Per contra see, e.g., Barber 1984, p. 129.

allow effective decisions in limited time, accommodate the limited human capacity for reason-giving, and encourage the humility and mutual respect required in plural societies.²⁰ Incompletely theorized agreements do not fulfill the demands of the criterion of mutual justification “all the way down.” By definition such agreements leave certain issues unresolved. But in deliberating to an incompletely theorized agreement, the parties offer mutually acceptable justifications regarding outcomes and sometimes even regarding the midlevel principles (such as precedent) that generate those outcomes. One metaprinciple that might generate such agreement is precisely that of leaving ultimate principles unresolved. To the degree that the parties can genuinely offer one another such justifications, based not only on the need to find a *modus vivendi* but on mutual respect for the other’s premises, the process of generating incompletely theorized agreements meets the deliberative criteria of mutual justification, mutual respect, reciprocity, fairness, equality among participants, and the absence of coercive power.

Integrated solutions, or “win-win” solutions based on *integrative negotiation*, are also forms of coordination that originate with conflict and conclude with agreement on one outcome but for different reasons. Unlike incompletely theorized agreements, they were originally conceived to deal explicitly with differences in self-interest, including material interest. In Mary Parker Follett’s original example of an integrated solution, she wanted the window in a library shut to avoid a draft while another patron wanted it open to get more air in the room. Her solution, opening the window in the next room, gave both parties what they wanted.²¹ Integrated solutions are possible only when the parties have different valuations of the different aspects of the negotiation and can discover a way of exploiting those different valuations for joint gain. Because in the end the parties have no need to compromise, integrated solutions might be said to “dissolve” a conflict or show that a perceived conflict was only apparent. Yet the parties involved do want different things, which at the origin of the deliberative negotiation seemed to present a conflict. They do not agree on an outcome for the same reasons. Only through deliberation, weighing, and exploring their mutual and conflicting interests can they discover how to resolve the apparent conflict by expanding the borders of the problem or introducing new perspectives.

Finally, in *fully cooperative distributive* negotiations (henceforth simply “fully cooperative negotiations”) participants enter a deliberation with conflicting interests, but, after deliberating on the content of those interests and on the principles of fairness appropriate to adjudicating them, adopt a distributive

²⁰Sunstein 1995; see also Sunstein 1996, pp. 35–61; 1997; 1999. Bohman also argues for deliberative agreement on the basis of “*different* publicly accessible reasons” (1996, p. 83, also p. 92, emphasis in the original; but see Pettit 2003 for caveats). By contrast, Habermas requires that the process of producing a “rationally motivated consensus” exclude the different parties accepting the result “each for his own *different* reasons” ([1992] 1996, p. 166, emphasis in original).

²¹Follett ([1925] 1942), originating the idea of integrated solutions/integrative negotiation.

agreement that all consider fair. *Distributive* negotiations differ from *integrative* negotiations in having zero-sum outcomes.²² That is, although the parties reach an agreement that is better for each than the status quo or the other alternatives available, they give up some part of what they want to get agreement. Coining the term “fully cooperative” negotiation to contrast with “cooperative antagonist” negotiation, the far more common form of negotiation and the subject of his classic text, Howard Raiffa wrote that the partners in a fully cooperative negotiation:

have different needs, values, and opinions, but they are completely open with one another; they expect total honesty, full disclosure, no strategic posturing. They think of themselves as a cohesive entity and they sincerely want to do what’s right for that entity. This would be true, for instance, of a happily married couple or some fortunate business partners.²³

Unlike most negotiations (those among cooperative antagonists), fully cooperative negotiations meet the criteria for deliberation. In the regulative ideal, they are conducted among participants of equal status and resources, who treat one another with mutual respect and concern, listen carefully to one another, speak truthfully, and aim at finding fair terms of cooperation. Fully cooperative negotiations rest solely on mutual justification. Whereas in other distributive negotiations the parties implicitly or explicitly exchange not only promises but threats (particularly each party’s threat of withdrawing from the potential agreement), in the ideal of fully cooperative negotiation each party eschews not only the threat of leaving but also other forms of coercive power.

III. SELF-INTEREST

Although judges and administrators should recuse themselves if they have self-interests in a matter they must decide for others, in politics participants make decisions not only for others but also for themselves. Those who know their interests best, namely (in general) those whose interests they are, need to deliberate with others about those interests, come to understand them, express them, and stand up for them. Even in a deliberation aimed at consensus on the common good, the exploration and clarification of self-interests must play a role.²⁴ Including self-interest in deliberative democracy reduces the possibility of

²²Walton and McKersie ([1965] 1991, pp. 4–5) introduced the terms “integrative bargaining” and “distributive bargaining” to distinguish between 1) the system of activities that is “instrumental to the attainment of objectives which are not in fundamental conflict with those of the other party” and 2) the “system of activities instrumental to the attainment of one party’s goals when they are in basic conflict with those of the other party.” We use the term “zero-sum” colloquially to include what strict game-theorists would call “constant-sum” and “zero-sum” games, in both of which my gain requires your loss. (Thanks to Joseph Mazor for this point.)

²³Raiffa 1982, p. 18. Raiffa wrote no more than this paragraph on this subject; we have fleshed out the concept as a component of the deliberative democratic ideal.

²⁴Several theorists have made a role for self-interest and conflicting interests in their understandings of deliberation: Benhabib 1996, p. 73; Dryzek 1990, p. 43; Mansbridge 1996; 2002;

exploitation and obfuscation, introduces information that facilitates reasonable solutions and the identification of integrative outcomes, and also motivates vigorous and creative deliberation.²⁵ Including self-interest in the regulative ideal of deliberative democracy embraces the diversity of human objectives as well as the diversity of human opinions.

Self-interest plays an important role in deliberation in two ways: relatively uncontroversially, as information on the common good or conflict, and, more controversially, as justifiably constitutive of an aggregative common good or conflict.

First, even in classic deliberation, where participants try to understand what policy best promotes the common good, self-interested statements serve as information regarding that common good.²⁶ The deliberation preceding a decision helps to clarify interests and preferences in addition to transforming them. In this process of clarification, participants in the deliberation must be able to explore what they really want and what is right for them as well as for others in a way that does not take self-interest off the table. A participant should be able to come to a realization of self-interest, saying, “But that policy would hurt me [or my constituents],” and hear from others that other policies will hurt or help them.²⁷ If self-interest is not part of the process of exploration and clarification, the chances increase greatly of a group’s adopting a version of the common good that does not take everyone’s interests into account. If members of the group can speak only as “we” and not as “I,” neither they nor the other participants may be able to discover what is really at stake and forge integrated solutions.²⁸ In

2006; Sanders 1997, p. 353; Young 1996, p. 126; and Bohman 1996, p. 255, n. 15. In Chambers’ (2003, p. 309) conception of deliberation, “participants are expected to pursue their interests.” Johnson (1998, p. 174) concludes that “a plausible argument for deliberation must not—in the effort to differentiate deliberation from bargaining—categorically exclude either self-interested claims or the conflicts that such claims might generate from the range of admissible topics that participants to deliberation might address.”

²⁵Fung even argues that “hot deliberations with participants who have much at stake make for better deliberation,” because “participants will invest more of their psychic energy and resources into the process and so make it more thorough and creative” (2003, p. 345, emphasis in original).

²⁶Cohen and Rogers (2003, p. 247) write: “Deliberation does not preclude statements of self-interest. The deliberative view . . . admits [expressions of self-interest] as ways to present *information*. For example, a relevant consideration in deliberation, and a possible justification or reason for a policy, is that it represents a fair accommodation of the interests of all, or advances the good of those who are in greatest need. But to know that it does either of these things, we need to know what those interests are, and expressions of self-interest by relevant persons are one way to find that out.” In the omitted ellipsis, however, Cohen and Rogers argue that “expressions of self-interest do not qualify as *justifications* for anything—as statements of reasons in the desired sense” (emphases in original). We argue below that within certain constraints such expressions can qualify as justifications.

²⁷Pettit (2006, p. 100) argues that interventions such as “That’s going to make life difficult for those of us who are [group characteristic]”, are “likely to be accepted as relevant on all sides” in a deliberation and to “secure acceptance as reasonable.” See also Goodin 1996, p. 341.

²⁸Per contra, Benjamin Barber (1984, p. 200) articulated the classic position against expressing or pursuing self-interest: “In place of ‘I want Y,’ the strong democrat *must* say ‘Y will be good for us.’” Jon Elster also reported that “There are certain arguments that *simply cannot* be stated publicly. In a political debate it is *pragmatically impossible* to argue that a given solution should be chosen just because it is good for oneself. By the very act of engaging in a public debate—by arguing rather than

practice, without this exploration of self-interest, the understandings of the common good of the more powerful in the polity may dominate, even without ill will or the intent to exercise power.

For example, one evening in 1965, forty-six faculty members at the University of Michigan who wanted to protest the Vietnam War met until four AM to decide between two proposals: a day-long anti-war moratorium with faculty calling off their classes, which would break the faculty members' contracts with the university, or an alternative new idea of a 24-hour session on the war with no cancelled classes. A young assistant professor eventually said, "I'm in favor of the alternative but it's not because I think it is more or less effective as a protest against the Vietnam War. It's because I'm scared. I'm afraid of losing my job. I could repeat some of the arguments for switching that others have given, but that's not the real reason."²⁹ A majority emerged for the alternative proposal, the disappointed pledged their support, and the "teach-in" was born. Teach-ins spread rapidly across the universities in America, at least in part because that solution accommodated self-interests that a more restrictive interpretation of a deliberately justified argument would have excluded from the discussion.

In this case, the deliberation had been framed to decide which strategy was the most effective protest. The decision was supposed to be not about what was best for "us," the deciding group, but what was best for the anti-war cause. The young assistant professor, trying to maintain authenticity but undoubtedly also worrying that the remark showed him insufficiently committed to the cause, offered his self-interest as information about himself, not as a justification. Yet that information turned out to be highly relevant, as what was best for the anti-war cause turned out to include the cost of anti-war activity for potential participants.

bargaining—one has *ruled out* the possibility of invoking such reasons" (Elster 1986, pp. 112–3, citing Midgaard 1980). Gutmann and Thompson (1996, p. 126) respond with an example from the U.S. Senate floor showing that in fact such claims are "pragmatically possible." Elster later gave the label, "the civilizing force of hypocrisy," to the pressure of the norms by which "even self-interested speakers are *forced* or induced to argue in terms of the public interest" (1995, p. 251, our emphasis; also 1998, pp. 13, 111). Other theorists have used language close to Elster's (but perhaps admitting of self-interest constrained by fairness). See, e.g., Hannah Pitkin (1981, p. 347, citing Tussman 1960): "[In public life] we are there *forced* to acknowledge the power of others and appeal to their standard, even as we try to get them to acknowledge our power and standard. We are *forced* to find or create a common language. . . . We are *forced*, as Joseph Tussman has put it, to transform 'I want' into 'I am entitled to,' a claim that becomes negotiable by public standards." See Benhabib (1996, pp. 71–72, citing Arendt 1961): public deliberation "*forces* the individual to think of what would count as a good reason for all others involved. One is thus *forced* to think from the standpoint of all involved. . . . a standpoint that Hannah Arendt, following Kant, had called the 'enlarged mentality.'" Finally, see Young (1996, p. 128): "Knowledge that I am in a situation of collective problem solving with others who have different perspectives . . . cultures and values from my own . . . *forces* me to transform my expressions of self-interest and desire into appeals to justice." (Emphases ours throughout.) To the degree that this force derives from social pressure, as in Elster's claim for the civilizing force of hypocrisy, it can undermine the deliberative ideal, reducing both authenticity and information.

