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DELIBERATIVE DEMOCRATIC THEORY

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■ **Abstract** Deliberative democratic theory has moved beyond the "theoretical statement" stage and into the "working theory" stage. Although this essay revisits some of the main theoretical debates, this is done via a survey and evaluation of the state of deliberative democratic theory as it is being *applied* in a number of research areas and as it intersects with related normative debates. Five research areas are covered: public law, international relations, policy studies, empirical research, and identity politics.

INTRODUCTION

It is now commonplace to talk about the deliberative turn in democratic theory (Dryzek 2000). Indeed, this turn is so striking that it has spawned a small industry of review articles and edited volumes attempting to sum up its meaning and content (Bohman & Rehg 1997, Bohman 1998a, Elster1998a, Macedo 1999, Freeman 2000). For the most part, these articles and books focus on the central theoretical principles underlying deliberative democratic theory and compare and contrast the major theoretical statements defining this view. This article will take a slightly different approach. Rather than go over already well-covered ground, I look beyond the question of what deliberative democratic theory is, to the question of what deliberative democratic theory is doing these days. Deliberative democratic theory has moved beyond the "theoretical statement" stage and into the "working theory" stage. Although I revisit some of the main theoretical debates, this is done via a survey and evaluation of the state of deliberative democratic theory as it is being applied in a number of research areas and as it intersects with related normative debates. I have chosen five research areas: public law, international relations, policy studies, empirical research, and identity politics.

This list is not exhaustive, nor are the categories mutually exclusive. Furthermore, I want to stress that the number of scholars working with a model of deliberative democracy or writing about this model is enormous. Any one of these subfields could furnish enough material for a survey article on its own. I cannot mention, let alone discuss, all the work being done in these fields and I am sure to leave out some potentially significant contributions.

WHO IS A DELIBERATIVE DEMOCRATIC THEORIST?

In 1999, Rawls joined the deliberative turn and explained that he was "concerned with a well-ordered constitutional democracy . . . understood also as a deliberative democracy" (1999, p. 139). A recent review article about deliberative democracy devoted a good half of its analysis to Rawls (Freeman 2000). Although Rawls endorses a deliberative democracy and his conception of public reason is central to that understanding of democracy, for the purposes of this review he is not considered a theorist of deliberative democracy. A great many other theorists who also endorse deliberation are not considered deliberative democracy theorists in this review. Let me explain. The problem is that nearly everybody these days endorses deliberation in some form or other (it would be hard not to). And more and more people understand constitutional democracy as entailing deliberation in some fundamental way (Tully 2002). The language and concepts of deliberative democratic theory have filtered into many discourses and debates. But not all appeals to or endorsements of deliberation can be considered deliberative democratic theory. For the purposes of this review, democratic theory is a more restrictive domain than appeals to deliberation. Rawls does not qualify because, although he discusses some aspects of democracy, his is not a democratic theory per se (for an alternative view see Laden 2000). This is a somewhat arbitrary distinction to be sure, but appeal to deliberation is now so widespread that without drawing some distinction I would have to survey liberal theory rather than just deliberative theory.

Although I think most political scientists have a fair idea of what is meant by deliberative democratic theory, I include a quick list of its key components as a starting point. Deliberative democratic theory is a normative theory that suggests ways in which we can enhance democracy and criticize institutions that do not live up to the normative standard. In particular, it claims to be a more just and indeed democratic way of dealing with pluralism than aggregative or realist models of democracy. Thus, it begins with a turning away from liberal individualist or economic understandings of democracy and toward a view anchored in conceptions of accountability and discussion. Talk-centric democratic theory replaces voting-centric democratic theory. Voting-centric views see democracy as the arena in which fixed preferences and interests compete via fair mechanisms of aggregation. In contrast, deliberative democracy focuses on the communicative processes of opinion and will-formation that precede voting. Accountability replaces consent as the conceptual core of legitimacy. A legitimate political order is one that could be *justified* to all those living under its laws. Thus, accountability is primarily understood in terms of "giving an account" of something, that is, publicly articulating, explaining, and most importantly justifying public policy. Consent (and, of course, voting) does not disappear. Rather, it is given a more complex and richer interpretation in the deliberative model than in the aggregative model. Although theorists of deliberative democracy vary as to how critical they are of existing representative institutions, deliberative democracy is not usually thought of as an alternative to representative democracy. It is rather an expansion of representative democracy.

Definitions of deliberation and how to distinguish it from other forms of talk—for example, bargaining or rhetoric—vary a great deal among theorists (compare Elster 1997 and Bohman 1996 on bargaining; see Remer 1999, 2000 on rhetoric). Furthermore, even when a strong distinction is made between, say, bargaining and deliberation, this rarely means that bargaining is illegitimate or undemocratic. It means that citizens need to deliberate about and decide when and where bargaining is a fair and appropriate method of dispute resolution (Habermas 1996). Generally speaking, we can say that deliberation is debate and discussion aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants. Although consensus need not be the ultimate aim of deliberation, and participants are expected to pursue their interests, an overarching interest in the legitimacy of outcomes (understood as justification to all affected) ideally characterizes deliberation.

