

Democracy, Value and Truth: Saving Deliberation from Justification

Daniel M. Weinstock
University Center for Human Values
Princeton University

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Should democratic decision-making be more *deliberative*? Should we be content with democratic institutions and procedures that simply aggregate individual's pre-politically formed interests, and that give rise to policies that satisfy as many of these interests as possible? Or should we insist on the exchange of *reasons*, aimed at the discovery or formulation of a genuinely *common* good?

A growing number of democratic theorists have argued that deliberation should be thought of as integral to the democratic ideal, and that democratic institutions should therefore be designed so as to encourage deliberation and to limit purely interest-based bargaining and logrolling to a minimum. Two types of reasons can, and have, been invoked to privilege deliberation over interest aggregation. First, it can be argued that deliberation, when appropriately organized and constrained, gives rise to policies that are *better*, according to some independent standard, than they would otherwise be. Call this the *justificatory* defense of deliberation. Second, it could be argued that democratic institutions which promote deliberation realize values which we have more reason to affirm than we do the values associated with the aggregative model. Call this the *moral* defense of deliberation.

In order to attain the quite different goals which they set for democratic institutions, both the exponent of the justificatory defense and the partisan of the moral defense must provide an account of how democracy must be organized and constrained in order to yield their payoffs. Untrammelled argument and debate, even if it involves all parties concerned, is unlikely, in and of itself, to yield

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justified outcomes *or* to embody admirable values. Threats and intimidation, nakedly emotional appeals, and countless other pathologies associated with group behaviour risk derailing any unconstrained deliberative procedure. It is therefore essential that such factors be neutralized or channeled by appropriate institutional constraints. Much of the burden of argument which defenders both of democracy's *justificatory* potential and of its *moral* promise have to face will thus lie in the formulation of appropriate constraints, and in the demonstration that the required connection between these constraints and the hoped for payoffs obtains.

My intention in this paper is to point out some problems with the justificatory defense, and to argue for a version of the moral defense. My strategy will be to show that the justificatory claim put forward by those deliberative democrats who have espoused the justificatory defense is overblown, and that focussing on the moral defense will lead to a reconsideration of some of the constraints for which they have argued.

More specifically, I will proceed as follows: After having briefly outlined three forms which the justificatory claim has taken in recent literature (I), I will argue that the claim cannot be made good regardless of the particular form of the claim which one might prefer (II-IV), and that the case for deliberative democracy must be seen as grounded not so much in its justificatory virtues as in its intrinsic moral properties (V). That is, we should be arguing for deliberative democracy in the first instance on the basis of claims which can be made about the operation of democratic institutions, and we should use criteria pertaining to the adequacy of outcomes as threshold requirements. And I will also claim, in a way which parallels the argument made by partisans of the justificatory defence of deliberative democracy, that the moral values which are distinctive of democracy can only be realized if certain normative *desiderata* are satisfied. But the moral aims of deliberative democracy as I will be describing them will require that *different* normative goals be reached. To make this clear, I will focus especially on how a moral defence of democracy requires quite a different reading of the deliberative democratic constraint of *reciprocity*, one which makes its instantiation compatible with the realization of a value which I call *fidelity*. (VI).

I

The justificatory claim, as I have called it, is that the policy outcomes generated by deliberation are *better* than those to which other decision-making procedures give rise. All the positions canvassed herein are in substantial agreement about what counts as *deliberation*. They differ in their accounts of what it is about deliberation that yields *bestness*. Let us first attend to the common ground. Deliberative democrats differ from earlier pluralist democrats in that they do not see the purpose of democratic institutions as being primarily that of aggregating citizens' pre-political and non-rational preferences, and of coming up with a result that will maximize the amount of satisfied preferences in a citizenry. Rather, deliberativists maintain that deliberation should require that citizens formulate *reasons* which might plausibly justify their policy-preferences in the eyes of their fellow citizens, and that, through the give-and-take of reasons which deliberation involves, they both *refine* and *improve* their understanding of what is at issue in a policy debate, and *narrow* the differences which separate them from their fellow citizens. More ambitious deliberative democrats will view *consensus* as an appropriate goal, at least in theory, for deliberation.² For others, the justificatory promise of deliberative democracy is fulfilled when the opinions upon which people vote have been duly refined through deliberation, so that whichever position ends up with the majority of votes can claim to be sufficiently deliberative.³ But all agree that there is some fact of the matter concerning what, from an impartial point of view which encompasses those of all citizens, ought to be done in a given policy debate, that people's policy preferences are appropriately to be viewed as fallible conjectures about such matters of fact, and that deliberation helps us make better conjectures, in part by offsetting the epistemic limitations to which we are all prey as individual thinkers.⁴

² For example, see Joshua Cohen, "Deliberation and Democratic Legitimacy", in J. Bohman and W. Rehg (eds.), *Deliberative Democracy*, (Cambridge, MA.: The MIT Press, 1997), p. 75.

³ See, for example, David Estlund, "Who's Afraid of Deliberative Democracy? On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence", in *Texas Law Review*, 71 (1993), pp. 1473 - 1477.

Deliberative democrats differ, however, in the way in which they construe the justificatory claim. *Why*, precisely, should we think that deliberation subject to appropriate constraints yields the best policy outcomes? At the risk of simplifying somewhat, I would claim that three broad families of views make up the bulk of the views on this question.

1) The *independent standard* view: there is an independent standard to which our policies are answerable. It happens that, for contingent reasons to do with the inescapable limitations on human judgment, democratic decision-making is the best way for humans to track bestness as defined by this standard.⁵

2) The *constitutive* view: moral truth just *is* whatever appropriately circumstanced enquirers say it is, at the ideal end of free and unconstrained inquiry. So good *policy* just is whatever appropriately situated and constrained citizens deliberating with one another say it is.⁶

3) The *pluralist* view: different sets of values bear relevantly on the most pressing policy debates of the day. But first, they tend to pull in opposite directions, and second, they are incommensurable. While the democratic theorists who take fundamental value pluralism as the social fact calling for deliberation do not exclude that there may be some notional way of reconciling citizens' diverse value commitments, they believe that, given our epistemic limitations, we have to arrive at policy decisions as if such a reconciliation were in principle unavailable. Deliberation among appropriately

⁴On this latter function of deliberation, see C.S. Nino, *The Constitution of Deliberative Democracy*, (Oxford: Oxford University Press, 1996), pp. 117 - 128.

⁵See Nino, *The Constitution of Deliberative Democracy*; and David Estlund, "Who's Afraid of Deliberative Democracy?"; "Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority", in Bohman and Rehg (eds.), *Deliberative Democracy*; and "Making Truth Safe for Democracy", in David Copp, Jean Hampton and John Roemer (eds.), *The Idea of Democracy*, (Cambridge: Cambridge University Press, 1993).

⁶The metaethical claim which constitutes the premise of this argument has been attributed to Jürgen Habermas. See for example his *Moral Consciousness and Communicative Action* (Cambridge, MA.: The MIT Press, 1990). Though Habermas himself has never, as far as I can see, affirmed the *political* consequence which makes up the view being considered here, it has been affirmed, for example, by Seyla Benhabib. See her "Toward a Democratic Model of Democratic Legitimacy", in S. Benhabib (ed.), *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton: Princeton University Press, 1996), pp. 67 - 74. See also Joshua Cohen, "Deliberation and Democratic Legitimacy".

constrained citizens is the next best thing to a meta-theory such as that which utilitarianism had promised.⁷

I trust that the differences between these three sets of views are clear. The defenders of the independent standard view and of the constitutive view base their claims on fairly ambitious metaethical doctrines. They are both realists, in that they both claim that there is some fact of the matter concerning what polities ought to do in contested policy debates, but they differ as to whether or not the justification-imparting standard is procedure-independent or not. The pluralist prescind from any definitive metaethical pronouncement, but still makes what might seem to some (certainly to monistic consequentialists such as utilitarians) to be a controversial claim, namely that *we might as well* assume that value-pluralism is true. Nonetheless, the justificatory claim which they make is accordingly somewhat weaker than the one put forward by the defenders of the independent standard and of the constitutive view: while the latter must claim that, in ideal circumstances, democratic deliberation yields ideal justification, the former can (indeed, must) be satisfied with a weaker claim, namely that deliberation provides us with the best policies we can hope for *given our epistemic predicament*.