²⁹Gamson 1991, pp. 31–2.

A second, more contested claim is that when the common good is composed of individual goods, each individual's self-interest is a constituent part of that common good. In this case, the presentation of one's self-interest is in itself a justification, a reason in itself for adopting a particular policy. In a highly simplified and completely aggregative case, the members of the polity could deliberate about their interests, explore their options together, flesh out the implications of different choices, contemplate the different forms of common good applicable to the problem, realize that the appropriate form in this case was purely aggregative, and all individually announce what they had concluded was good for them from the perspective of their own self-interest, saying, "This policy is in my (my group's) interest."³⁰ If all the participants, perhaps for different reasons, converge on one policy as in their self-interest, then that policy, formed by the aggregation of those interests, is for them the common good in an aggregative form. In these circumstances, for each individual and for the others in the group, the fact of self-interest is a reasonable and sufficient justification of the individual's stance.

One purpose of deliberation should be to clarify conflict as well as commonality, sometimes leading to the conclusion that the issue cannot be handled with deliberative processes alone. If, after deliberatively exploring both the common good and individual interests, participants find that either their understandings of the common good or their more self-regarding interests cannot be reconciled, they need to recognize this fact and authorize another form of decision-making, perhaps a form of voting, to produce a relatively legitimate decision. In this situation too the simple fact of one's self-interest may constitute a justification to others for desiring one policy, resisting another policy, and coming to the conclusion of irreconcilable conflict.

Finally, as explained earlier, the statement and pursuit of self-interest is in many cases necessary to construct a fair and fully cooperative negotiation, whether integrative or distributive.

The claim that may be hard for deliberative theorists to swallow is that self-interests are intrinsically self-justifying, under certain constraints, in those forms of democratic deliberation and decision that construct a common good from particular conflicting interests (including some incompletely theorized agreements, most integrative solutions, and most fully cooperative negotiations). Indeed, because a composite common good is made up of individual goods, which can include material self-interests, those interests have a self-evident, primordial claim to be counted in that common good.

³⁰See per contra Cohen and Rogers (2003, p. 247), arguing that "This policy is in my (group's) interest" exemplifies a statement that cannot be a justification; also Nino (1996, p. 122), arguing that the "mere expression of wants or description of interests," such as "This is what I want," "would be rejected as arguments in any genuine discussion." We consider it legitimate for a participant to begin a deliberation, perhaps to convergence, by saying invitationally, "This is in my self-interest; is it in any of yours?"

Consider an example in which two individuals have conflicting interests. One member of a married couple has a job offer in Chicago and the other an offer in Boston. It would distort their communication and decision-making to “force” them to discuss the issues solely in terms of what is good for “us,” e.g., for the “marriage” or for the children. Only by recognizing their self-interests and the conflict between them can the couple negotiate a fair, perhaps even integrative, agreement. In the good that they forge through their deliberative negotiation, their self-interested claims are intrinsically justifiable, that is, self-justifying in the absence of negating considerations. If in the Teach-In example the group had been making a decision about what was good for “us” rather than for the anti-war protest, it should by right have considered the young participant’s interests simply on the grounds that they were good for him and (like the married couple’s interests in their careers) worthy of being counted in the decision on that basis.

In the ideal of deliberative democracy, the expression and pursuit of self-interest must be curtailed both by the *universal constraints* of moral behavior and human rights and by the particularly *deliberative constraints* of mutual respect, equality, reciprocity, fairness and mutual justification.³¹ Thus many forms of self-interest are ruled out, not as desires but as justifications. “The desire to be wealthier come what may,” for example, is in most instances not compatible with mutual respect, equality, reciprocity, fairness and mutual justification. But the “desire to be as wealthy as possible consistent with a fair level that others (i.e. equal citizens) find acceptable” is compatible with the values that help constitute the deliberative ideal.³² As we deliberate on a collective course of action, I may justifiably claim that this desire of mine be given its proper weight, perhaps an equal weight with others’ conflicting desires, without its requiring any further justification.

To understand how self-interest might be inherently justified and legitimately act as a justification in deliberation yet be curtailed by certain constraints, we adapt words that John Rawls used in a different context when he identified citizens as “self-authenticating sources of valid claims,” meaning that citizens are “entitled to make claims on their institutions so as to advance their conceptions

³¹Some logical circularity may arise in contending, as we do, that the very meaning of moral behavior, human rights, mutual respect, equality, reciprocity, fairness, and mutual justification must be established, albeit temporarily and contingently, by deliberation that is itself constrained by these values. (E.g., concepts of fairness must be deliberated in as close as possible to ideal conditions, as dominant concepts of fairness are usually biased against subordinate interests and perspectives.) Yet, because the kind of deliberation to a binding decision that involves self-interest as a justification and not just as information appears at a stage at which both the philosophical deliberations and the foundational binding decisions on these matters have already occurred either explicitly or implicitly (see below), the possible philosophical circularity involved in establishing the meaning of these constraints need not affect our more narrow analysis of the role of self-interest.

³²This modification of Cohen’s (1989, p. 24) original contrast with a justifiable “desire to have a level of wealth that is consistent with a level that others (i.e., equal citizens) find acceptable” permits as justifiable the more self-interested desire for as much wealth “as possible” within constraints. It also adds fairness to acceptability.

of the good (provided these conceptions fall within the range permitted by the conception of justice). These claims . . . [have] weight on their own apart from being derived from duties and obligations specified by the political conception of justice, for example, from duties and obligations owed to society.”³³ In a similar way, we argue, citizens are entitled to make claims on their institutions to advance their interests (provided these interests fall within the range permitted by the broad constraints of human rights and morality and the deliberative constraints that run from mutual respect through mutual justification). These claims of *deliberatively constrained self-interest* have weight on their own, and do not need to be derived from a larger deontological or consequentialist theory.³⁴

The kinds of deliberation in which the regulative ideal allows participants to advance their particular self-interests are themselves constrained. Democratic deliberations ending in a binding decision over basic, unrenounceable and generalizable interests such as human rights ought to include statements of self-interest only as information. Most democratic deliberations to a binding decision do not, however, involve such basic constitutive decisions. Broadly speaking, the question of which kinds of claim are appropriate in any deliberation must itself be subject to deliberation and mutual justification. When the young anti-war faculty member advanced his self-interested reason for pursuing the less personally costly strategy, the group could have deliberated upon the appropriateness of that reason. Instead, it implicitly accepted the relevance of his reason to the common task. Although there was no actual deliberation on that relevance, his claim was at least potentially open to a process of mutual justification.

We have used the word “fair” rather than “impartial” to describe the ideal process in deliberative negotiation because we contend that to participate appropriately in integrative and fully cooperative negotiations the participants often should at one and the same time both try to conceive and follow a goal of fairness, a process that may require an impartial or third person perspective, and also stand up for their own self-interests. The participants thus need to be partisan or partial in identifying their own interests and promoting them.³⁵ But

³³Rawls 1993, p. 32.

³⁴Indeed, both deontological and consequentialist ideals presuppose the intrinsic justifiability of an individual’s self-interests. In the deontological ideal of equal respect, those interests are part of what we ought to respect. In utilitarianism, if we should count each for one and none for more than one (a standard formulation that has, however, not been traced to the specific words of Bentham or Mill), those interests are part of what we should count. Rawls made self-interests part of his conception of “primary goods” (1971, p. 93), concluding that “merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation” (1993, p. 52). Habermas also argued that a norm is valid if all affected can accept the consequences it can be anticipated to have “for the satisfaction of everyone’s interests” ([1983] 1990, p. 65), admitting expressly that there therefore is “a remnant of the good at the core of the right” ([1996] 1998, p. 29). (Thanks to Sharon Krause for these citations.)

³⁵Textbooks on negotiation often warn that friends and other individuals who want to do right by their communal entity may fail to pursue their self-interests fully enough to realize the gains that can be achieved in negotiation because their concern for the relationship is so great that they hesitate to cause conflict (e.g., Thompson 2005, p. 143).

they should also want to reach an accommodation that is fair, be willing and able to justify their self-interests to others in terms of fairness, understand the arguments from fairness from the other side, and look for fair adjudications among competing understandings of fairness. While they should seek impartial outcomes in the sense of outcomes that do not benefit one side or another unfairly, it is both permissible and in some institutional instances required that they take particular concern for their own interests. Participants need not be fully neutral or detached in the deliberative process.³⁶

Will legitimating self-interest, even in constrained form, undermine the capacity of the democratic deliberative ideal to inspire transformations in the direction of the common good? In practice, perhaps yes. Many normative theorists have emphasized the power of deliberation to transform individual participants' perceptions and even identities in the direction of the common good.³⁷ Deliberation would have no point if it did not produce change in the views of at least some participants, if only a change in the strength and conviction with which those participants held an unchanged opinion. When participants change their minds in deliberation, as in practice they often do, they most frequently do so because they have acquired new factual information.³⁸ They sometimes change their minds because they have detected logical mistakes in their reasoning, or developed new perspectives on the information they have, for example, taking a more long-range view. We consider deliberation "transformative," in the sense of transforming self-interest, not in these instances but rather when participants change their minds because they have adopted to some degree the perspective of another or taken the other's interests as their own. (This might be the case, for example, when a predominantly male faculty, or one whose members are mostly past the age of childrearing, decides to hold faculty

³⁶This point opens up a complex discussion that cannot be explored further here. Nagel's (1986; 1991) and others' works on impartiality have sparked an immense literature pro and con (see also, e.g., Williams 1973; 1981). Our point here differs from Nagel's (1991) argument that workable institutions have to find some way of incorporating both impartial ideals and some (not necessarily dominant) self-interested motivations. We argue that in deliberative democracy partiality, suitably constrained, should be part of the constellation of values *within the ideal itself*. In the past some normative deliberative theorists have made impartiality a criterion for good deliberation (e.g., Nino 1996, Estlund 1993 with caveats in n. 61), while others have used as a criterion such terms as "generality" and "generalization" (Manin 1987) or "a general point of view" (Pettit 2003). Some have explicitly distinguished from impartiality their criteria of reciprocity (Gutmann and Thompson 1996, pp. 59–63, and 2004, pp. 152–3), publicity (Bohman 1996, pp. 40–46, 80–88), or universalism (Sunstein 1988, p. 1574 n. 195). For Habermas the concept of impartiality understood as neutral detachment is appropriate for "discourses of application," when judges or others like them decide specific cases on the basis of already justified norms, but not for "discourses of justification," through which the universal validity of norms is earlier determined and in which each discourse participant should take the internal perspective of the affected others (which is incompatible with adopting a third person perspective); see Habermas [1991] 1993, pp. 35–38, 48–50 and Günther 1993.