Theorists of deliberative democracy are interested in such questions as: How does or might deliberation shape preferences, moderate self-interest, empower the marginalized, mediate difference, further integration and solidarity, enhance recognition, produce reasonable opinion and policy, and possibly lead to consensus? Deliberative democratic theory critically investigates the quality, substance, and rationality of the arguments and reasons brought to defend policy and law. It studies and evaluates the institutions, forums, venues, and public spaces available for deliberative justification and accountability. It looks at the social, economic, political, and historic conditions necessary for healthy deliberation as well as the attitudes, behaviors, and beliefs required of participants. Finally, deliberative democratic theory contains a deep reading (some would say rereading) of foundational issues regarding rights, popular sovereignty, and constitutionalism. This last is most visible when deliberative democratic theory meets law and constitutionalism.

PUBLIC LAW

With the publication of *Between Facts and Norms*, subtitled *Contributions to a Discourse Theory of Law and Democracy*, Habermas announced that what began in language philosophy had ended in legal theory (1996). Even before this, of course, legal scholarship had taken note of the deliberative turn or perhaps taken its own deliberative turn especially in the area of constitutional theory (Michelman 1988; Ackerman 1991, 1998; Sunstein 1993; Preuss 1995; Tully 1995; Nino 1996). Is there a common theme to deliberative legal theory? At the most abstract level, there is a shared theme of reconciling democracy and rights. Deliberative democratic theorists for the most part steer a middle course between rights foundationalism—which sees the will of the People, usually understood as majority will, in direct opposition to individual rights and so in need of clear and inviolable limits (Dworkin 1996)—and strong democracy and/or communitarian theory, which sees individual rights, or at least a culture obsessed with individual rights, as a pernicious

impediment to the common good (Sandel 1996). Deliberative democratic theory can be described as a rights-friendly theory of robust democracy, with some theorists leaning toward the rights side (Gutmann & Thompson 1996, 2002) while others lean more toward the democracy side (Dryzek 2000, Tully 2002).[1]

Habermas has developed this middle ground into a deep theory of legitimacy. In answer to the liberal objection that deliberative democracy privileges the People's will over rights, and to the democrat's objection that it privileges rights over the People's will, Habermas defends the "co-originality" (*Gleichursprünglichkeit*) of rights and popular sovereignty (1996, 2001b). There is no People's will to speak of without rights and there are no rights without some theory of popular sovereignty to create an original justification. The relationship between constitutional rights and popular sovereignty mirrors the relationship between law and democracy. The rule of law is inherent in democracy and democracy cannot function without the rule of law (Habermas 2001b). We are legal persons protected by rights only to the extent that we are authors of those laws. We are authors only to the extent that we are persons under the law.

Habermas's legal theory has generated much debate and criticism (Rosenfeld & Arato 1998, Chambers 2002, Honnig 2002). A common question running through the criticisms (Michelman 1996, Scheuerman 1999) has been: Where exactly is robust democracy in all this? One problem is that Habermas wants to do two things that are not always compatible. He wants to offer a grand legal theory that redescribes and reinterprets the modern legal tradition in deliberative terms. But at the same time he wants to offer a normative theory that has some critical bite—that can tell us what is wrong with the modern legal tradition or at least what is wrong with the way it is working today. The prescriptive project is often overshadowed by the descriptive one. Thus, the picture that emerges sometimes looks not much different from what we appear to have right now, and Habermas is very vague about the best or most efficacious institutional arrangements for deliberative empowerment.

Another problem is that Habermas is dealing with law at the highest level of abstraction. In contrast, questions of institutional design are best addressed within a particular legal and constitutional tradition. Habermas is much better when he talks about particular constitutions, the German or American for example, or when he engages in debate with legal scholars writing within a given tradition. The work of Ackerman (1991, 1998) demonstrates the effectiveness of this focus. He too is involved in a grand redescription that is supposed to lead to a significant set of prescriptions, but he begins deep within the American constitutional tradition. The redescription of American constitutional history is informed by a theory of constitutional dualism. Constitutional politics has two gears. Most of the time,

[1]Rather than a continuum, both Dryzek (2000) and Tully (2002) see a clear divide in deliberative theory along these lines. Dryzek distinguishes between liberal constitutionalist and discursive conceptions of deliberative democracy, whereas Tully contrasts a constitutional theory approach to an activist approach. I discuss this divide below.

the Constitution is a relatively stable set of principles that judges apply but do not radically alter. These principles form the backdrop to "normal politics." In this gear, citizens have little to do with the Constitution and court decisions stay within a given interpretive paradigm. But every once in a while, constitutional politics changes gears. During these "constitutional moments," citizens engage in higher law making. These are often times of crisis or great change when nations are galvanized by issues and debate spreads and intensifies. In these moments, elites call on and listen to the People. A collective reassessment of values and principles results in a constitutional paradigm shift. These moments represent a popular constitutional amendment process outside the formal institutional channels of amendment. Ackerman identifies three such moments (1998, p. 11): "The Founding, Reconstruction, and the New Deal were all acts of constituent authority."