II

How plausible is the independent standard view? In order to answer this question, we must examine separately two strategies which have been put forward to attempt to make good its central claim. I will call these the *negative* and the *positive* strategies. I associate them, respectively, with the work of David Estlund and Carlos Nino.

The negative strategy as developed by Estlund proceeds by framing the problem in terms of the following question: what reasons could we possibly have *not* to decide democratically? In Estlund's view, the principal concern which one might have concerning the independent standard

⁷This view has been defended by Amy Gutmann and Dennis Thompson, *Democracy and Disagreement*, (Cambridge, MA.: Harvard University Press, 1996); and "Why Deliberative Democracy is Different", unpublished ms.; and by Joshua Cohen, "Procedure and Substance in Deliberative Democracy", in S. Benhabib (ed.), *Democracy and Difference*.

view is that its defense of democracy is instrumental, and therefore, unattractively tepid. Indeed, if the defense of democracy is chiefly instrumental, then the argument depends upon our not having a better instrument. And if the standard to which our policy proposals are answerable is external to the procedure itself, then surely democracy's claim to being the best means of tracking bestness according to this standard depends upon contingent facts which may fail to obtain. Were we for example to agree that Sally is better at tracking the standard than we all are when deliberating together, then on the instrumental view we ought to defer to Sally. Thus, it would seem, the instrumental approach seems in theory to countenance quite radical departures from democracy.

Estlund's defense consists in claiming that no such agreement is forthcoming. We can both affirm the existence of an independent standard *and* resist the authoritarian conclusion. Estlund offers two arguments for this, which deserve to be treated separately. Both of them fail, in my view, but for interestingly different reasons.

The first argument, which we might call *pragmaticis* well summed up by Estlund: "Even if some have knowledge, others have no way of knowing this unless they can know the same thing by independent means, in which case they have no use for other's expertise".⁸ In other words, it would only be reasonable for people to defer to some elite if they knew that the members of this elite competently formulated policies which satisfied the independent standard. But they could only know *that* if they themselves knew what the standard was, in which case there would be no need for any kind of "epistocracy".

But the defense of epistocracy on the basis of the independent standard view does not require epistemic parity. If democracy's main justification is epistemic, then there is no reason *not* to defer to the views of a small coterie of decision-makers whose status may derive, for example, from the fact that they are *slightly* better than the common run of citizens at tracking the standards, so that though the latter know enough to know that the small coterie is better, they do not know enough to match their results.⁹ Even if we assume epistemic parity, moreover, we could imagine a

⁸Estlund, "Making Truth Safe for Democracy", p. 84.

citizenry deferring to an elite for *non-epistemic* reasons, for example because the members of the epistemic coterie are more *motivated* to search for the right answer in situations calling for policy decisions than is the average citizen. If the instrumental story is true, then either one of these (not terribly far-fetched) stories would be sufficient to justify handing over decision-making authority to the members of the coterie.

Estlund's negative strategy seems based on the idea that democracy is, as it were, the default position when it comes to deciding on a policy-making procedure. So that while it might be necessary to provide a reason to justify any *departure* from democracy, no analogous reason is required in order to remain in the default. But surely, if the justificatory claim is at the heart of the defense of democratic institutions, democracy cannot be defended simply by showing that there is no way of showing that *other* imaginable procedures will not fare particularly well.

Estlund's second argument might be termed "metaethical". It claims that reasonable people will differ as to the second-order standards which different epistocratic coterie might invoke in order to justify their superior independent standard-tracking abilities. The argument goes one step beyond the pragmatic one, in that it gives us a story about *why* it is reasonable to expect that even perfectly reasonable citizens will fail to agree upon the identity of the undemocratic epistocrats. Many considerations bear upon the selection of the standards governing the determination of the independent standard, and thus, of any putative epistocracy, and reasonable people will reasonably disagree as to what those standards are. So it is not simply that people don't agree on what standards appropriately govern their law-making procedures, it is that they *could* not agree, given the nature of what is at stake.

There are two ways of interpreting the metaethical argument, both of which raise difficulties for Estlund's argument. On the *strong* interpretation, there simply is no fact of the matter that could even in principle dispose of the disagreement on this matter. People disagree on this interpretation not because some of them fail to grasp some fundamental truth, but rather because the values which

⁹Compare: I know just enough about chess to know that Kasparov is better than me, and to know something about *why* he is better. That does not mean that I can do just as well as him, alas.

bear upon the choice of a standard are diverse, and there is no uniquely rational way of ranking them.

The strong interpretation of the metaethical would however prove too much from Estlund's point of view. Indeed, while it would make good the claim that none of us have any reason to defer to anybody else's judgment, it also controverts the claim that there *is* anything like *an* independent standard to which our law-making is answerable. The strong interpretation of the metaethical argument would in effect transform what I have been calling the "independent standard view" into the "pluralist" view, which I will be examining below.

The *weak* interpretation of the metaethical argument would drive a wedge between reasonability and access to the truth. It would claim that, though there is a single independent standard, one that fully rational persons would converge upon, one can be reasonable without being fully rational, and thus, without recognizing this single standard. Imagine that a citizenry is divided between independent standards A, B and C. Though it turns out that A is true, it is reasonable for people to uphold B and C. And reasonability, rather than truth, is the norm we ought to apply to our second-order differences concerning the standards to which our policy options are answerable. So though it turns out that the defenders of C are right, and would thus, all things equal, have a legitimate claim to constituting an epistocracy were truth to be the guiding norm, exponents of A and B can refuse to defer to them because A and B can reasonably be affirmed, and C reasonably denied.

Now, the weak interpretation of the metaethical argument squares well with some of what Estlund says. For example, he writes that "for there to be a problem of moral legitimacy, it need not be held that second-order knowledge is impossible, but only that it is generally something on which reasonable people might disagree".¹⁰ (Presumably, the defender of the strong interpretation would be wary to concede the possibility of uncontroversible moral *knowledge*).

This argument is however in some tension with the claim upon which the plausibility of Estlund's position surely depends, namely, that we know that there are independent standards and

that we know at least enough about them to be confident that democracy is the best procedural means we possess to track them. Indeed, for it to be reasonable for individuals not to defer to the holders of the right standard, it would have to be the case that the perspective from which it can be ascertained that C is true is unavailable to them, and for that matter, to the holders of C as well. In other words, it would have to be the case that defenders of A, B and C are epistemically on a par, and that they are all reasonable to adhere to their standards and to reject their rivals. Otherwise, it would be very difficult to hold *both* that there is an independent standard *and* that people can reasonably refuse to defer to those who affirm this standard. Now, Estlund might be right to claim that reasonable people might disagree about the appropriate standard by which to assess laws and policies, and that they may therefore be justified in opting for democratic decision making as a kind of *pis aller*. But then the defense of deliberative democracy would be very weak indeed: the claim could not be, as Estlund would have it, that democratic decisions rightly claim authority because of their tendency to promote justified results (even in cases where we think that the democratic procedure has led to a mistake), but rather, that democracy is a reasonable compromise among people who reasonably disagree about appropriate second-order standards, *even if* it were to turn out that democracy rarely if ever hits the mark defined by the independent standard.