³⁷E.g., Barber 1984; Elster 1986; Warren 1992; Mansbridge 1980 and 1992; Chambers 1996. For skepticism, see Knight and Johnson 1994, pp. 282 ff.

³⁸Goodin and Niemeyer 2003; see also Luskin, Fishkin and Jowell 2003. The new information could include, e.g., relevant circumstances not previously considered, relevant interests previously neglected, consequences not previously analyzed, and options not previously contemplated.

meetings at a time that makes it possible for one of their number, with a child in daycare, to pick that child up on time.) In another form of such transformation, participants may change their minds because the deliberation has evoked and strengthened perceptions of, and a commitment to, justice, which now overrides or modifies the self-interested perspective with which they entered the deliberation. They may even forge new understandings of justice in the deliberation. Or participants may be transformed in this way because the deliberation has evoked and strengthened ties to a communal entity to which they had given less weight before deliberation and that now overrides or modifies their original self-interested perspective. They may also help create, as they deliberate, the entity that now claims their allegiance.³⁹ When deliberation actually goes so far as to transform an individual's identity—a relatively rare occurrence—we can say that deliberation has transformed not only that individual's preferences but his or her interests.⁴⁰ When before the deliberation real underlying conflicts were obscured, any transformations of preferences and even identities/interests should ideally create or increase conflict.

Transformations of preferences, and even on rare occasions transformations of underlying identities, in the direction of a common good can be among the most valuable features of deliberation. To insist on a role for self-interest in deliberation is not to deny that value. The problem in practice is, as Archon Fung points out, "Discussions aimed at fostering and clarifying individual preferences, for example, by airing conflicts and advocating conflicting principles," particularly if they encourage the exploration of self-interest as well as common interest, may render "participants less flexible and more self-interested," thus less open to transformation.⁴¹ It is admittedly not easy to explore commonalities collectively, remain open to transformation, and forge a common good while at the same time exploring and keeping an appropriate grasp on one's own

³⁹The value of these transformations must be judged not only by the quality of the procedures that produce them but also by external criteria regarding, for example, the value of the entity or common good that claims the participants' allegiance. Transformative processes may lead participants to choose a policy that is good for them or their newly adopted objects of concern but bad for others.

⁴⁰Most transformations of identities (and therefore interests) will be caused not by discussion with others but by changes in objective circumstances, as when one becomes a parent. Some transformations in identities can be caused by combinations of words and actions, as when a combination of cognitive conclusions about justice and bonding through common action transforms one into an activist willing to give much, perhaps even her life, for the cause. Words alone (at least performative words) can on occasion accomplish such transformations of identities and interests, as when some French nobles on the night of August 4, 1789 entered the National Assembly as relatively self-interested beings and left committed to ending feudal privileges. Such relatively instantaneous transformations of identities may require a combination of cognition (e.g., specifying what justice demands in a given instance) and emotional exhortation (e.g., to identify with the parts of oneself that are willing to do what justice demands and disown the parts not committed to that goal). Over time, however, transformations of identities (and therefore interests) could take place through primarily cognitive considerations, as when a person already committed to justice assimilates new facts and insights about the content of justice and thereby takes on a new identity (e.g., as a feminist).

⁴¹Fung 2003, pp. 348–9. See also Thompson (2008) on the "internal conflicts problem" and Lax and Sebenius (1986) on the "negotiator's dilemma."

self-interest and potential conflicting interests. But the task is neither impossible nor a contradiction in terms. It is, in fact, the ideal.

IV. THE USE OF POWER

A. IS POWER ANTITHETICAL TO DELIBERATION?

In all of the deliberative forms of decision-making specified above, power—in the sense of coercive power—is ideally absent.⁴² Because, as Foucault points out, every human being is constituted by power relations, including coercive power relations, and at the same time exercises coercive power over others, the absence of coercive power is a regulative ideal, impossible to achieve but serving in many circumstances as a standard against which to measure practice.⁴³

We understand power in general as A's preferences or interests causing (or changing the probability of) outcomes, and coercive power as A's preferences or interests causing B to do (or changing the probability that B will do) what B would not otherwise have done through the threat of sanction or the use of force.⁴⁴ Coercive power arises only when the preferences or interests of A and B conflict. Of the two forms of coercive power, the threat of sanction and the use of force, only the threat of sanction engages the will of the coerced. If I threaten you with a sanction ("Leave this room or I'll shoot you"), you can always accept the sanction and deprive me of what I want. You will your action, although you do not prefer it and it is not in your interests. Force differs from the threat of sanction in not engaging the will of the coerced. When I use force, I achieve my goal without a choice on your part (I carry you out of the room, kicking and screaming). Because force works against your interest without engaging your choice, it includes any structuring of alternatives that, unknown to you, is detrimental to your interests.

⁴²In Habermas's ([1962] 1989, p. 202) formulations, both early and late, ideal deliberation embodies "the power-free flow of communication." Congruently, our reformulation of the regulative deliberative ideal involves the absence of coercive power within the process of decision, although not in its implementation. Even an ideally deliberated and fully consensual decision might require coercion in its implementation (see below).

⁴³Some of the mystique of Foucault's analysis derives from conflating power as capacity with power as coercion. This analysis focuses only on power as coercion. For Foucault's understanding of power, see Fraser ([1981] 1989) and McCarthy (1990). See note 51 and accompanying text for the "second best" point that in non-ideal circumstances it may be wrong to try to approach an ideal as closely as possible.

⁴⁴More strictly, we define power in general as "the actual or potential causal relation between the preferences or interests of an actor or set of actors and the outcome itself," a formulation adapted (by adding the words in italics) from Nagel's (1975) definition, which improves on those of Weber and Dahl by including anticipated reactions and not requiring intent. We thank Philip Pettit for suggesting "changing the probability" of outcomes. The categories of the threat of sanction and use of force derive from Bachrach and Baratz (1963). Our definition of coercive power applies only in situations of conflicting interests (see Lukes 1974) and corresponds with Pettit's (2001b, pp. 72 ff.) "hostile coercion." Coercive power may act subtly and without active interference (see Pettit 2001b on domination). We do not mean by unequal power the unequal capacity to persuade when interests do not conflict (see, e.g., Lukes 1974; Knight and Johnson 1997).

The power that is antithetical to deliberation is not power in general, which could include the simple capacity to act, but coercive power, defined as the threat of sanction or the use of force against the others' interests. Lying is a form of coercive power.⁴⁵ A's lying leads B to act, without B's willing it, against B's own interests in ways that B would otherwise not act.

In normal conditions, occupying the status quo gives one power through both the threat of sanction and the use of force, because established institutions and their accompanying social settings facilitate what everyone has always done, making actions that depart from this pattern subject to automatic and even unintended social and institutional sanctions. Those institutions and settings also propel participants in certain directions whether or not anyone is conscious of this propulsion or knows what the costs to different participants will be. The coercive power of the status quo becomes normatively problematic when it promotes the interests of one individual or group against the interests of another. In the deliberative ideal, including the ideal instantiated in a fully cooperative negotiation, coercive power should have no effect. In this ideal, even the status quo should have no weight other than through persuasion on its merits (for example, in an argument that if something has worked up till now, it will probably work in the future).⁴⁶

⁴⁵On deceit as coercion, see: Bok 1978, p. 18; Warren 2006, p. 166. We recognize that the word "force" (from Bachrach and Baratz 1963) has physical and violent connotations that we reject. In addition, we do not use "force" (a form of *coercive* power) for actions that structure alternatives in ways congruent with the other's interests, although we recognize that what is and is not congruent with a person's interests will always be highly contested. We avoid the word "strategic," because it can mean both 1) actions that merely take account of the potential reactions of other actors, a neutral usage that describes much ideal deliberation (see Johnson 1991), and 2) actions such as manipulating an agenda, withholding information, and misrepresenting facts or perceptions, which (except in paternalism) arise only when interests conflict, involve forms of coercive power, and are antithetical to deliberation. We thus do not describe as deliberation the kinds of interaction analyzed in Austen-Smith and Feddersen (2006).

⁴⁶Inducements pose a problem as yet unresolved in the theory of power. Many discussions of power (e.g., Bachrach and Baratz 1963) define coercion, as we have, to include threats of sanction and the use of force against an individual's interests but not to include inducements that enhance those interests. Most ordinary language speakers also call threats of sanction and the use of force "coercive," in part because in general coercion involves a deprivation of freedom, and freedom is often defined by reference to the status quo. (I "freely" choose to improve my lot in response to a promise, but am "coerced" when my lot is worsened in response to a threat.) From an economic perspective, the distinction is nonsense. From a psychological perspective, the distinction has more bite, because losses often decrease happiness more than gains increase it (Bentham [1789] 1961, p. 290; Kahneman and Tversky 1979). From a philosophical perspective that tries to capture, rationalize and improve normative intuitions, the status of inducements remains unclear (cf. Nozick 1972 on coercion; Barry [1979] 1991 on inducements). Classic deliberative theorists, rejecting bargains and negotiation as part of deliberation, bundle together both "threats and promises" (e.g., Habermas [1996] 1998, p. 166; Martí 2006a, pp. 41–52; also Elster 1995; Føllesdal 2006b). To correspond with common intuitions, we have singled out "coercive power" as antithetical to deliberation and define coercive power as the threat of sanction or use of force. Yet inducements may also be antithetical to ideal deliberation, particularly when, for example, they come in currencies from inappropriate spheres (Walzer 1983). Proposals for positive measures designed to achieve an integrated solution or produce a fair outcome are not properly inducements, just as predictions and warnings are not threats (see Elster 1995 for the distinction between offers/predictions and promises/threats), although that distinction is not always easy to draw in practice.

We grant that the ideal of fully absent coercive power (henceforth simply “power”) is not only impossible to achieve but even hard to envision. We are all the products of power relations and exercise power by our very presence in the world. Yet in practice human beings can recognize a rough spectrum that runs from a minimal to a far greater role for power. The regulative ideal of absent power in deliberative interactions prescribes reducing to a practical minimum the threat of sanction and the use of force against another’s interests.