An interesting aspect of Ackerman's reading of American history, from the point of view of deliberative democracy, is the situating of constituent authority and power of the People in informal but widespread deliberation. Although throughout all these periods there were national elections, the epicenter of popular sovereignty cannot be identified with one vote. Indeed there is no epicenter. This complements and furthers a Habermasian theme that runs through much deliberative democratic theory. As I noted at the outset, deliberative democratic theory moves the heart of democracy away from the vote and into the public sphere and practices of accountability and justification. Of course democratic polities still vote, and deliberative democracy is not an alternative to representative democracy. This results in a two-tiered view of democratic politics: One tier contains formal institutions of representation (sometimes called strong publics), and the second tier contains informal citizen deliberation (weak publics) (Fraser 1993, Habermas 1998). Habermas has been much criticized for being vague about how these two relate to each other. In particular, how can the informal opinion and will formation that goes on in civil society and the public sphere have the power to influence the formal institutions other than by simply mobilizing voting majorities? Historically focused studies like Ackerman's can show us how the People exercise constituent power that is not completely captured in the power of the vote.

This theme can also be seen in Michelman's (1999) recent study of Supreme Court Justice William Brennan. Here again we see a discussion of the intersection between rights and democracy being understood in terms other than the clash between majority will and individual rights. Brennan is depicted as a "responsive" judge who listened and was accountable to the People without being swayed by the majority. Habermas, Ackerman, and Michelman, along with others, are trying to work out a relationship between law and democracy that goes beyond majoritarianism. Another way to put this is that deliberative legal theory is trying to articulate a relationship between the public and legislative authority that goes beyond the voting booth to investigate how law might be an expression of popular will via communicative power. This translates into a constitutional theory concerned with the general conditions of communicative power. Deliberative legal theory investigates what ought to be in a constitution if we are to promote a deliberative order

(Nino 1996), how we ought to interpret a constitution to maintain and enhance deliberation (Sunstein 2001), and finally how we ought to be making constitutions if we are to establish a deliberative legitimacy (Elster 1998b, Chambers 1998).

A related trend in legal theory is worth mentioning. Recently, theorists have begun exploring a reflexive-law model of regulation (Arato 1998; J.L. Cohen 1999, 2002; Scheuerman 2001). Borrowing from systems theory (Teubner 1993), such scholars as Cohen develop "a new understanding of legal regulation and of state/society relations, allowing one to see how state regulation can foster autonomy and recognize plurality while still satisfying the demands of justice" (J.L. Cohen 2002, p. 4). Whereas the foundational theory we reviewed above steers a middle course between rights and democracy, regulatory law raises a slightly different set of antinomies. Here the middle course sought is between freedom and equality, often translated into decentered versus state-centered regulation. Reflexive law is an alternative to, on the one hand, liberal models of regulation and, on the other, welfare models. Liberal models are concerned with maintaining freedom and minimalizing interference. The result is that justice sometimes suffers. The welfare model, in a drive to establish justice and equality, is often intrusive and can lead to unwanted juridification, hence a loss of autonomy. Reflexive law seeks "regulated autonomy" (J.L. Cohen 2002). With the two mainstream paradigms at work, we see "the tendency to over- or underregulate, and to turn equality (secured by regulation) and liberty (secured by nonregulation?) into a zero sum-game" (J.L. Cohen 2002, p. 16). Reflexive law involves the public regulation of self-regulation to promote local problem solving. Rather than the state directly fixing a problem, the state sets up and guarantees fair procedures through which citizens fix a problem. Some collective bargaining procedures are forms of reflexive law. Not as decentered as the systems theory version, the deliberative democratic version of reflexive law stresses the *public*-regulation aspect of local self-regulation as much as the local aspect of it. Universal principles of reciprocity as well as substantive ends of justice should inform the design of self-regulation. In general, we need to promote procedures that empower citizens while safeguarding their autonomy.

Cohen applies this model to questions of intimacy and sexual harassment, where privacy versus justice is already a central concern. In a very different domain, Scheuerman (2001) applies it to questions of transnational economic legal co-ordination. He suggests that a reflexive-law paradigm can help us think about a global legal order that stands between freedom and equality. "This basic approach arguably combines precisely the right mix of realism and radicalism called for by globalization: a normatively acceptable model of global economic regulation must aggressively confront the glaring inequalities of the emerging global economy, but it will need to do so while recognizing the irrepressibility of some institutional restraints on the quest to achieve greater equality" (Scheuerman 2001, pp. 87–88). Although one might quibble with the articulation of the freedom side of the equation, Scheuerman nevertheless seeks procedures for regulation that would maintain the autonomy of economic regulatory agencies while subjecting them to procedural guidelines for their internal decisions. This leads directly to our next topic.