The principal problem I see with Estlund's defense of democracy is that it fails to provide us with even an account of what the independent standard to which our laws and policies are answerable might be, and it also fails to provide us with a plausible story about what democratic mechanisms reliably track the standard. Nor does it tell us anything about why *deliberation* might, among all imaginable democratic mechanisms, be most effective in helping us formulate policies that meet the independent standard. *A fortiori*, it does not give us an account, which the independent standard view would seem to require, of the nature of the *fit* between the mechanisms and the standard.¹¹ For this, we must move to a more positive defense of the independent standard.

¹⁰Estlund, "Making Truth Safe for Democracy", p. 87.

¹¹In fairness, Estlund's view is more nuanced than the one I have portrayed here. But I would argue that the needed amendments which would be needed fully to represent his position do not affect the argument presented here. Estlund does not claim that a policy is justified to the extent that it is brought about by a procedure that *perfectly* tracks the

A positive defense of the independent standard view was provided in his last book by the late Carlos Nino. Nino argues that deliberation prior to voting, duly constrained, will contribute to the *discovery* of a plethora of facts which bear relevantly on the policy debate being considered, and will also contribute to citizens taking up an impartial point of view from which they will be better able to appreciate the bearing of these facts on the common good. According to Nino¹², deliberation is essential in order to discover the interests of others. It also allows us to pool our individually limited epistemic resources to root out factual and logical mistakes which may have infected the views of some citizens. Moreover, the very process of deliberation will push citizens toward greater impartiality and public-spiritedness, as they will have to produce reasons rather than mere preferences as a price of entry into deliberation. Regardless of their initial motives, they will be shoehorned into impartiality by the very logic of discussion. Jon Elster speaks in this context of the “civilizing force of hypocrisy”.¹³ For all these reasons as well as others, Nino believes, deliberation cannot help but *improve* the positions with which citizens end up, for they will now embody greater information, and they will have been filtered through the impartiality-promoting mechanisms which are part and parcel of well-designed deliberative institutions.

Now, the reliability of any one of these mechanisms can be questioned. For example, in less than ideal circumstances, when time presses and some are more eloquent and forceful than others, what might seem like the “rational” narrowing of preferences which deliberative democrats imagine might simply be a non-rational pull to conformity.¹⁴ My point however is somewhat different. Assume, for

truth. Rather, it is justified to the extent that it is generated by a procedure which *reliably* tracks the truth. So in principle a policy could be justified without being the one that the standard called for. Obedience to the policy would be justified by the fact that it issued from a generally reliable procedure. This kind of argument is familiar from debates concerning rule- and act-utilitarianism, and Estlund’s position is accordingly vulnerable to the standard objection against rule-based views. But regardless of this, the more subtle account proposed by Estlund still owes us an account of why (positively) democracy (reliably but not perfectly) tracks the truth, and why, given the weight in the justification of democracy that justification is supposed to bear, we should not surrender our decision-making authority to a small coterie who (reliably but not perfectly) track the truth in their decisions.

¹²Nino, *Constitution of Deliberative Democracy*, pp. 117 - 128.

¹³Jon Elster, “Strategic Uses of Argument”, in K. Arrow et. al (eds.), *Barriers to Conflict Resolution*, (New York: W.W. Norton & Co., 1995), p. 250. See also his “Deliberation and Constitution Making”, in J. Elster (ed.), *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), esp. p. 104.

the sake of argument, that the various epistemic virtues which Nino ascribes to deliberation actually do obtain. Assume, that is, that deliberation can be useful in at least two ways: it can both *reveal* what citizens' pre-political interests and views of their well-being are. It can also help them *refine* their interests as deliberativists claim that they should, by making them bring out the *reasons* which might be invoked to prioritize their interests, and by leading them to reformulate their interests on the basis of the give-and-take of such reasons. Now imagine that, prior to deliberation, the set of policies propounded by people on the basis of their pre-political interests is $\{p_1, p_2, \dots, p_n\}$. Imagine that deliberation has succeeded in both refining people's interests, and thus their view of the possible policy alternatives, *and* in narrowing the scope of disagreement, so that the set of policies still favoured by different groups of citizens is $\{p'_1, p'_2, \dots, p'_m\}$, where $m < n$. (I assume that the two sets will not be disjoint-- either that the second will be a proper subset of the first, or that there will be a substantial area of overlap between the two. I also assume that $m > 1$). The question is this: if we assume that democratic deliberation has done all the epistemic work it can do, what reason do we have to continue employing democratic decision-making processes to choose among the elements of the second set?

Let me sum the problem up more tersely: if we accept that the epistemic justification of policies depends upon how well they promote people's interests and well-being, and that deliberation can help us in determining what the relevant interests *are*, this still hasn't given us a reason to engage in democratic *decision-making*, as opposed to democratic *discovery*. And unless we make the unrealistic assumption that discovery can yield unanimity, there is no reason to equate the two.

Consider the matter from the point of view of a defeated minority. They will have engaged in deliberation with their fellow citizens, and will, accordingly, have arrived at a position which will itself have been improved and refined by deliberation. The thought that deliberativists put forward is that the quality of the deliberative exercise will be sufficient to reconcile members of defeated minorities to a majority vote, because the position of the members of the majority will itself have been refined by deliberation.

¹⁴For doubts of this kind, see James Johnson "Arguing for Deliberation: Some Skeptical Considerations", in J. Elster (ed.), *Deliberative Democracy*.

But why should it? It is worth quoting at some length the passage in which Nino attempts to justify his optimism in this context:

[T]he general epistemic value of democracy provides a reason for observing the democratic decision even when our *individual* reflection tells us with certainty that the decision is mistaken. If we ignored the result of collective discussion and majoritarian decision each time our *isolated* reflection told us it was wrong, we would be giving priority to this reflection, observing the majority decision only when it coincided with our own thinking. This would clearly contradict our conclusion that the democratic process is generally more reliable epistemically than the *isolated reflection of any individual*. Accordingly, we must observe the outcome of the democratic process even if we are sure that it is wrong, insofar as the conditions which ground its epistemic value are fulfilled.¹⁵

As the italicized words and passages make clear, Nino is helping himself here to an assumption to which he is not entitled, namely, that *only* the majority opinion can claim for itself the epistemic virtues born of deliberation. This assumption is fallacious: to this extent that they lend themselves to it in good faith, *both* the majority and the minority opinions will emerge improved from the deliberative process. There is no reason for the member of the minority to view her policy preference as the fruit of “isolated reflection”, as it will have been formed in the very same collective, deliberative process as that of the members of the majority.

