

Introduction

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Over the last 25 years or so, the idea of deliberation has gradually become a central component of all major current democratic theories. Since 1980, when Joseph Bessette coined the phrase “deliberative democracy” to refer to a particular conception of constitutional democracy, one that he believed was implicit in some interpretation of the American Founding Fathers” thought and the constitutional tradition they inaugurated (Bessette, 1980), hundreds of works have been devoted to the idea of democratic deliberation.¹ Gradually, deliberative democracy has become one of the most fashionable ideals in contemporary Western political theory, a token of which may be that deliberative democracy has now gained a privileged place in most recent handbooks on theories of democracy (e.g. Cunningham, 2002, p. 101).

Thus, while the defense of deliberation in politics cannot be said to be new at all, there being a long tradition of democratic deliberation since Aristotle, when we talk nowadays of modern deliberative democracy, we refer to an ideal that was first openly stated in the 1980s. Rooted in a revival of the “public spirited” studies of democracy produced during the 1960s and 1970s (Laslett, 1956; Davis, 1964; Barry, 1965; Flathman, 1966; Bachrach, 1973) and hence ambiguously related to the renaissance of a participatory view of democratic politics (Davis, 1964; Bachrach, 1967; Pateman, 1970; Pennock and Chapman, 1975; Macpherson, 1977; Fishkin, 1979; Mansbridge, 1983; Barber, 1984), deliberative democracy was seen as a response to the so-called “crisis of democracy” denounced by economic and elitist theories of democracy.²

In the first decade after 1980, several works were published both in the United States and Europe that contributed to consolidating the ideal of deliberative

¹ Evidence may be found in the numerous collections of essays that have been published on the issue (see, for example, Bohman and Rehg, 1997; Elster, 1998a; Macedo, 1999; Hongju Koh and Slye, 1999; Eriksen and Fossum, 2000; Fishkin and Laslett, 2003; Aiken et al., 2003; and Steiner et al., 2005).

² They are the theories that Lane Davis, in a very lucid – and critical – article of 1964, calls the “new” and “realist” conceptions of democracy (Davis, 1964, p. 37). These are theories based on Joseph Schumpeter’s work, which deny the significance of the public good (or the public interest) and apply social choice theory to the study of politics and democracy (see, for example, Schumpeter, 1946; Buchanan, 1954 and 1975; Dahl, 1956; Downs, 1956; Buchanan and Tullock, 1962 and Riker, 1982 and 1986). For the notion of “crisis of democracy”, see Crozier et al. (1975). For a modern account of economic theories of democracy and the distinction from “public good” views, see Elster (1986).

democracy (Habermas, 1981; Elster, 1986; Cohen, 1986 and 1989; Manin, 1987).³ During the 1990s, crucial and more ambitious publications gradually emerged (see, for example, Gutmann and Thompson, 1996; Habermas, 1992; Bohman, 1996; Dryzek, 1990; Nino, 1996; and three important collections of essays: Bohman and Reh, 1997; Elster, 1998a; and Macedo, 1999).⁴ By the end of the decade, James Bohman confirmed “[t]he coming of age of deliberative democracy” in his retrospective on the evolution of the democratic model and noted a “certain maturation in discussions of deliberative democracy” which were more and more “[f]lemppered with considerations of feasibility, disagreement and empirical limits” (Bohman, 1998, p. 422). A “new, practical emphasis on feasibility” was taken to be “the most striking feature of the recent boom in theories of deliberative democracy” (Bohman, 1998, p. 400). This shift has now been clearly confirmed in the last six years’ publications, which have focused more and more on the institutional design of deliberative democracy and encompass empirical studies of real world deliberation (see, for example, Sunstein, 2000, 2001 and 2002; Goodin, 2000 and 2003; Dryzek, 2000 and 2001; Fishkin and Luskin, 2000; Fung and Wright, 2001; Fishkin et al., 2002; Mendelberg, 2002; Fishkin and Laslett, 2003; Delli Carpini et al., 2004; Steiner et al., 2004; Gutmann and Thompson, 2004; Fung, 2004; Ryfe, 2005).⁵

Active discussion and writing about democratic deliberation over the past 25 years does not mean that all theoretical and practical difficulties with the ideal of deliberative democracy have been dissipated, nor that all that is left is to manage empirical shortcomings. On the contrary, numerous controversies remain and it is the aim of this introduction to map the most important ones.