INTERNATIONAL RELATIONS

Paralleling the deliberative turn in democratic theory has been an explosion in debate and literature on postnational sovereignty, multilevel governance, cosmopolitanism, and the new global order. A common theme within the transnational discourse has been the question of democratic deficit. As economic globalization intensifies and market zones such as the European Union (EU) expand, we are reminded of nineteenth-century enthusiasm for free market forces and the early twentieth-century attempt to control them via the welfare state. Does globalization represent the escape of market forces from the political controls of the welfare state? Do we need to re-embed those forces within a coherent social and political vision of the good society? Does the national political arena have enough reach to accomplish a re-embedding? Just as deliberative democratic theory steers a middle course between rights foundationalism and communitarian democracy, it also steers a middle course between free markets and statism. While acknowledging the benefits of healthy markets, deliberative democratic theorists want to embed them in politics, and particularly in democratic politics. Political units such as the EU and institutions such as the World Trade Organization raise the question of political and democratic accountability. These are just some of the concerns that have sent deliberative democratic theorists beyond the nation-state to investigate postnational politics.

The two focal points of the debate regarding democratic accountability are international governance and the EU.[2] On the question of cosmopolitanism, the range of views within deliberative democratic theory is quite broad,[3] running from those who argue that global issues and cosmopolitan perspectives must inform national politics but sovereignty needs to stay within the nation-state (Thompson 1999) to those who argue for a full-fledged new order in which we develop democratically accountable international governmental organizations (Held 1995). Between these two views are theorists who envision governance without government and accountability without formal representation via such mechanism as nongovernmental organizations (Dryzek 2000) and what could be called the global public sphere (Bohman 1998b, 1999).

This debate is still in its early stages and its impact on the wider field of international relations is not yet clear, although there does appear to be a growing discussion of transnational governance in general, even if it is not informed by deliberative democratic theory in particular. More interesting is the way in which this debate is reflecting back onto deliberative democratic theory by asking theorists to identify clearly the ties that bind citizens into a democratic enterprise. For

[2]The literature on transnational democracy, especially as it relates to the EU and EU constitutionalism, is vast. In this section, I highlight only debates within deliberative democratic theory and make no attempt to address the wider discussion.

[3]Stock A. *Deliberative democracy and international governance*. PhD manuscript. Dep. Polit. Sci., Univ. Colorado, Boulder, CO.

example, Habermas (2001a, p. 107) has had to admit that "any political community that wants to understand itself as a democracy must at least distinguish between members and non-members . . . . Even if such a community is grounded in the universalist principles of a democratic constitutional state, it still forms a collective identity, in the sense that it interprets and realizes these principles in light of its own history and in the context of its own particular form of life. This ethical-political self-understanding of citizens of a particular democratic life is missing in the inclusive community of world citizens." The issues that Habermas raises here are the focal point of the most interesting debate. One also sees innovative suggestions regarding institutional design of international organizations (Held 1995, Archibugi 2000). But the more difficult questions have to do with how much and what sort of commonality is necessary for democracy. The answers have implications not only for how far beyond the nation-state we can imagine democracy moving, but also for how far pluralism can expand within the nation-state before we see cracks in our democratic walls (Benhabib 2002). Obviously, Habermas does not mean collective identity on an ethnic model, but he does mean it on some model of "civic solidarity," and this might be problematic as our populations become more diverse and are in continual flux.

The relationship between collective identity and workable deliberative democracy is also raised in the EU debate, especially as the EU is on the brink of a major enlargement that will bring in countries with different civic traditions. The focus has been on the question of a constitution for the EU (Weiler 1999, Eriksen & Fossum 2000, Habermas 2001c). Although there is a considerable amount of talk about European integration through deliberation, it is sometimes vague and occasionally suffers from an institutional deficit. There are very few concrete suggestions for citizen venues that could, for example, counterbalance the technocratic bent of the EU. The constitutional debate, although it too vaguely nods toward institutionalized deliberation, is really directed at a deeper level.

Deliberative democratic theory, for the most part, weighs in on the side of a European constitution. The reasons for this include the maintenance and recognition of universal principles of reciprocity as well as the placement of an overarching political framework above the economic framework. But one reason that certainly seems implicit in Habermas's endorsement of the constitution is that constitutions can bind citizens into a common enterprise. Thus, deliberative democracy is seen by some as needing a relatively coherent and bounded *demos* that shares a collective identity in order to function. The questions, then, as I have said, are: How much commonality? And what kind? Habermas (2001a) and Benhabib (2002) endorse a form of constitutional patriotism that requires commonality mediated through constitutional principles. But even this might be too demanding if it can only be generated through a common history.