On the contrary, deliberation might make members of a minority even *less* inclined than they might otherwise have been to go along with the view of the majority. Indeed, if members of a minority which has engaged in good-faith deliberation can, as I have suggested above, claim that its views have been improved by the deliberative process, then they are likely to be *more* rather than less convinced of their being in the right. So there are good reasons to doubt that the simple fact that deliberation has occurred prior to a vote will give the members of the minority more reasons to go along with the results of the vote.¹⁶

Even if Nino’s arguments were to be judged successful, part of the case for deliberative democracy as a decision-making procedure would still remain to be made. Indeed, if the standard to which our policy-making is answerable is the common good, we can understand why bringing as many

¹⁵Nino, p. 130. Italics added.

people in to the process as possible might give rise to epistemic gain by overcoming the epistemic limitations to which we are all prey as solitary thinkers. We can also understand why *deliberation* may be needed: indeed it might only be through discussion, the give and take of reasons and arguments, that our self-centered perspectives can give way to a truly *common* perspective.¹⁷ What Nino has not provided us with is a reason to hold fast to a democratic procedure such as voting once democratic deliberation has run its course. Deliberation may very well leave us with a smaller set of policy options, but these will be felt by those who hold them, whether they end up in the majority or the minority, to be surer and more justified than they had previously felt them to be. So from the point of view of a citizen who will end up having to go along with a view she disagrees with, it is unclear what value a democratic vote will have in imparting *further* justification on a majority decision, *if* the sole relevant standard by which to judge policy proposals measures justification by reference to its conformity to an external standard. The vote will give her no further assurance that the standard has been met; it will simply measure popularity of the winning proposal.

One might object to this by claiming that one cannot separate out the moment of deliberation and the moment of voting as neatly as I have suggested. For example it could be that the quality of our deliberation will be altered by the fact that we know that deliberation will be followed by voting. Consider an analogy¹⁸: a golf swing's follow-through, taken in isolation, seems to do no work in driving the ball, since it occurs after the ball has already been hit. But it is only by swinging with the intention of following through that one will get the ball to go where one wants it to go. Similarly, we are wrong to consider voting in isolation. We must consider how its presence at the end of the decision-

¹⁶For different doubts concerning the extent to which we are entitled to believe that deliberation might better reconcile minorities than other decision-making procedures, see James Fearon, "Deliberation as Discussion", in J. Elster (ed.), *Deliberative Democracy*.

¹⁷Though the connection between deliberation and the common good is plausible, it is far from being obvious. Indeed, an argument must be provided to show that the common good requires a common perspective of judgment, and that neither the upshot of bargaining between self-interested agents, nor the optimal satisfaction of as many citizens' pre-politically formed interests as possible, has any claim to representing the common good. Though I cannot argue for this here, it seems to me that deliberativists tend to underestimate the burden of argument they must shoulder.

¹⁸This possibility was suggested to me by Jeremy Waldron.

making process alters what precedes. The claim would be that one could only obtain the epistemic payoff which deliberation promises by considering it as part of a process which *includes* voting.

But it is hard to see why this might be. Presumably, the claim is that the goal of persuading others when voting will lead to one's being more public-spirited, and more inclined to consider their points of view, if only for the initially self-interested reason of getting their votes. But one can easily conceive of situations in which the opposite would occur: voting is after all, unlike deliberation, a practice in which it makes sense to think in the adversarial terms of winning and losing, and in which strategic considerations are thus more likely to come naturally. Especially when time presses, as it tends to when a vote looms, people might be tempted to resort to the shortcuts of emotional appeal, rhetorical seduction and perhaps even out and out threats and promises in order to get the votes, rather than adopting the higher but slower road of appeal to the force of the better argument. They might do so, that is, unless they are already antecedently inclined not to employ less-than-public-spirited means to achieve their electoral ends. But in that case, there is no need for the *telos* of voting to *get* them to deliberate in a public-spirited manner.¹⁹

Clearly, something more needs to be said about deliberative procedures and about voting in order to reconcile members of losing minorities, and in order to give them a reason to go along with the decision of the majority. Either it must give us some reason to think that *certainty* attaches to the outcome of duly organized deliberative procedures. Or it must provide us with *other*, non-epistemic reasons, to view the democratic process taken as a whole as legitimate. I myself favour the latter route. The claim that I will be exploring below is that an irreducibly moral justification of deliberation and voting must be forthcoming. Democratic procedures must be seen as embodying values which even losers have reason to affirm, and which can thus lend justification, not just to policy *outcomes*, but to the entire democratic *process*. Let me first however examine a school of thought which, at least at first

¹⁹ Let me be clear about the status of the argument here. My claim is *not* that there could not be an argument, perhaps along Condorcetian lines, which would show that voting contributes to the *justification* of policy options. Not do I want to deny that, even absent *any* justificatory payoff which it might contribute, voting is a functional necessity for large scale democracies. My intention was simply to deny that arguments defending democratic *deliberation* can simply do double duty as arguments for democratic *voting*. I thank Connie Rosati for pressing me on this point.

glance, seems to want to claim that deliberation can yield certainty because the standards by which the justification of policies are determined are *internal* to the democratic deliberative procedure itself.

III

According to the *constitutive* view, there *is* no procedure-independent standard of rightness. What is morally right is simply constituted by what appropriately situated persons deliberating together conclude. This is clearly a very ambitious metaethical pronouncement, and its plausibility will rely upon some very strenuous conditions being met. Not only ill will, but also power differentials, time-constraints, the requirements of agenda-setting, and the like, prevent real-world deliberators from being able to inquire into the justification of norms in the kinds of ideal circumstances which would have to be in place for the metaethical claim to be made good.

My aim here is certainly not to address the broader metaethical claim, which has been associated with such thinkers as Jürgen Habermas and Karl-Otto Apel. My concern will be to assess the potential usefulness of the metaethical claim, if true, to the ambitious justificatory claim which, I have said, characterizes most deliberative democrats. Is the fact that moral truth is the result arrived at at the ideal end of inquiry by free and equal inquirers of any relevance to the assessment of real-world deliberations?

I claim that it is not. Let us assume, as I think we must, that the kinds of conditions which would have to be in place in order to make good the constitutive metaethical claim cannot be fully satisfied in the real world. At best, they provide us with an ideal to which we might tend, but with respect to which our actual deliberative practices will always be approximations.

There are a variety of roads which the constitutivist can travel once this initial concession has been made. The first is simply to recognize that in real-world conditions, democratic deliberation must go hand in hand with other forms of decision-making, since the former is unlikely to give rise to many consensuses at all, let alone ones with justification-imparting bite. Bargaining, voting and legal adjudication will be needed at various points to bridge the gap between deliberation's practice and its promise. Interestingly, this is the view which Habermas has himself defended in his most recent

work.²⁰ A second route, which acknowledges that, as it were, ideal justification requires that we be in it for the long haul, simply uncouples deliberation from decision-making. The role of deliberation is no longer to give rise to binding legal decisions, but, say, to enhance community and democratic practice by engaging everyone in a practice of reason-exchanging which is assumed at the outset not to have any necessary *terminus*. This view is, for example, James Bohman's: "Rather than regarding adjudicating institutions and interpretation of principles as normatively settled and then seeing politics as a matter of resolving the disagreements that emerge within such settled mechanisms, it is better to see deliberation as an ongoing, cooperative enterprise that does not require that citizens be always fully convinced by the public reasons offered by others in deliberation."²¹ A third reaction to the assumption would consist in saying that the kind of deliberation which would be in place were all the factors which in real-world contexts move us away from ideal justification to be neutralized should function as a kind of counterfactual test of the policies which we arrive at, *whatever* the decision-making procedure we employ. A policy would be justified were it the case that it would be chosen by deliberators in ideal conditions.

Now, regardless of their intrinsic merits, it is clear that none of these positions is of any help to the defender of the deliberative democratic justificatory claim. The first abandons the claim by stating that democratic institutions are in and of themselves insufficient to justify policies, while the second apparently gives up on the idea that the *aim* of deliberation should be construed as being that of giving rise to determinate policies. The third hardly counts as a contribution to *democratic* theory at all. It simply requires that the results of our decision-making procedures, whatever they may be, map on to those of the counterfactual ideal deliberative procedure. But there is no reason from the point of view of

²⁰Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, (Trans. W. Rehg), (Cambridge, MA.: The MIT Press, 1996).