B. POWER IN FACILITATING STRUCTURES

The closer an actual deliberation comes to the ideal, the less the threat of sanction and the use of force should prevail. In practice, some coercive power is often needed in a deliberation simply to keep order. A moderator’s keeping a list of those who wish to speak, helping to cluster together comments on a particular topic, curtailing long-winded speakers, or making space for those who have not yet spoken threatens sanctions against those who want to speak right then and as long as they want, but this coercion, fairly exercised, promotes the purposes of deliberation. In a context of preexisting inequality, some coercive power may also be necessary to maintain basic rights, equal opportunity, and the other conditions that help participants approach the deliberative ideal. In a metadeliberation over the conditions of deliberation free and equal participants would be likely to adopt these mutually justifiable rules not only as a guard against others but also to curtail their own future weaknesses of the will.

C. POWER VERSUS POWER

A more seemingly discordant use of power consonant with deliberation arises in attempts to achieve balance when one party in a negotiation has more power resources than the other party and intends to use those resources to achieve her ends against the other’s interests or in other ways to depart from the deliberative ideal. In cases like these, it is morally acceptable for the other party also to exercise power or consonantly depart from the deliberative ideal.

Two arguments excuse these departures. The first, closer to the deliberative ideal, aims at creating the conditions for good deliberation. If in a two-party interaction one party has greater power than the other, the less powerful party may appropriately increase its power to equal the first in order to neutralize the first, thus producing as close as possible an approximation to the ideal of no power in the deliberation.⁴⁷ A deliberative democrat might, for example, justify

⁴⁷David Estlund (2006, p. 87) gives the following example: “If you put a gun to my head, and I put a gun to your head in reply, your use of power has been (at least to some extent) countervailed, in the sense that its ability to skew the deliberations has been scaled back by my response. Still, the power-free ideal of the ideal speech situation . . . has not been restored.” This logic may lie behind the

strikes or the threat of strikes on these equalizing or neutralizing grounds.⁴⁸ Any use of power to create the conditions for listening in situations of impeding inequality would also qualify.

The second argument is simply one of self-defense. Deliberative democrats should not be expected to cleave to the norms of deliberation when opposing parties do not meet those norms.⁴⁹ From the perspective of self-defense, derogations from the deliberative norm are authorized to the degree of the other's derogation.⁵⁰ More broadly, Jon Elster underscores "the harm that can be done by *unilateral* attempts to act morally" and enunciates the theory of the "second best," pointing out that "When others act non-morally, there may be an obligation to deviate not only from what they do, but also from the behavior that would have been optimal if adopted by everybody."⁵¹ In practice, self-serving bias often leads participants somewhat to overestimate the amount they must do to redress a balance, thereby encouraging escalation.⁵²

D. POWER IN IMPLEMENTATION

After the decision, whether a group has deliberated to genuine consensus in a setting relatively free from power or made its decision through forms of democracy that involve power, the decision will still often have to be implemented through coercive power. Collective action problems must often be solved by participants agreeing to impose some form of coercion on those (including themselves) who, after the agreement, would otherwise rationally be tempted to defect.⁵³ We assume that democracies will often need to use coercive power (in addition to deliberative processes) in implementing legislative decisions no matter how closely the process of decision approached the deliberative ideal.

requirement in some negotiations that each party (e.g., labor and business) have an equal number of representatives, even though the number of individuals that, say, labor represents is presumably much greater than the number business represents. This neutralizing strategy works only in two-party situations.

⁴⁸Lani Guinier (1992, pp. 288–92) similarly argues that minority representatives should occupy crucial strategic locations in a legislature to insure that the process is responsive to their views.

⁴⁹Estlund 1993, p. 1474; see also Estlund 2006, pp. 81–7; Gutmann and Thompson 1996, pp. 72–3, and also p. 90; Young 2001.

⁵⁰See Fung (2005) on the criteria of fidelity, charity, exhaustion, and proportionality.

⁵¹Elster (1986, pp. 116, 119) (emphasis in original), drawing on a line of thought begun by Lipsey and Lancaster (1956–57). E.g., in a collective action problem one might have in general a duty to cooperate, but if the other defects one might have a duty to defect in a tit-for-tat response that might induce the other to cooperate in the future. See also Goodin 1995.

⁵²Babcock and Loewenstein 1997. Negotiating parties indulge in, for example, strategic misrepresentation in part because they expect that others will do so and they need to equalize the balance (Shell 2000; Meltsner and Schrag 1974; Freund 1992). Machiavelli ([1513] 1950, p. 64) too advised princes that "as [others] are bad, and would not observe their faith with you, so you are not bound to keep faith with them."

⁵³Olson 1965; Hardin 1982; Grofman and Feld 1988.

V. NON-DELIBERATIVE DEMOCRATIC MECHANISMS

Democracy is a practical form of decision-making that derives its normative legitimacy from the degree to which it approaches the ideals on which it is based. It derives its sociological legitimacy from the degree to which it works in practice. That effectiveness in turn depends in part on its approaching the ideals on which it is based, because citizens are more likely to cooperate voluntarily, requiring only minimal coercion, when they see their polity living up in practice to their ideals.

To attain significant sociological legitimacy, democracy requires normative ideals that can apply not only to situations of common interest or potential agreement on what is best for the polity, but also to the situations, common in politics, of conflicting interests or irreconcilable disagreement about what policies are best. Thus deliberations in democracy must be structured to clarify conflict as well as commonality. When interests and opinions continue to conflict irreconcilably after this clarifying process, democracies need non-deliberative ideals and mechanisms that facilitate mutual accommodation and produce reasonably fair and acceptable decisions. When, as is almost inevitable in these circumstances, the decisions that eventuate do not in fact meet every participant's needs, these ideals and institutions should also help keep the potential for conflict alive.⁵⁴

From a deliberative perspective, the non-deliberative mechanisms necessary for democratic decision may be considered normatively legitimate (henceforth simply "legitimate") when they either result from agreements in actual deliberations that sufficiently approach the ideal or are in accordance with an appropriately constructed hypothetical deliberation, such as agreement in the original position.⁵⁵ In deciding on such non-deliberative decision-mechanisms, the deliberators must consider the facts of human psychology, or, in Rousseau's words, "men as they are," realizing that human psyches can themselves be changed to some degree, for better or worse, by the institutions in which they act.

The non-deliberative democratic mechanisms that we believe free and equal individuals would choose in either real or hypothetical deliberation include two mechanisms that we consider "coercive": aggregation through non-unanimous voting and negotiation among cooperative antagonists. Each of these involves power in the decision-making process itself (and not for the deliberative goals of structuring the deliberation to be more productive or to preserve rights and mutual respect, nor antecedently to level the playing field). Each mechanism departs in this way from the deliberative ideal. Yet because power is inevitable in the full spectrum of political life, the legitimacy of each mechanism is measured

⁵⁴See Honig 1993; Schwartz 1999.

⁵⁵E.g., Gutmann and Thompson 2004; Rawls 1971.

by regulative ideals appropriate to its sphere. In democracies these ideals always include the freedom and equality of the contending parties.

A. VOTING

Deliberative democrats have often downplayed the virtues and even anathematized the aims and mechanisms of voting—whether in face-to-face assemblies, in referenda, or for representatives who then make decisions binding on the voter.⁵⁶ Voting undoubtedly has the significant drawbacks of taking preferences as given, frequently assuming conflicting interests or being aimed at success rather than mutual understanding, and, in the form of a secret ballot, not requiring justification to others and thus encouraging private-regarding impulses.⁵⁷ Voting has, however, one significant virtue. In important ways it is more inclusive and egalitarian than deliberation. In a polity of any size, it is impossible to give everyone a “say” in the literal sense of having one’s individual voice heard by all other members of the polity. Even in extremely small polities, it is almost always counterproductive to design institutions in which each member has a literal equal say, and impossible to design institutions in which what each member says is taken with equal weight. By contrast, voting has the capacity to bring every full member of the polity into the decision and give that member’s “say” an equal weight, at least in the decision as constructed. In doing so, the voting process makes a statement of equal respect parallel to, but qualitatively different from, the respect accorded by listening in a deliberation.

Deliberative democrats also recognize the democratic necessity of some form of aggregation by non-unanimous voting after deliberation when interests conflict irreconcilably, negotiation to agreement is impossible, or an assembly simply runs out of time. If the deliberation has been structured to bring out disagreement fully and any final agreement is unanimous, unforced and genuine, that agreement—whether through classic deliberation, expanded deliberation, convergence, incompletely theorized agreements, integrative negotiation, or fully cooperative negotiation—will, truisitically, be more acceptable to every member than a decision through non-unanimous aggregation. In a non-unanimous vote, although reasons may stand behind each party’s action and be expressed through the vote, it is ultimately each party’s will and the power that each wields rather

⁵⁶See notes 6–9 above on deliberation versus aggregation. Many deliberative democrats, however, have emphasized the complementarity of these mechanisms. See, e.g.: Manin 1987, pp. 341–4, 355–61; Gutmann and Thompson 1996, pp. 79–91, and 2004, pp. 79–90; Bohman 1996, ch. 2, esp. pp. 83–95; Nino 1996; Waldron 1999, pp. 91–3; Besson 2005, pp. 207, 233–54; Mansbridge 1980; Goodin 2008, pp. 108 ff. Thompson (2002) explores how electoral procedures depend normatively on processes of mutual justification. For a defense of non-deliberative arrangements see, e.g., Walzer 1999 and Shapiro 1999.

⁵⁷The privatizing effect of voting may have been exaggerated. In a large election, the small effect of any one person’s vote seems in practice to encourage both “expressive” voting to give voice to one’s values (Brennan and Lomasky 1993) and “sociotropic” voting for the common good (Kinder and Kiewiet 1979).

than their reasons that determine the result.⁵⁸ We say that aggregation with a non-unanimous decision rule is intrinsically “coercive” because in deciding to settle an issue (temporarily) by giving each individual equal power through the vote, we build that equal coercive power into the very process of decision. This integration of power into the process of decision itself differs from the use of power to implement the decision. In majority rule, for example, the minority bends to the power of the majority within the decision, while in the implementation both the majority and the minority are subject to power.