Some deliberative democracy theorists take issue with this constitution-centered understanding of deliberative democracy. The constitutional model highlights the possibility of a People collectively shaping and steering society according to democratically worked-out principles or values—indeed, for Habermas, a shared life

form. From this point of view, we need to make Europe more like a nation-state in order for democracy to work, and conversely [for Habermas (2001a) and Thompson (1999)], democracy is not really appropriate for the international sphere because there can be no People with shared aspirations. In contrast, such theorists as Dryzek (2000) and Bohman (1997, 1998b) (see also Shaw 1999, Tully 2001) are developing more genuinely postnational models of democracy that do not rely on traditional "ties that bind," a *demos*, or a collective identity. Democracy is centered not in a collective will but rather in making institutions, elites, and governments accountable to a plurality of voices often joined together by issues, interests, or causes. "The politics of transnational civil society is largely about questioning, criticizing and publicizing" (Dryzek 2000, p. 131). We might add that it is not about pursuing a "shared life form." This model eschews traditional notions of sovereignty that need a clear and constituted authority to stop the buck and offers a decentered democracy in which a plurality of grass-roots forces engage in global campaigns of discursive harrying. Decentered democracy locates democratic voice in a largely uncoordinated civil society and public sphere (Warren 2002). To be sure, constitutionally oriented theorists also place much stock in civil society, but in the constitutional model, the opinions formed in the crisscrossing debates of civil society and the public sphere are ultimately funneled into representative institution that coordinate our shared life. A fully decentered view of democracy focuses on the way representative institutions answer to the multiple and uncoordinated voices of civil society. National-level civil societies are the most developed and so are the richest ground for decentered democracy, but the international arena is an ideal context to illustrate the fundamental components of decentered democracy precisely because there is no center in the form of a state.

PUBLIC POLICY

Public policy research was one of the first subfields in political science to embrace a deliberative model. The late 1980s and early 1990s saw a pronounced shift away from an expert-centered policy science and toward the inclusion of citizens in policy debates (Fischer & Forester 1993, Majone 1990). Generally speaking, deliberative policy studies can be divided into two not entirely distinct areas. The first involves a procedural approach and concentrates on the design of venues for choosing and developing policy. The second area involves using a deliberative model to generate substantive public policy outcomes. We could, of course, divide up public policy by subject matter. An attempt to cover public policy by subject would lead us into a huge literature as it would have to include environmental policy, bio- and medical ethics, educational policy, energy and space policy, and media studies, to name only a few of the areas most noticeably influenced by deliberative models.

Procedurally focused public policy runs the gamut from discussions of small neighborhood initiatives to grand nation-encompassing conversations. Sometimes proposals are very specific, for example, instituting a "National Deliberation Day"

(Ackerman & Fishkin 2002) or suggesting that the funding and establishment of citizen panels be a top priority in electoral reform (Gastil 2000 is particularly helpful in giving an overview of deliberative initiatives around the country). Other times, the approach is more general, investigating general models of policy analysis and dispute resolution (Gutmann 1999, Fischer 1993). It is in the realm of policy initiative and analysis that deliberative democratic theory is at its most concrete. One often hears the complaint that deliberative democratic theory is very abstract, lacking a clear institutional core or agenda. But even the briefest foray into policy initiative literature indicates that deliberative initiatives are springing up all over the country, in all sorts of policy areas. Citizen consultation, for example, in the form of open meetings has always been around. But in conjunction with a growing theoretical literature on deliberation and deliberative democracy, these sorts of initiatives are getting more sophisticated, innovative, and sensitive to such issues as including marginalized groups or canvassing silent sectors (Kahane 2003). Citizen conferences, citizen panels, and citizen juries are proliferating, sponsored by local, state, and national governments as well as a growing number of private foundations (e.g., Kettering and Carnegie Mellon) dedicated to citizen deliberation (Gastil 2000, Gastil & Gina 1995). These initiatives are furnishing good empirical data on how deliberation might work in various settings as well as, of course, bringing citizens into the process in a meaningful way. Such phenomena as the Oregon initiative on publicly funded health care (Daniels 1991, Gutmann 1999), the Kettering Foundation's National Issues Forums on education (Button & Mattson 1999, O'Connell & McKenzie 1995), and Fishkin's experiments in Deliberative Opinion Polls (Fishkin 1995, Gastil 1996) are often cited as flagship examples of deliberation in action. But these three are just the tip of the iceberg.

Although I have been talking about a procedural approach to public policy, it is important to remember that procedures are designed to enhance and facilitate *deliberation* rather than a fair decision rule.[4] Decisions need to be taken and fair decision rules need to be in place, but a deliberative approach focuses on qualitative aspects of the conversation that precedes decisions rather than on a mathematical decision rule. In designing and proposing deliberative forums, scholars generally have four goals in mind: to augment legitimacy through accountability and participation; to encourage a public-spirited perspective on policy issues through cooperation; to promote mutual respect between parties through inclusion and civility; and to enhance the quality of decisions (and opinions) through informed and substantive debate (Gutmann & Thompson 1997).

Deliberative democracy should not be confused with direct democracy. For example, it might be suggested that citizen participation in local policy issues should not be encouraged because it will be dominated by parochial attitudes exemplified by NIMBY ("not in my back yard"). Deliberative policy analysts respond

[4]Gutmann & Thompson (1997) associate the term procedural with a decision-rule emphasis and so reject it as a way of describing deliberation. I do not disagree; I simply use "procedural" in a somewhat broader way.

that this criticism of participation assumes citizens take part only at the end point (Fischer 1993). A deliberative model involves citizens at every stage of policy formation, including research and discovery stages. Thus, a deliberative model offers a way to overcome NIMBY by getting citizens to cooperatively solve policy dilemmas rather than simply vote on policy options. Furthermore, within the public process of deliberation, many NIMBY-type arguments are difficult to justify.