²¹James Bohman, "The Coming of Age of Deliberative Democracy", in *The Journal of Political Philosophy*, vol. 6 (1998), p. 407. See also his *Public Deliberation. Pluralism, Complexity and Democracy*, (Cambridge, MA.: The MIT Press, 1996); and Simone Chambers, *Reasonable Democracy*, (Ithaca: Cornell University Press, 1996). See also her "Discourses and Democratic Practices", in Stephen K. White (ed.), *The Cambridge Companion to Habermas* (Cambridge: Cambridge University Press, 1995), and "Contract or Conversation? Theoretical Lessons from the Canadian Constitutional Crisis", in *Politics and Society*, vol. 26 (1998)..

the theory for the *actual* procedure employed to be particularly democratic.²² One can imagine a body of unrepresentative bureaucrats or a benevolent despot attempting to track the results of the counterfactual standard.

The only way for the constitutivist to avoid either abandoning the justificatory claim or losing sight of democratic theory seems to me to be to make the following claim: though we can of course not hope perfectly to instantiate the ideals of perfect deliberation in the real world, we can at least hope to approximate them in our actual deliberative practices. In other words, we should *attempt* to realize these values in our institutions as much as possible, in the hope that the level of justification which we will be able to achieve will be in proportion with the extent of the ideals which we manage to realize. This seems to be Seyla Benhabib's view. Referring to the discourse model of ethics, she writes that "the procedural constraints of the discourse model can act as test cases for critically evaluating the criteria of membership and the rules for agenda setting, and for the structuring of public discussions within and among institutions".²³ Joshua Cohen also seems to believe that those constraints which in the ideal case allow deliberation to generate justified outcomes should be used as standards against which to assess our own democratic institutions: "The point of the idealized procedure is to provide a characterization of free reasoning among equals, which can in turn serve as a model for arrangements of collective decision making that are to establish a framework of free reasoning among equals".²⁴

I believe that this kind of easy inference from counterfactual ideal of undistorted communication to the design of actual institutions falls prey to what I would call the *fallacy of approximation*. This fallacy consists in thinking that, necessarily, achieving x% of an ideal entails attaining a comparable proportion of the values which the ideal realizes. Ideals divide according to whether or not they satisfy this condition, but it is a mistake to think that they all do. And there is reason to think that as far as deliberative democracy is concerned, partial satisfaction of the ideal will in many cases be worse than no

²²There would be an analogy between this kind of view and objective consequentialism, which radically uncouples standards of rightness and decision procedures.

²³Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy", p. 70.

²⁴ Joshua Cohen, "Democracy and Liberty", in J. Elster (ed.), *Deliberative Democracy*, p. 193.

satisfaction at all.²⁵ Consider two ways in which real world deliberations can fall short of the ideals spelled out by the counterfactual ideal deliberative procedure: first, while ideal deliberation requires that all voices with a stake on a given issue be heard, and that they be equally empowered to determine the agenda and make interventions, our own deliberative practice falls well short of the ideal for all sorts of practical reasons. Now imagine that on some given policy debate, there are N perspectives that bear relevantly and distinctly, and that therefore should be included in an ideal deliberation. Suppose that our present deliberative democratic practice only includes $N-X$ voices, and that, in our effort to approximate ideal conditions to a greater degree, we increase that number to $N-Y$ (where $X > Y$). My claim is that there is no reason to think that we have *ipso facto* improved our degree of realization of the ideal by whatever proportion of N ($X-Y$) represents. First, it is possible that some perspectives still left out would contribute considerations and arguments that are key to the proper deliberative resolution of the policy debate in question, and that such perspectives therefore weigh more heavily in the ideal resolution than simply $1/N$. And second, there is the danger that as we come closer to including all perspectives, the *salience* of excluded perspectives will diminish. It will be clearer that the absence of relevant perspectives will have in some way to be corrected for when the number of such perspectives is great than when we are closer to full inclusion. In other words, there are both practical and theoretical reasons to fear that factors impeding justification will continue to play themselves out in a more *subterranean* manner than they would in circumstances further from the ideal.²⁶

Second, and similarly, consider the dangers of only imperfectly neutralizing power differentials and rhetorical advantages in actual deliberative settings. It seems better, intuitively, for such factors to play themselves out in the open in our deliberative practices, even if we then have to correct for them in non-democratic fora, than to have these very same factors continuing to wield causal efficacy in a more subterranean and insidious manner. The imperfect neutralization of power differentials seems to open

²⁵This develops an idea briefly alluded to by Jon Elster in his “The Market and the Forum”, reprinted in Bohman and Rehg, *Deliberative Democracy*, p. 18. For a useful delineation of the fallacy, see Avishai Margalit, “Ideals and Second Bests”, in Seymour Fox (ed.), *Philosophy for Education*, (Jerusalem: Van Leer Foundation, 1983).

the door to would-be Machiavellian princes, craftily imposing their wills while hiding behind the facade of a sham equality.²⁷

These are obviously empirical claims. But they provide *prima facie* grounds for being wary of any uncritical claim to the effect that we simply ought to attempt to approximate the ideals of a counterfactual deliberative procedure in which characteristics of real-world democratic assemblies are wished away in order to increase the level of justification of democratically arrive-at policies.

My tentative conclusion is that the theoretical route which would see us responding to the difficulties which the independent standard view ran into by, as it were, closing the possible gap between deliberation and justification is not one which we should travel. Better, or so I will suggest below, to opt for the second proposed route, which consists in downplaying the importance of the justificatory claim in the overall justification of democratic deliberation, and combining with it some irreducibly moral claim on behalf of democracy.

IV

Pluralists claim that the goal of *justification* as construed by independent standard theorists and constitutivists is too ambitious. There doesn't seem in their view to be any fact of the matter about what *the* right thing to do is in hard moral and political cases; and if there is, we are epistemically insufficiently equipped to know what that right course might be. Pluralists balk at the idea, put forward by some democratic theorists, that the reconciliation of divergent *interests* is the fundamental task of democratic institutions. They claim that disagreement would persist even if all interests were satisfiable. As Gutmann and Thompson put it, "the sources of moral disagreement lie

²⁶The conclusion I wish to draw from this is of course not that we should not be trying to make our politics more inclusive, but rather that we should be wary of assuming that greater inclusion will automatically yield greater justification. There are however, weighty moral reasons to increase the inclusiveness of democratic politics.

²⁷ This much is acknowledged even by a recent writer on deliberative democracy who *does* think that ideal discourse can be approximated in real-world institutions. See Simone Chambers, *Reasonable Democracy*, (Ithaca: Cornell University Press, 1996), p. 205.

partly within morality itself”.²⁸ Though they stop short of making any metaethical or metaphysical claim about the *truth* of value pluralism and incommensurability, they hold that, given our limited understanding, we might as well comport ourselves in our political dealings with others *as if* the claim was true. “We do not know whether, if we enjoyed perfect understanding, we would discover uniquely correct resolutions to problems of incompatible values”.²⁹

Given this epistemic predicament, Gutmann and Thompson argue that we ought to describe the justificatory task which democratic institutions must perform differently. Justification accrues to a policy not when it has satisfied some independent standard, nor when it has been shown to map out with the hypothetical outcomes of ideal deliberative procedures. Rather, a policy can be said to be justified when, through the give-and-take of reasons which constitutes deliberation, citizens come to *share* common reasons for a policy. The process is viewed as dynamic and provisional, since what will count as justification will in part depend upon the sets of values which are actually in play in the deliberative field at any given time. “[T]he practice of deliberation is an ongoing activity of mutual reason-giving, punctuated by collectively binding decisions. It is a process of seeking, not just any reasons but, mutually justifiable reasons, and reaching a mutually binding decision on the basis of those reasons”.³⁰ The view of justification put forward here echoes John Rawls’ view of political justification as fundamentally *relational*. Justification is always justification *to* other citizens with whom we disagree, but with whom we must also come to some decision on political issues of mutual concern.³¹

The conception of justification at work is still *cognitive*, however, in that pluralists do not believe that just *any* agreement over policy will be justification-imparting. Policy proposals should in the deliberative process be supported by *reasons*. Reasons are defined minimally by their

²⁸Gutmann and Thompson, *Democracy and Disagreement*, p. 24.