The categorization of non-unanimous voting as “coercive” is not intended to be hostile; justified and appropriate coercion both in mechanisms and in implementation makes self-government possible on matters of conflict. Moreover, in the regulative ideal the power of the vote must be equal. The conception also excludes vote buying, either with money or through offering goods or services to specific individuals in return for their vote. When the voting process in general has been justified and approved by deliberative procedures and any particular instance of voting has been preceded by the respectful attempts at mutual justification required by deliberation, this democratic mechanism is compatible with and complementary to deliberation. Dennis Thompson discusses in detail the kinds of deliberative justification required to establish the procedures for any vote.⁵⁹

Traditionally, aggregation by voting has taken the form of majority rule. Yet majority rule is not a fair method of aggregation when the question involves distributive outcomes in a deeply segmented polity with an entrenched minority (or minorities). In polities with cross-cutting cleavages (such as, on the national level, the United States, the United Kingdom, France, or Germany), an individual or group who loses on one issue may expect to win on another. But when a polity is segmented, so that the important issues (such as, on the national level, economic, religious, linguistic, and cultural issues) cluster together, the minority on one issue will be in the minority on another, and can expect to lose on all important issues. In such cases of permanent minorities, majority rule is less fair than forms of decision-making based on one-person/one-vote that generate proportional outcomes.⁶⁰

No form of non-unanimous aggregation is perfect. Procedures that meet some of the criteria of fairness—and even of equality—are likely to fall short on others. But in a democracy all aggregative procedures must meet the criteria that they acknowledge every citizen’s “status as an equal member of the polity” and protect them all against political outcomes that would place their prospects “in

⁵⁸Thompson (2002, p. 187) comments on elections (one form of voting): “The willful character of elections makes justifying the process by which will is expressed all the more important.”

⁵⁹Thompson 2002.

⁶⁰See Lijphart 1977, and 2004 (although his theory of consociationalism does not stress proportional outcomes); Mansbridge 1980; Guinier 1994; Føllesdal 2006a. Both consociationalism and majority rule aggregation have democratic drawbacks (see, e.g., Shapiro 2005; Risse 2004; Pettit 2001a).

serious jeopardy.”⁶¹ In societies with sufficient cross-cutting cleavages, majority rule with minority rights can meet this requirement. In such societies, as Gutmann and Thompson write, “Members of the losing minority can accept majoritarianism as a fair procedure even when it yields incorrect results because it respects their status as political equals.”⁶²

Although majority rule can meet the requirement of treating citizens as political equals, theorists differ on the reasons that make majority rule legitimate. Deliberative democrats tend to choose theories that stress mutual justification; others choose theories that stress the equal division of power.

Some deliberative theorists adopt a rationale for majority rule that may date from ancient Athens, concluding that all else equal, the majority is more likely than the minority to choose correctly.⁶³ In a version of this epistemic claim that underscores the burden of proof, Seyla Benhabib writes that majority rule is a “fair and rational decision procedure, not because rationality lies in numbers but [because] . . . if a large number of people see certain matters a certain way as a result of following certain kinds of rational procedures of deliberation and decision-making, then such a conclusion has a presumptive claim to being rational until shown to be otherwise.”⁶⁴ Cristina Lafont makes the burden of proof claim more explicit, dynamic, and embedded in a deliberative process. She writes that in an ongoing deliberation, a majority vote tracks “*where the burdens of proof lie* in the deliberative process,” indicating “which side of the argument failed to provide convincing arguments in support of a given decision at a given time.”⁶⁵ In her view, those in the minority accept the decision not because it is correct or more likely than other choices to be correct, but because the vote against them makes them realize that they need to satisfy more effectively the criterion of public justifiability.

These deliberative theories hinge on the minority having reasons to respect a majority’s conclusion even when the minority disagrees with that conclusion.

⁶¹Beitz 1989, p. xiii. More recently, see Risse (2004) and Føllesdal (2007, critiquing Waldron 1999) for alternatives to majority rule that meet the criterion of respecting each citizen’s equal status. See Thompson (2002) for the importance of equal respect as a principle justifying any voting procedure.

⁶²Gutmann and Thompson 1996, p. 27.

⁶³This rationale had its first explicit rendering in Condorcet ([1785] 1972), who saw himself as formalizing Rousseau’s idea. Kendall (1959) attributes a version of this theory to Locke. See also Martí 2006b.

⁶⁴Benhabib 1996, p. 72. Manin (1987, p. 359) early pointed out (in addition to arguing that majority rule after deliberation is legitimated by “in that context, the greater strength of one set of arguments compared to others”) that the process of majority rule “nevertheless institutionalizes the admission that there were also reasons not to desire the solution finally adopted.” (On majority rule respecting disagreement see also: Mansbridge 1980, p. 170; Waldron 1999, pp. 111 ff.; and Besson 2005, pp. 245–54.) Nino (1996) defends majority rule deliberatively as requiring more people to be convinced (and therefore provoking the most rational, universalistic arguments) than any other rule; McGann (2006, pp. 135 ff.) adds that the possibility of cycling makes majority rule more revisable than other rules and defends the way the rule structures the deliberative process. See also Bohman (1996) on “deliberative majorities.”

⁶⁵Lafont 2006, pp. 18–19, emphasis in original.

Theorists in this vein understand majority vote as producing a majority conclusion, not majority rule. By contrast, theories of democracy based on power assume that sovereignty is at least in part a matter of will, not reason, and conclude that each citizen has a right to an equal part of that will. Theorists in this vein may simply define democracy as equal power.⁶⁶ Implicitly or explicitly assuming conflicts in interests, they prescribe a fair resolution of the conflict through giving each participant equal power in the struggle.⁶⁷

Because the practice of politics often encompasses power as well as reason, and because sovereignty is at least in part a matter of will, we combine both deliberative and power rationales for majority rule. We see equal power in majority rule not as an ultimate ideal but as one ideal-based mechanism established to deal reasonably fairly with certain realistic non-ideal conditions. We also assume that citizens facing distributive conflicts of interest will rarely conduct themselves like fully cooperative negotiators, as they would in the ideal. In moments of conflicting interest, those citizens will not always search for fair divisions. Nor, in the face of conflicting views of fairness, will those citizens search for a fair way of adjudicating between these views or splitting the difference fairly. Rather, power relations will enter into the production of decisions as well as into their application. Thus rather than ignoring ideals, a power-based theory looks to relevant ideals to deal with the absence of ideal behavior on the part of individual citizens. Just as in general the ideal of equal citizen rights responds to the non-ideal tendencies of governments to deny those rights, so the specific right to an equal vote (or more broadly the right to equal power) responds to the non-ideal tendencies of individuals and groups in decision-making to exercise as much power as they can.

We therefore accept as legitimate some amount of voting as simply the exercise of power in the forming of a collective will. Voting has the greatest legitimacy when it comes closest to the ideals of free access and equal power appropriate to its practice, when the procedures have been appropriately deliberated and adopted in a process based on mutual justification, and when any particular vote is preceded by thorough deliberation under as close as possible to ideal conditions.

The process of voting is integrated with deliberation, and not just complementary to it, when the deliberation structures the voting, for example by ruling out options, creating single-peaked (or other) preference orderings, or, on

⁶⁶E.g.: Lively 1975; Pateman 1970.

⁶⁷Although we consider the distinction between deliberative and power-based theories of majority rule a helpful guide to underlying assumptions, no theorist has yet worked through the implications of an explicitly power-based theory. Nor do deliberative and power-based theories exhaust the arguments for majority rule. Some justify majority rule through implicit preference utilitarianism, some “by something akin to the rule of insufficient reason” (Barry [1979] 1991, p. 27; see Risse 2004 for other justifications). Waldron’s (1999, pp. 13, 114 ff.) evocation of the equal respect embodied in the commitment to give equal weight to each person’s “opinion” on “matters of common concern” seems more deliberative than power-based.

a more macro level, choosing the form of voting itself. The expectation of voting also structures deliberation, for example by forcing the choices into a simple yes-or-no vote. When participants fail to disclose information or otherwise game the deliberation knowing it will end in majority rule, these efforts at structure impede good deliberation.⁶⁸

The more the polity faces a question of basic rights or justice, the more important good deliberation becomes and the less that question should be settled on the basis of power, even equal power. One might be tempted to say that constitutional moments ought to be more deliberative and removed from the exercise of power than moments of ordinary politics, but in actual constitutional moments, power considerations are often critically important for the future stability of the polity. It is on the most fundamental issues, when the members of the polity have arguably generalizable interests such as basic rights, that matters are ideally both deliberated upon in depth and deliberated to a genuine consensus. When consensus cannot be reached, subjecting these matters to a vote is a practical and reasonable step, but that vote should be conceived deliberatively as a temporary conclusion that establishes a political burden for further justification. The more an issue involves basic rights and fundamental justice, the less ought it to be decided by votes conceived simply as the exercise of power in a field of competing wills.⁶⁹

What does the deliberative ideal demand of a citizen facing a vote? Ideally, that the citizen first deliberate with others in the sense of actively seeking out opposing views, listening attentively to the full panoply of those views, offering justifications for his or her own views, taking seriously the objections to those justifications, and being willing to revise his or her views on the basis of the objections of others and with the goal of promoting the common good and fairness to all concerned. At this point the citizen's duty has three stages. If the citizen concludes that one policy or candidate would promote the common good more than another, the citizen should vote for that policy or candidate.⁷⁰ If there

⁶⁸For an example of forced binary choice, see Chambers (1996, p. 235). For the information-suppressing effects of such a binary choice on deliberation, see Mansbridge (1986). For the role of an expected vote in structuring legislative deliberations, see Waldron (1999, ch. 4) and Besson (2005, pp. 244–5). For the role of deliberation in structuring voting alternatives, see Mackie (2003, pp. 386–92) and List et al. 2006.

⁶⁹On generalizable interests in Habermas and more generally, and on the greater importance of deliberation on philosophically foundational issues, see Chambers (1996, pp. 102 ff., 187). We distinguish between: first, the use of deliberation, either hypothetical or actual, to ground the meaning of foundational ideals, in which self-interest should not enter (and which this paper does not address); second, deliberation to a binding decision over basic, unrenounceable and generalizable interests that we can assume that everyone has (such as basic rights), which should include self-interest only as information; and third, deliberation to a binding decision over particular interests, which may and often should include self-interest, suitably constrained, as a justification. On a separate scale, a deliberating body should be willing to pay higher costs to approach the ideal both as the decision becomes more foundational and encompassing and as the content of the decision becomes more important.

⁷⁰See Mill ([1865] 1958, p. 155): “His vote . . . has no more to do with his personal wishes than the verdict of a jurymen. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good.”

seems to be no justifiable “common” good (loosely defined) but instead a relatively fair adjudication of conflicting values or interests, the citizen should vote for the fairest adjudication possible. If the citizen concludes, however, that this particular vote is structured to function as no more than a way of aggregating self-interests, preferences, or competing values, then that citizen should feel free to vote on his or her self-interests, preferences, or values as part of the aggregation process. Perhaps only a small number of votes in governmental matters will justifiably be construable, through this staged process, as no more than aggregations of self-interests or preferences. Such votes may tend to occur on the lowest level and in the smallest settings, for example when a third-grade teacher asks, “How many people want to play dodgeball? How many want to play baseball?”