Although the actual public policy recommendations that come out of deliberative democratic theory are predominantly procedural ones, procedure blurs into substance at a certain point. But we need to be careful about the status of substantive proposals vis-à-vis deliberative theory. For example, Habermas recently contributed to bioethics by coming out against human cloning on the grounds that it would undermine individual autonomy (Habermas 2001a). He argues that in replacing blind chance by human intention as the determining factor in an individual's genetic makeup, we necessarily shift the basis of moral self-understanding. It becomes more difficult to see oneself as free and equal. This is especially true when we think of ourselves in relation to the "original" who furnished the genetic material. Without evaluating the merits of Habermas's argument, I want to consider its connections with deliberative democracy. First, Habermas could be endorsing a no-human-cloning policy because the arguments he outlines are the ones that are the most likely to be agreed to in a deliberation of all those affected. Second, he could be saying that autonomy is a condition of healthy citizenship and so the no-human-cloning principle is a precondition of democracy in the same way that the recognition of certain human rights is a precondition of democracy. Or finally, he could simply be making a contribution as a citizen to an ongoing debate that we, as democratic citizens, must work out over the course of the next years.

If he thinks his position on cloning is reasonable, then he thinks that he could (ideally) persuade others of its cogency, that is, it could be the object of general agreement. But he does not think, nor do most theorists of deliberative democracy think, that a theory of deliberation is a tool for arriving at determinate solutions to substantive policy disputes. In this respect, deliberative democratic theory is not like game theory. Models of deliberative democracy are rather blunt instruments for "determining" what people would agree to. One reason for this is that the very question often changes as it is subject to public and democratic debate. The deeper normative issue is that, in principle, substantive outcomes should be the result of actual and not virtual deliberation. But sometimes what appear to be substantive issues are, deep down, procedural issues. On this reading, Habermas might be endorsing a no-human-cloning policy because it is a necessary condition of a democratic society—in other words, it is a procedural requirement of deliberation. But these requirements are themselves subject to democratic debate and deliberation. So, ultimately, Habermas's policy stand on cloning should be seen as a citizen's contribution to an ongoing ethical debate. His reasoning, however, is based on the moral self-understanding most conducive to the practice of public and private autonomy. The general point is that the more substantive, as opposed to procedural, the policy recommendations to flow from a deliberative

perspective are, the more one risks bypassing democracy itself (Chambers 2002; for a criticism of this procedural approach see Gutmann & Thompson 2002).

EMPIRICAL RESEARCH

Theories of deliberative democracy contain many empirical claims and assumptions, particularly about preference and opinion formation. For example, a central tenet of all deliberative theory is that deliberation can change minds and transform opinions. What if that is not the case or rarely the case? In addition to the assumption that minds are changed through deliberation, one also finds arguments concerning the direction in which minds are changed. Although few adhere to the view that deliberation inevitably leads to consensus, many believe that deliberation under the right conditions will have a tendency to broaden perspectives, promote toleration and understanding between groups, and generally encourage a public-spirited attitude (Benhabib 1992, Chambers 1996, Gutmann & Thompson 1996, J. Cohen 1997, Dryzek 2000). There is a widespread belief that deliberation and publicity associated with deliberation will have a salutary effect on people's opinions. But again we can ask, is this true? Perhaps deliberation sharpens our disagreements, intensifies social competition, and polarizes opinion (Mansbridge1996, Sunstein 2002). Or perhaps empirical realities make it impossible to even approximate deliberative conditions, especially the equality condition (Hooghe 1999, Sanders 1997). These and other empirical questions raised by deliberative theory have spawned a growing literature concerned with testing its claims.

Empirical research falls into three categories. The first involves deep forays into fields such as social psychology, jury research, and public opinion research (Mackie 2002). The second involves designing and running experiments especially geared to test claims of deliberative democratic theory (Neblo 1998, Weber 1998, Sulkin & Simon 2001). The third category looks at "real world" cases as test cases for theoretical claims. This third area is very rich and involves many different techniques, including participant-observer methods (Quell 1998, Mendelberg & Oleske 2000), surveys and questionnaires of participants in various deliberative initiatives (Price & Neijens 1998, Pelletier et al. 1999), qualitative analysis of deliberative initiatives (Button & Mattson 1999, Smith & Wales 2000, Mutz 2002), and quantified content analysis of public statements using, for example, a Discourse Quality Index to measure whether statements live up to ideals of deliberation (Steenbergen et al. 2003, Steiner et al. 2004).

What does empirical research tell us about normative theory? The literature is quite mixed. Although "empiricists" agree that normative theory has generally been somewhat cavalier with its empirical claims, there is no consensus about whether such research generally supports the normative claims or undermines them. Some of the experimental material is particularly ambiguous because it is impossible to recreate all the crosscutting conditions that shape deliberation in an ongoing political community. The cumulative effect of this research, however, has

given us a better idea about the nuts and bolts of deliberation and especially insight into questions of institutional design. Let's look quickly at one such case.