²⁹Ibid., p. 25.

³⁰Amy Gutmann and Dennis Thompson, “Why Deliberative Democracy is Different”, forthcoming in *Social Philosophy and Policy*.

³¹John Rawls, *A Theory of Justice*, (Cambridge, MA.: Harvard University Press, 1971), p. 581.

generality: in order to count as a *reason*, an argument supporting a policy proposal should “apply to everyone who is similarly situated in the morally relevant respects”.³² In order to satisfy the rational requirement of deliberation, my plea that the half-way house not be placed down the block from my house should be couched in terms which should at least make it plausible to others why some value which applies to them as well should be served by the local authorities not putting it there.

Of course, simply insisting on the logical form of generality is unlikely, in a moderately pluralistic society, to get us very far down the road toward the narrowing of our moral differences. After all, the fundamentalist Christian who argues that abortion should be outlawed because it is like murder surely takes herself to be invoking a reason which applies just as much to me as it does to her! So if what we are after is reasoned *agreement*, then we will have to insist on something more than generality. For Gutmann and Thompson, that something more is cashed out in terms of the requirement of *reciprocity*.

According to Gutmann and Thompson, reciprocity requires of us that we “appeal to reasons that are shared or could come to be shared by our fellow citizens”.³³ Now, getting a clear sense of how exigent a requirement reciprocity is requires that we get a clear handle on the modal verb of this sentence. I will return to this below. But it is clear that for Gutmann and Thompson it rules out arguments which would call on one’s fellow citizens that they “adopt one’s sectarian way of life as a condition of gaining access to the moral understanding that is essential to judging the validity of one’s moral claims”.³⁴

I believe that there are two logically independent requirements at work in Gutmann and Thompson’s argument, and that they call for different understandings of reciprocity. The *deliberative* requirement insists that citizens provide one another with reasons rather than, say, emotional pleas, appeals to naked self-interest, and the like. Reasons are defined as propositions bearing the appropriate level of generality, as well as the logical structure required in order for

³²Gutmann and Thompson, *Democracy and Disagreement*, p. 13.

³³Ibid., p. 14.

inferences and other logical links to be made. The point of this requirement is to make democratic discussion *epistemically respectable*. The *convergence* requirement calls on citizens only to deliberate on the basis of reasons which could in principle be shared. The point of this requirement is to increase the chances of *agreement*. The point I want to make for present purposes is that it seems possible to have deliberation without agreement, and thus to insist upon the deliberative requirement without imposing the convergence requirement. Moreover, once we see that “deliberativeness” and agreement are in principle separable goals for democratic debate, the question is also raised as to whether the simple fact of agreement, taken independently of the quality of the deliberative processes which have given rise to it, carries any independent justificatory weight. And it would seem that it does not: we can see quite clearly once they are disaggregated that the deliberative requirement rather than the convergence requirement is doing all the epistemic work.

Why should we insist on deliberation being governed by reciprocity, rather than the more modest requirement which, as I have suggested above, is at least *compatible* with the project of deliberative democracy, of reason-giving? Two possibilities suggest themselves: the first is that we think we will thereby be increasing the likelihood of *agreement*. The second is that we think we will be arriving at *better* policies. It might be thought that the distinction collapses in the case of pluralists because they adopt a resolutely relational conception of justification. Justification for them is always justification *to*. But we have seen that the simple *fact* of agreement is not for Gutmann and Thompson sufficient to indicate that a policy has been justified even on the relational view of justification. Agreement can after all be the result of coercion, boredom, brainwashing, and any number of other factors which hardly count as justification-imparting. But it seems sufficient, if our concern is to avoid such sham agreements, that we insist upon *reason-giving* rather than *reciprocity*. Imagine that we allowed citizens deliberating with one another to make arguments firmly grounded in their “comprehensive conceptions of the good”. The only requirement placed upon them is that the arguments they put forward count as reasons according to the very general sketch of what reasons are provided above. Now, presumably, the ratio of policies around which

³⁴Ibid., p. 57.

we will be able to form deliberative consensuses to policies which will have to be settled by voting or by some other non-deliberative mechanism will be lower. But we should not exaggerate the difference. On the one hand, Gutmann and Thompson themselves allow that on certain “hot-button” issues where citizens’ values clash in an irreconcilable manner, deliberation will have to yield to such mechanisms. And on the other hand, it is unclear that it will be much more difficult to achieve reasoned agreement around non-hot-button issues under a reason-giving conception of deliberative democracy than under a conception that insists upon reciprocity. After all, holders of different conceptions of the good do not have to have *the same reasons* to endorse, say, a minimum wage policy, or an environmental protection policy, or a health care policy, or whatever. We have a tendency to be hypnotized by issues such as euthanasia, abortion and school prayer, on which religious and secular citizens appear to be diametrically and unbridgeably opposed. But there is no reason why they would need to accept the constraint of reciprocity in order to arrive at reasoned agreements on most other issues, especially if we accept that agreements can be, in Cass Sunstein’s helpful phrase, “incompletely theorized”.³⁵

I conclude that Gutmann and Thompson’s insistence upon reciprocity must be understood as having agreement as its purpose rather than justification, even if we accept the more modest conception of justification that they put forward in their work. Now, this is hardly in and of itself a condemnation of the requirement of reciprocity. I want to derive a much more limited point from the foregoing discussion: justifying reciprocity requires that we look to goals *other than the justificatory one*. Once we do this, we see immediately that a case *can* in fact be mounted for reciprocity. Agreement on issues of common concern is, after all, an attractive goal for any society. But once we accept that we need to look at values *other than justification* in order to discover the norms that ought to govern the institutional design of deliberative democracy, then we must ask ourselves the following question: are there still *other* values, realizable through deliberative democratic institutions, which we might want to affirm, and which might lead us to weakening the

³⁵Cass Sunstein, *Legal Reasoning and Political Conflict*, (Oxford: Oxford University Press, 1996), ch. 2.

requirement of reciprocity. I think that there are. And in the following section, I will give a thumbnail sketch of what at least some of them are.

V

What values do we want to see embodied in democratic institutions? There is some debate, for example, about whether we ought to see democracy's foundational value as being liberty or equality.³⁶ I want to abstain from wading into that particular debate, in large measure because it does not allow us to capture what I take to be the moral distinctiveness of deliberative democracy. Standard liberals, marxists, libertarians can all after all claim that their theories are underpinned by one or the other or both of these values. One or the other might offer a better *conception* of the concept, but that is a different question. What I want is briefly to outline some values which can be seen as distinctive of democracy, and which democratic institutional design ought therefore aim to realize. Needless to say, this account should not be seen as *exclusive*. There may be other values still which bear relevantly on the design of democratic institutions and on the normative constraints thereupon. My aim here is to identify some values which are distinctive of democracy, and which force us to moderate the requirement of reciprocity.