B. FAIR BARGAINS AMONG COOPERATIVE ANTAGONISTS

In *Between Facts and Norms*, Jürgen Habermas recognized that democracies often face instances in which no “generalizable interest or clear priority of some one value” is “able to vindicate itself.” In those cases, citizens deliberatively establish the possibility of solving some of their differences through a negotiated agreement. They assess when and how negotiation is adequate and possible. In Habermas’s words, democracies require, in addition to deliberation, bargains that deploy “threats and promises . . . material resources, manpower and the like,” but the “bargaining power should at least be disciplined by its equal distribution among the parties.”⁷¹ Thus for the bargains to be “fair,” in Habermas’s view, their procedures should “provide all the interested parties with an equal opportunity for pressure, that is, an equal opportunity to influence one another during the actual bargaining, so that all the affected interests can come into play and have equal chances of prevailing.”⁷²

Note that the use of threats in addition to promises moves the negotiations in question from “fully cooperative” distributive negotiations, a form of *deliberative* negotiation in which parties stand up for their interests and seek a fair outcome that incorporates those interests fairly, to distributive negotiations among “cooperative antagonists,” a form of *non-deliberative* negotiation in which the parties deploy threats, a form of coercive power, to achieve their ends. While democratic theorists currently are contesting the grounds that might legitimate majority rule, the discussion of what conditions might legitimate negotiations among cooperative antagonists has hardly begun.

One regulative ideal upon which every democratic theorist would agree is equality of power among bargaining partners, whether in direct assemblies, legislatures, or legislatively-endorsed extra-parliamentary venues. Equal power,

⁷¹Habermas [1992] 1996, pp. 165–6, see also pp. 108–9; quoting Elster (1991, revised and reprinted 2000) on threats and promises, etc.

⁷²Habermas [1992] 1996, pp. 166–7.

however, is even harder to achieve in bargaining than in voting. Every feature that could affect the cost of leaving or not entering the negotiation affects bargaining power, including one's best alternative to a negotiated agreement and the effects of the status quo on one's position. Possessing information and the resources to gather information, having ample time to wait, and many other factors all affect bargaining power. Moreover, as with the vote, equal power can be defined either individually or in context. An actor may individually have equal power with all other individuals, but if she is in a minority, particularly a permanent minority, Habermas's "equal opportunity for pressure" will not translate into an equal or even a proportionate chance of "prevailing." Nor will it even translate into outcomes in which all interests have equal consideration. With equal individual power but without sufficient allies in a given context, the interests of a participant may be given infinitesimal consideration. For the member of a minority, the different principles of equal opportunity, equal power, equal outcomes, and equal satisfaction can each produce different outcomes, both in majority rule and in bargaining.⁷³ Because the procedures for producing political equality are multiple and indeterminate,⁷⁴ what constitutes equality in the opportunity for pressure or the chance of prevailing will often be intrinsically contestable.

In practice the process of cooperative antagonist negotiation is frequently integrated with deliberation, and not just complementary to it. Often deliberation structures such a negotiation, for example by ruling out options, defining the situation, or, on a more macro level, selecting the partners to the negotiation and setting the rules of the game.⁷⁵ Even more often, deliberation (e.g. arguing over facts and norms) is deeply intertwined with such a negotiation (involving coercive power).⁷⁶ Even in international politics "truth-seeking arguing" can play an important role in negotiation among cooperative antagonists, as when James Baker convinced Michael Gorbachev that a united Germany would be less threatening within NATO than outside it.⁷⁷

Matters of value as well as material self-interest can also trigger cooperative antagonist negotiations, sometimes with deliberative elements. In Germany, for example, legislators settled temporarily a controversy over embryonic stem cell research by allowing existing stem cell lines to be used (giving the scientists some of what they wanted) but prohibiting the use of new stem cell lines (giving those opposed to the use of embryos some of what they wanted). In this instance, if

⁷³See Beitz 1989; Mansbridge 1980. Who is to count as a participant is also intrinsically contestable and perhaps "essentially contested" (Gallie 1955–56). Habermas distinguishes between moral questions that affect all humanity and those that apply only to "the totality of social or subcultural groups that are directly involved" ([1992] 1996, p. 108). Yet neither the principle of direct involvement nor that of affected interests provides determinate boundaries (Goodin 2007). See note 4 above.

⁷⁴See Beitz 1989.

⁷⁵See Risse 2000.

⁷⁶Holzinger (2004, p. 200) concludes that "a conflict of interest will rarely be free of normative and factual disagreement, and thus arguing is also needed"; see also Elster (1995) on mixed acts.

⁷⁷Risse 2000, p. 26.

power had not been relatively equally balanced, either side would have happily imposed its values on the other.⁷⁸

As we pointed out earlier, equal power between two sides of a controversy (that is, equal numbers and strength of allies) will tend to create an environment in which each side is willing to hammer out some form of compromise that respects the other's deepest commitments. But, as also pointed out earlier, equal power between the two sides of a controversy often produces quite different results from equal individual power, in which the greater numbers prevail. While balance may produce the more deliberative results, based on each side justifying its position to the other through considerations the others are likely to accept, from the adversary perspective equal individual power may be fairer. In choosing between these ends, context is important. When a polity seems to have committed itself to a primarily adversary approach to politics by ignoring or marginalizing the possibility of negotiations that might forge some form of mutually acceptable common interest, it is particularly important to create a variety of forums for deliberation. These could be organized around different ways of dealing with the problem of power under antagonism in the hope that in some forums deliberative solutions would emerge that then, even under adversary procedures based on equal individual power, would have the chance to attract a majority.

Although the negotiations of cooperative antagonists are ideally constrained by the democratic values of equal power and open access (as well as by morality and basic rights), these antagonists differ from fully cooperative negotiators in not hesitating to use the power they have. The circumstances of power in politics thus pose again the problem of the "second best," making it problematic in reality for participants always to strive for ideal deliberative negotiation, including fully cooperative negotiation. If the game revolves around power, those who eschew power will simply lose. An even more fundamental critique of deliberative negotiation could argue that a spirit of partisanship, trying to win within certain rules of the game, along with an active spirit of contest and opposition, might in practice produce just the organization and protection of ideas that lively deliberation demands.⁷⁹

⁷⁸Holzinger 2005. The same compromise was reached by President George W. Bush in the U. S. Although for some members of the German parliament this result may have been genuinely integrative, for most it was probably a compromise negotiated among cooperative antagonists. Risse (2000) distinguishes aptly between "rhetorical reason-giving" and "deliberation" on the criterion of whether or not the actors are prepared to change their own beliefs and be persuaded by the better argument. The German parliament's plenary debate over stem cell research included few justifications of positions and "no dialogue" (Holzinger 2005, p. 250). Because the issue would be decided by majority vote and because the plenary, being public, served primarily to present the different positions to the public, one would not expect much genuine deliberation in this setting. See Elster 1995 and 1998. On the negative effects of publicity on deliberation, see Chambers 2004 and, empirically, Checkel 1999; Ulbert and Risse 2005; and Naurin 2007. In this example although the two sides in the assembly may have been equally balanced, the deliberation did not necessarily take into account the interests of all affected parties (e.g., the embryos may have had present and future interests).

⁷⁹For the virtues and ethics of partisanship, see Muirhead (2006) and Rosenblum (2008); for the need actively to promote adversarial debate, see Manin (2005).

If, as we believe, the exercise of power is inevitable in human politics, then we must, like Madison, design democratic institutions that incorporate that power rather than ignore it. Those institutions should include aggregation by voting. They should facilitate among the cooperative antagonists in the legislatures relatively productive deliberative and non-deliberative forms of negotiation. They might accommodate a role morality among legislators in which some conscious and strategic use of power is legitimate. Although we cannot in this space tackle the range and limits of the non-deliberative democratic mechanisms that deliberative democrats might recognize as legitimate, such democratic mechanisms will always require, in the ideal, some significant forms of liberty and equality for all participants.

VI. CONCLUSION

Deliberative democratic theory continues to “come of age.”⁸⁰ In this contribution to its development, we assume that deliberation should clarify conflict as well as help participants to discover and forge common interests. Although we want to stress the importance of seeking a genuinely common good, we argue that deliberation can and should in certain conditions include both self-interest and the negotiation of conflicting interests. Convergence, incompletely theorized agreements, integrative negotiation, and fully cooperative negotiations are compatible with deliberative ideals. They are forms of *deliberative* negotiation. Voting and the negotiation of cooperative antagonists are not themselves deliberative acts but, when they are justified through deliberative procedures and preceded in practice by such procedures, can be accepted by deliberative theorists as legitimate components of democracy complementary to and in some cases integrated with deliberation. Although we cannot here fully explore the questions of which forms of partisanship in voting and negotiation among cooperative antagonists are compatible with deliberation and in which contexts, or which forms are subject to which criteria of legitimacy, we consider some version of these forms of exercising power a necessary component of legitimate democracy.

Future theorists will want to investigate further the ways in which specific forms of bargaining and negotiation are compatible or incompatible with deliberative ideals. “Log-rolling,” for example, can produce unanimity among participants on the basis of balanced self- or group interests, but create externalities that are bad for the whole. The role morality of cooperative antagonists in partisan politics that permits the strategic manipulation of parliamentary regulations may be an appropriate “second-best” response to practical limitations in guaranteeing cooperative motivation, but it can undermine both good deliberation and the equal distribution of power. The question of the legitimate use of power in democratic decision-making remains

⁸⁰Bohman 1998.

undertheorized, along with the relation of the second-best to democratic ideals and the mechanisms for insuring revisability in deliberation and decision.

We conclude by pointing out that “deliberation” is not just any talk. In the ideal, democratic deliberation eschews coercive power in the process of coming to decision. Its central task is mutual justification. Ideally, participants in deliberation are engaged, with mutual respect, as free and equal citizens in a search for fair terms of cooperation. These terms can include the recognition and pursuit of self-interest, including material self-interest, and some forms of negotiation, constrained by the deliberative democratic ideals of mutual respect, equality, reciprocity, mutual justification, the search for fairness, and the absence of coercive power.