Sunstein (2002) has noted that deliberative democratic theorists would do well to look at group polarization research, which appears to challenge many central claims of deliberative democracy. Group polarization research indicates that "members of a deliberating group predictably move toward a more extreme point in the direction indicated by members' predeliberation tendencies" (Sunstein 2002, p. 176). Research seems to suggest the group polarization can be associated with two factors. The first has to do with social dynamics: Members of groups seek approval of and recognition from other group members. This tends to lead members to present themselves as champions of the most prevalent opinion of the group. The second factor is a limited argument pool that is skewed in a particular direction. Thus, the more like-minded and similar the members of a group are to start with, the more intense the group polarization effect will be.

These findings do not challenge very general claims of deliberative theory. Ideally, a well-ordered deliberation is based on full information and the representation of all points of view. Thus, the claim that under these (ideal) conditions participants are likely to become accommodating of others and more broad-minded is not directly undermined. The real question is whether the conditions of group polarization experiments offer a more plausible representation of real deliberative conditions than does normative theory. The answer is not as obvious as one might think. Experimental data record empirically observable phenomena whereas normative theory often relies on inference and conjecture about how opinions will shift in deliberation. But our political reality is no more like a controlled experiment than it is like the ideal speech situation. It is a good idea to read experimental research in a comparative framework that highlights alternative conditions. The significance and limitation of the group polarization research comes to light if we read it alongside other experimental data. For example, Sunstein (2002) notes that Fishkin's (1995) Deliberative Opinion Polling (DOP) experiments found no polarization effect.

In struggling with the feasibility of nationwide face-to-face deliberation, Fishkin proposed, developed, and implemented a series of national issues conventions intended to simulate a national deliberation (Fishkin 1995, Gastil 1996, Merkle 1996, Fishkin & Luskin 1999). These conventions are designed to gather valuable data about the dynamics of deliberation, and if they succeed, the findings could make their way into national debates. Thus, rather than appeal to "raw" public opinion, elites might be encouraged to appeal to deliberated public opinion (Ackerman & Fishkin 2002). The public would also be encouraged to think about and engage the deliberated opinion on any given policy question. The idea that small-group deliberation can at least put deliberated opinions on the agenda is also behind such proposals as citizens panels and citizen juries. One objection to these proposals is that citizens need to experience the face-to-face deliberation to find deliberated opinions persuasive in the first place. A number of objections to DOP (Mitofsky 1996, Flaven & Dougherty 1996), not the least of which is that it is undertaken

under highly controlled experimental conditions, make it a questionable place holder for national debate. But as an experiment, and in comparison with polarization studies, it has produced interesting results.

Conference participants were drawn from a random sample of the population and brought to an all-expense-paid three-day issues conference (conferences have taken place in Britain, Australia, and the United States). There they participated in small-group discussions as well as larger plenary sessions on major policy questions facing the nation. A predeliberation and postdeliberation opinion survey were administered. Polarization research predicts that opinions will tend to shift toward the median predeliberation opinion. No such strong tendency emerged in DOP surveys. What explains the difference? Sunstein (2002) notes five relevant differences between Fishkin's experiment and group polarization experiments: (*a*) No votes were taken during DOP conferences; (*b*) DOP conferences were random-sample forums whereas groups polarization research usually studies groups; (*c*) moderators oversaw the discussions and insured that all points of view were heard (such moderators were usually absent in group polarization studies); (*d*) DOP conferences provided expert panelists to answer questions; and (*e*) extensive informational material was distributed to conference participants.

Sunstein concludes correctly that these differences have implications for institutional design. Moderators, random sampling (or at least bringing together people with very different viewpoints), and no voting will reduce group polarization and to that extent enhance deliberation. I would add that deliberation and deliberative democracy are appealed to in a wide range of contexts, from small one-on-one dispute resolution models proliferating at the margins of the judicial system to global "debates" about human rights and the environment. The variety of institutions, contexts, venues, and conditions in which these deliberations take place is almost inexhaustible. A comparison of group polarization studies and DOP studies provides a glimpse of some of the dynamics we must attend to in some sorts of deliberation and in designing certain sorts of institutions. But it is unclear what we should conclude from these studies with regard to the informal, free-wheeling deliberation of civic society, for example. Empirical research can be invaluable in keeping normative theorists on their toes and in zeroing in on some specific institutional design questions. Empirical research cannot be either the last or the leading word in deliberative democratic theory, however.

IDENTITY, DIVERSITY, AND RECOGNITION

Deliberative democratic theory's confrontation with the claims of identity, diversity, and recognition has pushed deliberative theory in promising new directions. This debate has led deliberative theorists to reformulate and specify aspects of the theory to make it both more concrete and better able to deal with pluralism. The criticisms voiced by diversity theory begin with a general misgiving with regard to the emphasis on agreement. As Gould notes (1996, p. 172), "the telos of discourse, what characterizes its aim and method, is agreement. Difference is something to be

gotten past. And the reciprocal recognition is for the sake of common agreement rather than also for the sake of enhancing and articulating diversity." This general theme is taken up in two related but distinct tracts of political theory: postmodern difference theory and critical diversity theory. Difference is the more abstract concept; diversity almost always refers to social groups.