I want to briefly describe three values, autonomy, mutual respect and rationalism, which can be realized through democratic institutions, and show how their realization is dependent upon the attainment of a fourth (fidelity), which requires that we adopt an understanding of reciprocity different from Gutmann and Thompson's.

Think of the two plausible alternatives which are often contrasted with deliberative democracy: liberal constitutionalism and democratic proceduralism. The former, most often associated with the work of Ronald Dworkin³⁷, holds that non-democratic institutions, and most notably Courts, are appropriately empowered to consider issues of principle. The latter, which can actually be seen as the

³⁶See for example Thomas Christiano, *The Rule of the Many*, (Boulder: Westview Press, 1996), chs. 1-2.

³⁷See in particular "The Forum of Principle", in *A Matter of Principle*, (Oxford: Oxford University Press, 1986).

logical corollary of the former, states that the democratic forum's principal function is the aggregation and efficient satisfaction of preferences. What attractive values might it be difficult to achieve in a regime of either sort, or in a regime which combined them?

I would suggest that it would be very difficult for them to contribute to citizens' *autonomy*. According to a very widely shared understanding, autonomy requires that I reflectively endorse the desires and preferences upon which I act. A regime in which it is simply assumed that citizens engaging in the democratic process will not undertake the rational exercise of offering reasons as opposed to merely voicing preferences is a regime that fails to embody an appreciation of the value of autonomy.³⁸ Citizens in such a regime may very well, as a matter of fact, be autonomous, but the link between political institutions and autonomy would be tenuous and contingent. A deliberative democratic regime which required of people that they present reasons rather than mere preferences, desires and interests to one another makes the link between deliberation and autonomy conceptual rather than simply contingent.

Similarly, a regime in which citizens are seen as limited to the expression of mere preferences is a regime which makes difficult the kind of mutual respect which autonomy permits. Even if I disagree with her vigorously, I respect a person who has provided me with reasons for her position much more than I would a person with whom I disagree, and whose views strike me as reflecting unreason, prejudice, frivolity, unreflective self-interest, and the like. A regime which makes it a price of entry to the deliberative arena that one formulate *reasons* for one's policy preferences will be one which, all other things being equal, promotes mutual respect among citizens.

Clearly, moreover, a regime which does not expect citizens or their representatives to formulate reasons will fail to embody *rationalism*. Rationalism is the view that, at least as long as deliberation is going on, a position's strength is assessed by the strength of the arguments which are invoked in its

³⁸ The view of autonomy put forward here of course echoes Kant's (*Grundlegung II*), but it also has resonances with contemporary views such as Frankfurt's and Taylor's. See Charles Taylor, "What is Human Agency?" in his *Philosophical Papers I*, (Cambridge: Cambridge University press, 1985); and Harry Frankfurt, "Freedom of the Will and the Concept of a Person", in *The Importance of What We Care About*, (Cambridge: Cambridge University Press, 1988). It is essential that the conception of autonomy in play here not be conflated with the substantive conception, according to which autonomy denotes *a way of life*. Autonomy as I am referring to it is a procedural notion that can encompass a plurality of (on the substantive conception) non-autonomous ways of life.

favour, rather than by the numbers of citizens who subscribe to it. Rationalism is thus a bulwark against the danger often identified with other models of democracy, namely, that of the tyranny of the majority.

Autonomy, mutual respect and rationalism thus seem values which are difficult to realize in the main alternative sets of institutional arrangements. It is in this sense that I view them as distinctive of democracy. (I trust that I can safely assume that the reader will not deny them their status as attractive values worthy of human pursuit). The further claim I now want to make is that deliberative democracy's emphasis on the exchange of reasons can only promote autonomy, respect, and rationalism if it is accompanied by a fourth value which might be called *fidelity*. Fidelity as I define it requires that citizens and their representatives be limited in their deliberations with others to reasons which they are prepared actually to affirm, independently of the fact that they happen to support the policy proposal they are making.³⁹ What fidelity will not countenance is citizens reaching for reasons which they would not independently affirm, *simply* because, in so doing, they are able better to make a case in the eyes of their fellow citizens for the policy they prefer. Why do autonomy, mutual respect and rationalism require that fidelity be displayed? Autonomy requires it as it is in a sense conceptually opposed to both self- and other-deception. In formulating policies or "maxims" for myself, I am in effect embarked upon an enterprise of self-constitution wherein I fashion a self out of the raw materials of desires and "inclinations". If the reasons I put forward are disconnected from these desires and inclinations, then they are not operative in this procedure the operation of which just is what autonomy on this account consists in. Autonomy requires that I be able reflectively to endorse the maxim which *actually does* motivate my action, and not simply that I be able to formulate *some* reflectively endorsable reason which I *could* invoke in defense of my action, regardless of whether or not it has actually moved me to action. Similarly for respect: my respect for you is illusory if it is grounded in something other than a recognition of the values and reasons that you *actually* uphold and affirm in your actions.

³⁹There are obvious connections between what I call "fidelity" and what Gerald Postema terms "sincerity", which requires of participants in deliberation that they "present proposals, evidence, interpretations and arguments which they fully endorse". Gerald Postema, "Public Practical Reason: Political Practice", in *Nomos XXXVII : Theory and Practice* (New York: The NYU Press, 1995), p. 358.

Rationalism also requires that fidelity be in place because the appreciation and criticism of both our own and of others' positions on a given issue gets short-circuited if we or our fellow citizens only present, as it were, the tip of the iceberg of our actual position. That is, if we only put forward our policy-proposal supported by whatever justification for it will suit our argumentative purposes, rather than by the arguments which we would actually be prepared to recognize on their independent merits, then we are not truly engaging in the process of deliberation as deliberative democrats understand it. For what is doing the work in shaping our behaviour in deliberative fora is simply that we *want* such and such a policy to be implemented. We are, despite appearances, behaving strategically, rather than in the true deliberative spirit of exchange of reasons.

This is of course not to say that citizens *must* always formulate their arguments in terms of their comprehensive conceptions. People's views in policy debates are often shaped by a multiplicity of considerations. There can be no objection in such cases to their formulating arguments in terms of those reasons which in their view are most likely to appeal to their fellow citizens. Fidelity does not *preclude* that the quest for agreement be *among* the considerations which inform the way in which citizens deliberate with one another. It merely requires that this quest not be the *only* consideration leading individuals to adopt shared reasons.

VI

Once we accept that a full-bloodedly *moral* defense of democratic institutions might be required, then we will recognize that there are a plurality of values which bear relevantly on the task of designing democratic institutions, and that they will sometimes pull in different directions, such that satisfying one will require that the normative constraint required in order to satisfy another be tempered. Now clearly, agreement is an important goal for societies to pursue, and to the extent that reciprocity is instrumentally required in order to promote agreement, then it should be among the normative constraints in question. However, if I have made plausible that autonomy, mutual respect and rationalism are also attractive values which deliberative democratic institutions seem well situated to promote, and if fidelity as I have

defined it is a condition of their realization, then it follows that fidelity should somehow be embodied in our democratic institutions as well.