REFERENCES

- Arendt, H. [1963] 1965. *On Revolution*. New York: Viking.
- Arendt, H. 1961. The crisis in culture. In *Between Past and Future*. New York: Meridian.
- Austen-Smith, D. and T. J. Feddersen. 2006. Deliberation, preference uncertainty, and voting rules. *American Political Science Review*, 100, 209–17.
- Babcock, L. and G. Loewenstein. 1997. Explaining bargaining impasse: the role of self-serving biases. *Journal of Economic Perspectives*, 11, 109–26.
- Bachrach, P. 1974. Interest, participation and democratic theory. In J. R. Pennock and J. W. Chapman (eds), *Nomos XVI: Participation in Politics*. New York: Lieber-Atherton.
- Bachrach, P. and M. Baratz. 1963. Decisions and non-decisions: an analytical framework. *American Political Science Review*, 57, 632–42.
- Barber, B. R. 1984. *Strong Democracy*. Berkeley: University of California Press.
- Barry, B. 1965. *Political Argument*. London: Routledge & Kegan Paul.
- Barry, B. [1979] 1991. Is democracy special? In vol. 1, B. Barry (ed.), *Democracy and Power*. Oxford: Oxford University Press.
- Beitz, C. 1989. *Political Equality*. Princeton: Princeton University Press.
- Bell, D. A. 1999. Democratic deliberation: the problem of implementation. In S. Macedo (ed.), *Deliberative Politics*. Oxford: Oxford University Press.
- Benhabib, S. 1996. Toward a deliberative model of democratic legitimacy. In S. Benhabib (ed.), *Democracy and Difference*. Princeton: Princeton University Press.
- Bentham, J. [1789] 1961. *Introduction to the Principles of Morals and Legislation*. Garden City, NY: Doubleday/Dolphin.
- Besson, S. 2005. *The Morality of Conflict: Reasonable Disagreement and the Law*. Oxford: Hart Publishing.
- Besson, S. and J. L. Martí, (eds). 2006. *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- Bohman, J. 1996. *Public Deliberation: Pluralism, Complexity and Democracy*. Cambridge, MA: MIT Press.
- Bohman, J. 1998. Survey Article: the coming of age of deliberative democracy. *Journal of Political Philosophy*, 6, 400–25.
- Bohman, J. 1999. Democracy as inquiry, inquiry as democratic: pragmatism, social science, and the cognitive division of labor. *American Journal of Political Science*, 43, 590–607.
- Bok, S. 1978. *Lying: Moral Choices in Public and Private Life*. New York: Pantheon Books.
- Brennan, G. and L. Lomasky. 1993. *Democracy and Decision*. Cambridge: Cambridge University Press.
- Chambers, S. 1996. *Reasonable Democracy: Jürgen Habermas and the Politics of Discourse*. Ithaca, NY: Cornell University Press.

- Chambers, S. 2003. Deliberative democratic theory. *Annual Review of Political Science*, 6, 307–26.
- Chambers, S. 2004. Behind closed doors: publicity, secrecy, and the quality of deliberation. *Journal of Political Philosophy*, 12, 389–410.
- Checkel, J. T. 1999. Social construction and integration. *Journal of European Public Policy*, 6, 545–60.
- Cohen, J. 1989. Deliberation and democratic legitimacy. In A. Hamlin and P. Pettit (eds), *The Good Polity*. Oxford: Blackwell.
- Cohen, J. 1996. Procedure and substance in deliberative democracy. In S. Benhabib (ed.), *Democracy and Difference*. Princeton, NJ: Princeton University Press.
- Cohen, J. and J. Rogers. 2003. Power and reason. In A. Fung and E. O. Wright (eds), *Deepening Democracy: Experiments in Empowered Participatory Governance*. London: Verso Press.
- Condorcet, J., Marquis de. [1785] 1972. *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix*. New York: Chelsea Publishing.
- Dryzek, J. S. 1990. *Discursive Democracy: Politics, Policy, and Political Science*. Cambridge: Cambridge University Press.
- Dryzek, J. S. 2000. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford University Press.
- Dryzek, J. S. 2006. *Deliberative Global Politics: Discourse and Democracy in a Divided World*. Cambridge: Polity.
- Elster, J. 1986. The Market and the forum: three varieties of political theory. In J. Elster and A. Hylland (eds), *Foundations of Social Choice Theory*. Cambridge: Cambridge University Press.
- Elster, J. [1991] 2000. Arguing and bargaining in two constituent assemblies. *University of Pennsylvania Journal of Constitutional Law*, 2, 345–421.
- Elster, J. 1995. Strategic uses of argument. In K. Arrow et al. (eds), *Barriers to Conflict Resolution*. New York: Norton.
- Elster, J. 1998. Deliberation and constitution making. In J. Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press.
- Estlund, D. M. 1993. Who's afraid of deliberative democracy? On the strategic/deliberative dichotomy in recent constitutional jurisprudence. *Texas Law Review*, 71, 1437–77.
- Estlund, D. M. 2001. Deliberation down and dirty: must political expression be civil? In T. R. Hensley (ed.), *The Boundaries of Freedom of Expression and Order in American Democracy*. Kent, Ohio: Kent State University Press.
- Estlund, D. M. 2006. Democracy and the real speech situation. In S. Besson and J. L. Martí (eds), *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- Fishkin, J. 2005. Defending deliberation. *Critical Review of International Social and Political Philosophy*, 8, 71–8.
- Føllesdal, A. 2006a. Subsidiarity, democracy and human rights in the constitutional treaty for Europe. *Journal of Social Philosophy*, 37, 61–80.
- Føllesdal, A. 2006b. The value added of theories of deliberative democracy: where (not) to look. In S. Besson and J. L. Martí (eds), *Deliberative Democracy and its Discontents*. Aldershot: Ashgate.
- Føllesdal, A. 2007. Why international human rights judicial review might be democratically legitimate. *Scandinavian Studies in Law*, 52, 103–22.
- Follett, M. P. [1925] 1942. Constructive conflict. In *Dynamic Administration: The Collected Papers of Mary Parker Follett*, ed. H. C. Metcalf and L. Urwick. New York: Harper.
- Fraser, N. [1981] 1989. Foucault on modern power: empirical insights and normative confusions. In *Unruly Practices*. Minneapolis: University of Minnesota Press.
- Fraser, N. 1992. Rethinking the public sphere. In C. Calhoun (ed.), *Habermas and the Public Sphere*. Cambridge MA: MIT Press.
- Freund, J. C. 1992. *Smart Negotiating*. New York: Simon and Schuster.

- Fung, A. 2003. Recipes for public spheres: eight institutional design choices and their consequences. *Journal of Political Philosophy*, 11, 338–67.
- Fung, A. 2005. Deliberation before the revolution: toward an ethics of deliberative democracy in an unjust world. *Political Theory*, 33, 397–419.
- Gallie, W. B. 1955–56. Essentially contested concepts. *Proceedings of the Aristotelian Society*, 56, 167–98.
- Galinsky, A. D., G. Ku, and C. S. Wang. 2005. Perspective-taking and self–other overlap: fostering social bonds and facilitating social coordination. *Group Processes and Intergroup Relations*, 8, 109–24.
- Gamson, W. A. 1991. Commitment and agency in social movements. *Sociological Forum*, 6, 27–50.
- Goodin, R. E. 1995. Political ideals and political practice. *British Journal of Political Science*, 25, 37–56.
- Goodin, R. E. 1996. Institutionalizing the public interest: the defense of deadlock and beyond. *American Political Science Review*, 90, 331–43.
- Goodin, R. E. 2007. Enfranchising all affected interests, and its alternatives. *Philosophy and Public Affairs*, 35, 40–68.
- Goodin, R. E. 2008. *Innovating Democracy: Democratic Theory and Practice after the Deliberative Turn*. New York: Oxford University Press.
- Goodin, R. E. and S. J. Niemeyer. 2003. When does deliberation begin? Internal reflection versus public discussion in deliberative democracy. *Political Studies*, 51, 627–49.
- Gould, C. C. 2004. *Globalizing Democracy and Human Rights*. Cambridge: Cambridge University Press.
- Grofman, B. and S. L. Feld. 1988. Rousseau's general will: a Condorcetian perspective. *American Political Science Review*, 82, 567–76.
- Guinier, L. 1992. Comment: voting rights and democratic theory. In B. Grofman and C. Davidson (eds), *Controversies in Minority Voting*. Washington: Brookings Institution Press.
- Guinier, L. 1994. *The Tyranny of the Majority*. New York: Free Press.
- Günther, K. 1993. *The Sense of Appropriateness*, trans. J. Farrell. Albany, NY: SUNY Press.
- Gutmann, A. and D. Thompson. 1996. *Democracy and Disagreement*. Cambridge, MA: Harvard University Press.
- Gutmann, A. and D. Thompson. 2004. *Why Deliberative Democracy?* Princeton, NJ: Princeton University Press.
- Habermas, J. [1962] 1989. *The Structural Transformation of the Public Sphere*, trans. T. Burger. Cambridge, MA: MIT Press.
- Habermas, J. [1983] 1990. *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. W. Nicholsen. Cambridge, MA: MIT Press.
- Habermas, J. 1989. Morality and ethical life: does Hegel's critique of Kant apply to discourse ethics? *Northwestern University Law Review*, 83, 38–53.
- Habermas, J. [1990] 1993. Morality, society, and ethics: an interview with Torben Hviid Nielsen. In *Justification and Application: Remarks on Discourse Ethics*, trans. C. Cronin. Cambridge, MA.: MIT Press.
- Habermas, J. [1991] 1993. Remarks on discourse ethics. In *Justification and Application: Remarks on Discourse Ethics*, trans. C. Cronin. Cambridge, MA: MIT Press.
- Habermas, J. [1992] 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg. Cambridge, MA: MIT Press.
- Habermas, J. [1996] 1998. *The Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. De Greif. Cambridge, MA: MIT Press.
- Hall, C. 2007. Recognizing the passion in deliberation: toward a more democratic theory of deliberative democracy. *Hypatia*, 22, 81–95.
- Hardin, R. 1982. *Collective Action*. Baltimore, MD: Johns Hopkins University Press.
- Held, V. 1970. *The Public Interest and Individual Interests*. New York: Basic Books.