The exchange between postmodernism and deliberative theory has been lively and at times heated (Villa 1992, Kelly 1998, Connolly 1999, Mouffe 2000, Dean 2001). I do not discuss it in detail because, first, it has not been as productive as the exchange with diversity theory. The intersection with diversity theory has moved deliberative democratic theory in significant new directions. The debate with postmodernism has contributed to our self-understanding as moderns and highlighted the ways modernity limits rather than expands freedom, but it has not led deliberative democratic theory to major reformulations. Deliberative theory has moved away from a consensus-centered teleology—contestation and indeed the agonistic side of democracy now have their place—and it is more sensitive to pluralism. All this has more to do with a confrontation with other peoples, cultures, and identities, however, than a confrontation with postmodernism. To be sure, much of postmodernism is concerned with other peoples, cultures, and identities. The divisions between deliberative theory, diversity theory, and postmodern difference theory are very blurry at the edges, with some very good work being done at the intersection of all three (Markell 1997, 2000; White 2000; Honig 2001; Tully 2002). But for the most part, postmodernism has not compelled deliberative theory to take a closer look at how groups and specific identities fare within the model. This leads to my second reason for concentrating on identity theory. I have chosen to look at some applications of deliberative theory rather than debates about its epistemological foundations. Again we see that the exchange between diversity theory and deliberative theory has helped to make the latter more concrete. The debate with postmodernism is often very abstract.

Williams (2000) argues that diversity theory has two major concerns about deliberative theory. The first involves the notion of reasonableness and reason-giving and the second the conditions of equality. With regard to the first, Williams argues (2000, p. 125), "Whether or not citizens will recognize others' reasons *as* reasons may be a socioculturally contingent matter. Moreover, it seems likely that the contingency of this recognition may tend to be resolved in a manner that systematically disadvantages the reasons of marginalized groups in a discursive exchange" (see also Young 1996, Deveaux 2000). This sort of concern pushes deliberative theory to interrogate the process of reason-giving. Gone, with only a few exceptions (Elster 1998b), is the narrow, highly rationalistic view of reason-giving that stresses a model of impartiality rising above all difference. First as a response to feminist criticism that the impartial perspective excludes many issues and points of view that are context bound (Benhabib 1992, Phillips 1995), and second in response to multicultural criticisms that impartiality is in fact not impartial when it comes to other cultures (Williams 1998), most deliberative democratic theory has adopted a flexible and pluralistic idea of reason-giving (Bohman 1995, Benhabib 2002).

Here we see a definite expansion of the sorts of things that could be considered arguments and reasons. This expansion is sometimes the result of deep theorizing about reason but is also the result of confrontations with real-world practices.

Deliberative democracy has benefited from the "what about . . . " line of argument. What about aboriginal peoples and their use of story telling and greeting, what about African Americans and their repertoire of meanings, what about women and their appeal to the personal (which is after all political), what about the religious and their appeal to the faith, what about the oppressed and their appeal to anger and passion, what about . . . ? This does not lead to ad hocism. It leads to a richer and more useful idea of public reason that addresses real-world challenges. It concretizes the debate in positive ways and forces deliberative democratic theory to grapple with real-world cases. The intersection between deliberative theory and diversity theory is becoming less an intersection and more a merger (De Greiff 2000, Valadez 2001, Benhabib 2002). Proponents of identity politics will continue to criticize Habermas because he is too Kantian and challenge Gutmann & Thompson because they are not radical enough. But I predict that the next generation of deliberative theory will also be diversity theory.

The second concern that comes out of diversity theory is about conditions of discourse, in particular the equality condition. All deliberative democratic theory contains, either implicitly or explicitly, an idea of a well-ordered public sphere. The organizing principles of a well-ordered public sphere are drawn loosely from an ideal notion of deliberation. For the process of deliberation and accountability to work as it should, participants need to be on equal footing. But what does this mean? Theorists concerned with diversity have argued that deliberative theory has been blind to the inability of marginalized groups to even minimally meet the conditions of discourse (Fraser 1997, Williams 2000). They argue that at best deliberative theory has been too vague and abstract about the real-world barriers to authentic deliberation, and at worst it understands the problem in such minimal and negative terms (e.g., the debate about free speech and campaign finance regulation) as to fail miserably to confront it (Sanders 1997).

What sort of equality is necessary for deliberative democracy? What conditions are required to give marginalized groups voice and empowerment? These are not really questions that diversity theory brings to deliberative theory but questions that diversity theory and deliberative theory together need to answer. Where have distribution questions gone in all this talk of recognition and the public sphere? Some authors are indeed reengaging the question of distribution and poverty (Phillips 1997, Fraser 2000, Tully 2000, Fraser & Honneth 2003). Deliberative democratic theory needs to pursue questions of its own material conditions (in both the national and global context) more vigorously. This, too, I predict, will be a central concern of the next generation of deliberative theorists.

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