Now my claim is that reciprocity and fidelity stand in some tension to one another. If reciprocity requires that I abstain in deliberation from invoking those reasons which are actually at the basis of my espousal of a policy proposal that stem from my conception of the good, because only then will I be citing a reason which my fellow citizens “can” possibly share, then it will make fidelity well-nigh impossible to attain. Gutmann and Thompson seem to think that the resources of “reciprocal” reasons is sufficiently vast to allow most any reputable position to be defended without needing to violate the constraint of reciprocity. Now, this may very well be true, and there may be situations in which citizens whose positions are fundamentally motivated by reasons drawn from their comprehensive conceptions will be able to appeal to “reciprocal” reasons, perhaps because the values of their comprehensive conceptions substantially overlap with them. (Think of religiously motivated arguments appealing to “human dignity”). But there will be situations in which reciprocity as construed according to the fairly exigent standard I have just alluded to will require that fidelity be sacrificed. And where this happens, there is in my value loss of value that need not occur.

Why do deliberative democrats so quickly assume that reasons drawn from comprehensive conceptions should be excluded from the deliberative process? I believe that deliberative democrats insist upon such a strenuous conception of reciprocity because of an only partially justified suspicion of the kind of argument that is forthcoming from adherents of comprehensive conceptions, and in particular of religious views of the human good. They believe, or so I would argue, that rational and religious argument are radically *discontinuous*, in that whereas the former appeals solely to the force of the better argument, the latter is based entirely on appeals to authority. In fact, I think the situation is much more complex. On the one hand, moral argument can hardly proceed without some values being taken as read. On the other, the great religious traditions contain a wealth of reasoning about moral and political questions which is only very indirectly conceptually dependent upon the authoritative word of God or scripture. The conceptual resources involved might not always be the same as those which

defenders of liberal-democratic political moralities recommend. But it is a far cry from this fact to the view that they are *ipso facto* irrational and undeserving of a public hearing.

It is possible that I am exaggerating the extent of my disagreement with Gutmann and Thompson. Their claim is that reciprocity requires that the reasons put forward in deliberation over public policy could be shared by fellow citizens. But there is could, and then again there is could. Read strenuously, the requirement of reciprocity requires that your reasons be shareable by me, *given everything else that I presently believe and value*. On this reading, the reasons which a religious faith provides its adherents with are unacceptable, because unshareable by people of other faiths, or of no faith. Read in a manner which holds fixed none of what individuals actually believe, the requirement is extremely lax. After all, I can imagine myself undergoing some fairly thoroughgoing spiritual transformation which would bring me round to the reasons which my religious fellow citizens would impress upon me. Any reason would thus be acceptable, since given a transformation sufficiently radical, I could imagine myself coming to adhere to a number of conceptions of the good to which I actually think it rather unlikely that I will convert.

I suggest that there is a reading of the reciprocity requirement (which, after all, I do not for a minute want to jettison) which avoids these two extremes, and which allows us to combine it with the requirement of fidelity. I alluded to it above: it is that citizens and their representatives put forward *reasons*, that is propositions that have the requisite general form, that obey minimal logical standards, from which inferences can be drawn, etc.), and which therefore permit critical scrutiny. Deliberation might then *look* quite different from what it looks like on the pluralist model. Citizens would try to draw out implications from each other's proffered reasons in order fully flesh out what one is committed to in upholding a given reason. Or it might take the form of conceptual bridge-building between sets of principles and values in order to discover hitherto unsuspected commonalities. Providing a full picture of the reciprocity constraint thus construed, and of the picture of deliberation which flows from it is the subject of another paper. I hope to have said just enough to tantalize the reader into thinking that the kind of deliberation that would occur would still be one we would have reason as democratic citizens to

want to take part in, both because of its intrinsic merits, and because it permits reconciliation with the equally attractive value of fidelity.

Conclusion

Deliberative democrats have tended to view democratic institutions as primarily justified by their giving rise, under appropriate normative constraints, to better policies than conceivable policy-making arrangements. I have argued that this justificatory claim is over-stated, regardless of the particular formulation which it has received from different theorists. The proper defense of deliberative democracy will, I have argued, be irreducibly moral. I have also argued that the normative constraints which deliberative democrats view as essential to the attainment of the justificatory goal must therefore be evaluated in the light of moral values rather than epistemology. We must ask ourselves what set of normative constraints best allows us to embody the mix of values we want our democratic institutions to realize. I have illustrated the difference which an ethical approach to the justification of democracy might make by focussing on the deliberative constraint of reciprocity. Reciprocity might help us secure *agreement* over major policy issues, but it might also under certain circumstances make it more difficult for democratic practices to contribute to the realization of certain other values to which democracy seems naturally attuned. These include autonomy, mutual respect and rationalism, and the value which, I have argued, underpins them, fidelity.

Focussing on the moral values which deliberative democratic institutions can embody also helps us to see that the function of democracy is not simply to *justify* policies by pointing to the epistemic virtues of the procedure which gave rise to them, but also to *legitimate* them in the eyes of reasonable citizens who might not always be in agreement with the decision of the majority. Why might a democratic politics which attempts to achieve a balance between reciprocity and fidelity have more of a chance of reconciling the reasonable members of defeated minorities than one that emphasized reciprocity to the *exclusion* of fidelity? Why would reasonable citizens belonging to a minority have reason to go along with the decision under the kind of democratic dispensation I have described?

When deliberative democracy's chief normative underpinning is justificatory, the only resource its institutions possess to reconcile reasonable dissenting minorities is to point to the fact that deliberative democratic procedures *usually* produce good results, either because it reliably (but imperfectly) tracks an independent standard, or because it was generated by a procedure that embodies normative constraints which, when they are *ideally* in place, can plausibly be taken to *constitute* moral truth. We have seen that the dissenter has little reason to believe that approximately ideal deliberative institutions produce approximate truth; we have also seen that the member of the minority who has engaged in good-faith deliberation with his fellow citizens has no less reason to believe that the conclusion of his deliberation tracks the standard than does the member of the majority. The defender of the pluralist view can do only slightly better: she can claim that the decision to which the member of the defeated minority objects has been arrived at as a result of the operation of a procedure governed by a constraint, that of reciprocity, designed to achieve principled agreement in contexts of deep moral disagreement. This will come as cold comfort to the member of the deliberative minority that has ended up being voted down. She may still very well feel that she is right, and feel moreover that, in being forced to operate within the confines of a very stringent constraint of reciprocity, she has not even had the opportunity to voice the real reasons behind her dissent, to make clear to her fellow citizens the convictions that truly motivate her.

We do better by focussing not solely on the results of deliberation, and on the types of deliberative institutions instrumentally best geared to reaching good results, but also on the *procedure* itself, and on the values that it can embody, and can be seen to embody, even by those who, in a given case, end up on the losing side of a democratic decision. If they feel that they have been recognized within the deliberative process, that the reasons which actually motivate their positions have been allowed into the deliberative forum, and that they have been duly considered by their fellow citizens, then this gives them *a* principled reason to go along whole-heartedly even with a decision with which they disagree. Their reasonable allegiance will be trained on the values embodied in the procedure which has given rise to the result, rather than on the result alone. This, I would argue, is a result worth aiming

for. Its attainment requires that we design institutions governed by constraints which are not geared solely⁴⁰ to the attainment of what I have been calling the justificatory goal.

Daniel Weinstock
Center for Human Values
Princeton University

⁴⁰Justification will of course still have a place in the kind of defense of deliberation I envisage. First, justification functions as a *threshold* requirement. The claim which we must be able to make on behalf of deliberative democracy is *not* that its moral virtues make it the best way of deciding upon policy, *regardless* of its epistemic force. Rather, it is that, like other conceivable decision-making procedures, deliberative democracy satisfies a standard of justificatory adequacy. Its superiority with respect to other procedures is taken to reside in the moral values that it embodies. Second, in order for deliberation successfully to realize these values, participants in it must take themselves to be *aiming at* the discovery of justified policies. I thank Amy Gutmann for having pressed me on this point.