- Holzinger, K. 2004. Bargaining through arguing: an empirical analysis based on speech act theory. *Political Communication*, 21, 195–222.
- Holzinger, K. 2005. Context or conflict types: which determines the selection of communication mode. *Acta Politica*, 40, 239–54.
- Honig, B. 1993. *Political Theory and the Displacement of Politics*. Ithaca, NY: Cornell University Press.
- Johnson, J. 1991. Habermas on strategic and communicative action. *Political Theory*, 19, 181–201.
- Johnson, J. 1998. Arguing for democracy: some skeptical considerations. In J. Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press.
- Kahneman, D. and A. Tversky. 1979. Prospect theory: an analysis of decision under risk. *Econometrica*, 47, 263–91.
- Kant, I. [1781] 1998. *Critique of Pure Reason*, ed. P. Guyer and A. Wood. New York: Cambridge University Press.
- Kendall, W. 1959. *John Locke and the Doctrine of Majority Rule*. Urbana: University of Illinois Press.
- Kinder, D. R. and D. R. Kiewiet. 1979. Economic discontent and political behavior: the role of personal grievances and collective economic judgments in congressional voting. *American Journal of Political Science*, 23, 495–527.
- Knight, J. and J. Johnson. 1994. Aggregation and deliberation: on the possibility of democratic legitimacy. *Political Theory*, 22, 277–96.
- Knight, J. and J. Johnson. 1997. What sort of political equality does democratic deliberation require? In J. Bohman and W. Rehg (eds), *Deliberative Democracy*. Cambridge, MA: MIT Press.
- Krause, S. R. 2008. *Civil Passions: Moral Sentiment and Democratic Deliberation*. Princeton, NJ: Princeton University Press.
- Lafont, C. 2004. Moral objectivity and reasonable agreement: can realism be reconciled with Kantian constructivism? *Ratio Juris*, 17, 27–51.
- Lafont, C. 2006. Is the ideal of a deliberative democracy coherent? In S. Besson and J. L. Martí (eds), *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- Lax, D. A. and J. K. Sebenius. 1986. *The Manager as Negotiator*. New York: Free Press.
- Lijphart, A. 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven, CT: Yale University Press.
- Lijphart, A. 2004. Constitutional design for divided societies. *Journal of Democracy*, 15, 96–109.
- Lipsey R. G. and K. Lancaster. 1956–57. The general theory of second best. *Review of Economic Studies*, 24, 11–32.
- List, C. 2003. Two concepts of agreement. *The Good Society*, 11, 72–9.
- List, C., R. Luskin, J. Fishkin and I. McLean. 2006. Deliberation, single-peakedness, and the possibility of meaningful democracy: evidence from deliberative polls. (<http://personal.lse.ac.uk/list/PDF-files/DeliberationPaper.pdf>).
- Lively, J. 1975. *Democracy*. Oxford: Blackwell.
- Lukes, S. 1974. *Power: A Radical View*. London: Macmillan.
- Luskin, R. C., J. S. Fishkin and R. Jowell. 2003. Considered opinions: deliberative polling in Britain. *British Journal of Political Science*, 32, 455–87.
- Machiavelli, N. [1513] 1950. *The Prince*. New York: Random House/Modern Library.
- Mackie, G. 2003. *Democracy Defended*. Cambridge: Cambridge University Press.
- Manin, B. 1987. On legitimacy and political deliberation. *Political Theory*, 15, 338–68.
- Manin, B. 2005. Deliberation: why we should focus on debate rather than discussion. Paper presented at the Program in Ethics and Public Affairs Seminar, Princeton University. (<http://politics.as.nyu.edu/object/BernardManin.html>).
- Mansbridge, J. 1980. *Beyond Adversary Democracy*. New York: Basic Books.
- Mansbridge, J. 1986. *Why We Lost the ERA*. Chicago: University of Chicago Press.
- Mansbridge, J. 1992. A deliberative theory of interest representation. In M. Petracca (ed.), *The Politics of Interests*. Boulder: Westview.

- Mansbridge, J. 1996. Using power/fighting power: the polity. In S. Benhabib (ed.), *Democracy and Difference*. Princeton: Princeton University Press.
- Mansbridge, J. 1998. On the contested nature of the public good. In W. W. Powell and E. S. Clemens (eds), *Private Action and the Public Good*. New Haven, CT: Yale University Press.
- Mansbridge, J. 1999. Everyday talk in the deliberative system. In S. Macedo (ed.), *Deliberative Politics*. Oxford: Oxford University Press.
- Mansbridge, J. 2002. Practice–thought–practice. In A. Fung and E. O. Wright (eds), *Deepening Democracy*. New York: Verso.
- Mansbridge, J. 2006. Conflict and self-interest in deliberation. In S. Besson and J. L. Martí (eds), *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- Mansbridge, J. 2009. Deliberative and non-deliberative negotiations. Harvard Kennedy School Working Paper RWP09–010. (<http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP09-010>).
- Martí, J. L. 2006a. *La república deliberativa. Una teoría de la democracia*. Madrid: Marcial Pons.
- Martí, J. L. 2006b. The epistemic conception of deliberative democracy defended. In S. Besson and J. L. Martí (eds), *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- McCarthy, T. 1990. The critique of impure reason: Foucault and the Frankfurt school. *Political Theory*, 18, 437–69.
- McGann, A. 2006. *The Logic of Democracy*. Ann Arbor: University of Michigan Press.
- Meltsner, M. and P. Schrag. 1974. Negotiating tactics for legal services lawyers. *Clearinghouse Review*, 7, 259–62.
- Michelman, F. I. 1988. Law's republic. *Yale Law Journal*, 97, 1493–537.
- Midgaard, K. 1980. On the significance of language and a richer concept of rationality. In L. Lewin and E. Vedung (eds), *Politics as Rational Action*. Dordrecht: Reidel.
- Mill, J. S. [1865] 1958. *Considerations on Representative Government*, 3rd edn, ed. C. V. Shields. New York: Bobbs-Merrill.
- Miller, D. 1992. Deliberative democracy and social choice. *Political Studies*, 40, 54–67.
- Muirhead, R. 2006. A defense of party spirit. *Perspectives on Politics*, 4, 713–27.
- Nagel, J. 1975. *A Descriptive Analysis of Power*. New Haven, CT: Yale University Press.
- Nagel, T. 1986. *The View from Nowhere*. New York: Oxford University Press.
- Nagel, T. 1991. *Equality and Partiality*. New York: Oxford University Press.
- Naurin, D. 2007. *Deliberation Behind Closed Doors: Transparency and Lobbying in the European Union*. Colchester/New York: ECPR Press/Columbia University Press.
- Nino, C. S. 1996. *The Constitution of Deliberative Democracy*. New Haven, CT: Yale University Press.
- Nozick, R. 1972. Coercion. In Peter Laslett, W. G. Runciman and Quentin Skinner (eds), *Philosophy, Politics and Society*, 4th series. Oxford: Blackwell.
- Nozick, R. 1989. *The Examined Life*. New York: Simon and Schuster.
- Olson, M. 1965. *The Logic of Collective Action*. Cambridge, MA: Harvard University Press.
- Pateman, C. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Pettit, P. 2000. Democracy, electoral and contestatory. In I. Shapiro and S. Macedo (eds), *Nomos XLII: Designing Democratic Institutions*. New York: New York University Press.
- Pettit, P. 2001a. Deliberative democracy and the discursive dilemma. *Philosophical Issues* (Supp. *Nous*), 11, 268–99.
- Pettit, P. 2001b. *A Theory of Freedom*. Oxford: Blackwell.
- Pettit, P. 2003. Deliberative democracy, the discursive dilemma, and republican theory. In J. Fishkin and P. Laslett (eds), *Debating Deliberative Democracy. Philosophy, Politics and Society*, 7th series. Malden, MA: Blackwell.

- Pettit, P. 2006. Depoliticizing democracy. In S. Besson and J. L. Martí (eds), *Deliberative Democracy and Its Discontents*. Aldershot: Ashgate.
- Pitkin, H. 1981. Justice: on relating public and private. *Political Theory*, 9, 27–52.
- Przeworski, A. 1998. Deliberation and ideological domination. In Jon Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press.
- Raiffa, H. 1982. *The Art and Science of Negotiation*. Cambridge, MA: Harvard University Press.
- Rawls, J. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press.
- Rescher, N. 1987. *Ethical Idealism*. Berkeley: University of California Press.
- Risse, T. 2000. 'Let's argue!' Communicative action in world politics. *International Organization*, 54, 1–39.
- Risse, M. 2004. Arguing for majority rule. *Journal of Political Philosophy*, 12, 41–64.
- Rosenblum, N. 2008. *On the Side of the Angels: An Appreciation of Parties and Partisanship*. Princeton, NJ: Princeton University Press.
- Sanders, L. M. 1997. Against deliberation. *Political Theory*, 25, 347–76.
- Scanlon, T. M. 1982. Contractualism and utilitarianism. In A. Sen and B. Williams (eds), *Utilitarianism and Beyond*. Cambridge: Cambridge University Press.
- Schmitt, C. [1926] 1988. On the contradiction between parliamentarism and democracy. In *The Crisis of Parliamentary Democracy*, 2nd ed., trans. E. Kennedy. Cambridge, MA: MIT Press.
- Schmitt, C. [1928] 1957. *Verfassungslehre*, 3rd ed. Berlin: Duncker and Humblot.
- Schwartz, J. M. 1999. *The Permanence of the Political: A Democratic Critique of the Radical Attempt to Transcend Politics*. Princeton, NJ: Princeton University Press.
- Shapiro, I. 1999. Enough of deliberation: politics is about interests and power. In Stephen Macedo (ed.), *Deliberative Politics: Essays on Democracy and Disagreement*. New York: Oxford University Press.
- Shapiro, I. 2005. *The State of Democratic Theory*. Princeton, NJ: Princeton University Press.
- Shell, G. R. 2000. *Bargaining for Advantage*. New York: Penguin.
- Steiner, J., A. Bächtiger, M. Spörndli and M. R. Steenbergen. 2004. *Deliberative Politics in Action: Analyzing Parliamentary Discourse*. Cambridge: Cambridge University Press.
- Stokes, S. C. 1998. Pathologies of deliberation. In Jon Elster (ed.), *Deliberative Democracy*. Cambridge: Cambridge University Press.
- Sunstein, C. R. 1988. Beyond the republican revival. *Yale Law Journal*, 97, 1539–90.
- Sunstein, C. R. 1995. Incompletely theorized agreements. *Harvard Law Review*, 108, 1733–72.
- Sunstein, C. R. 1996. *Legal Reasoning and Political Conflict*. New York: Oxford University Press.
- Thompson, D. F. 2002. *Just Elections*. Chicago: University of Chicago Press.
- Thompson, D. F. 2008. Deliberative democratic theory and empirical political science. *Annual Review of Political Science*, 11, 497–520.
- Thompson, L. L. 2005. *The Mind and Heart of the Negotiator*, 3rd edn. Upper Saddle River, NJ: Pearson/Prentice Hall.
- Tussman, J. 1960. *Obligation and the Body Politic*. New York: Oxford University Press.
- Ulbert, C. and T. Risse. 2005. Deliberately changing the discourse: what makes deliberation effective? *Acta Politica*, 40, 351–67.
- Waldron, J. 1999. *Law and Disagreement*. Oxford: Oxford University Press.
- Walton, R. E. and R. B. McKersie. 1991. *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System*. Ithaca, NY: ILR Press.
- Walzer, M. 1983. *Spheres of Justice*. New York: Basic Books.
- Walzer, M. 1999. Deliberation and what else? In S. Macedo (ed.), *Deliberative Politics*. New York: Oxford University Press.
- Warren, M. 1992. Democratic theory and self-transformation. *American Political Science Review*, 86, 8–23.

- Warren, M. E. 2006. Democracy and deceit: regulating appearances of corruption. *American Journal of Political Science*, 50, 160–74.
- Williams, B. 1973. A critique of utilitarianism. In B. Williams and J. J. C. Smart (eds), *Utilitarianism: For and Against*. Cambridge: Cambridge University Press.
- Williams, B. 1981. *Moral Luck*. Cambridge University Press.
- Young, I. M. 1996. Communication and the other: beyond deliberative democracy. In S. Benhabib (ed.), *Democracy and Difference*. Princeton, NJ: Princeton University Press.
- Young, I. M. 2001. Activist challenges to deliberative democracy. *Political Theory*, 29, 670–90.