1 Setting the Agenda: From Theory to Practice and Back Again

Although authors have now realized the importance of working on institutional design and the feasibility of deliberative democracy, Bohman’s (1998) complaint regarding the lack of adequate empirical research about democratic deliberation

³ Other important works at the time were: Mansbridge (1983); Ackerman (1989); Sunstein (1985 and 1988); Michelman (1986, 1988a, 1988b and 1989); and Benhabib (1986 and 1989).

⁴ Other books and articles were also highly relevant for the model’s evolution (see, for instance, Habermas, 1992; Elster, 1995; Estlund, 1993 and 1997; Sunstein, 1993; Benhabib, 1994 and 1996; Bohman, 1998; Cohen, 1996; Mansbridge, 1992; Miller, 1992; Pettit, 1997 and 2003; and Young, 1996 and 1999). It is also important to note that Rawls’ idea of public reason resembles the ideal of deliberative democracy, although it is hard to ascertain whether Rawls can be considered a paradigmatic defender of democratic deliberation (Rawls, 1993, pp. 212–53, and 1997).

⁵ True, elements of an empirical approach to democratic deliberation could already be traced back in earlier works (e.g., Mansbridge, 1983; Bessette, 1994; Fishkin, 1991 and 1995). All lacked, however, a systematic account of institutional design.

is still relevant today, as a lot remains to be done. Andreas Follesdal goes even further in Chapter 3 of this book, where he states that “[t]he present state of the literature makes it clear that both theoretical and empirical questions remain unresolved. Further rigorous theoretical analysis is required about such philosophical questions as the reasons to value political participation and the relationship between procedures and validity. In addition, much empirical research is needed in order to assess existing democratic arrangements and proposed improvements” (Follesdal, in Chapter 3).

Thus, Follesdal rightly emphasizes that we do not even have the agreement about the main features of the ideal model that we need before we can seriously test it in practice. Most authors agree that deliberative democracy constitutes a regulative ideal, but there is little work done on what this implies exactly (see, for a preliminary analysis, Marti 2004, Chapter 1, and 2005b). Follesdal identifies at least five theoretical issues that deserve more attention before one could embark on systematic empirical research on deliberative democracy: (1) What are the main claims of the model? (2) What are the alternative democratic theories? (3) Are there actual forms of deliberation subsumable under the model? (4) Which are the appropriate institutional and cultural conditions to promote and enhance democratic deliberation? And (5) how does partial or total compliance with these conditions affect the legitimacy or justice of deliberative outcomes? (Follesdal, in Chapter 3).

Considering the crucial relevance of these theoretical issues, it is important to address them in more depth, before embarking on the design of concrete political institutions and developing a whole empirical research to evaluate them. This is, in a nutshell, the upcoming agenda for deliberative democracy theories.

2 The First Step: From Practice Back to Theory ...

The first step in this re-discussion of the fundamentals of deliberative democracy is to return to the ideal of deliberative democracy with a keen eye for new issues. This implies, first of all, going back to the core of the ideal, before turning to some of the remaining difficulties.

The Ideal of Deliberative Democracy

Deliberative democracy is an ideal of political legitimacy (Manin, 1987, pp. 351–59; Cohen, 1989, pp. 17–22; Estlund, 1993, p. 1469; Gutmann and Thompson, 1996, p. 4; Bohman, 1996, pp. 4 and 5, and 1998, pp. 401 and 402; Marti, 2005a). It claims that political decisions are ideally legitimate when they are made through a deliberative procedure, which implies publicly exchanging arguments “offered by and to participants who are committed to the values of rationality and impartiality”, and in which all those affected by the decision can take part directly or through their representatives (Elster, 1998a, p. 8). As an ideal, it has a

normative, rather than a descriptive appeal (Sunstein, 1988, pp. 158–60, and 1993, p. 137; Cohen, 1989, pp. 21 and 22; Dryzek, 1990, pp. 36 and 37; Bohman, 1996, pp. 16 and 17, and 1998, pp. 400 and 401). It is a claim as to how our institutional arrangements should be and does not aim at describing how they actually are. As we will see, whether that “inspiration” is to be understood as a mirroring (or maximization) effect or as something else remains an open question (Estlund, in Chapter 4). At the same time, however, deliberative democracy retains a practical vocation and aspires to be useful as a relevant model of political legitimacy, one used to assess the degree to which real and concrete decisions are legitimate.

At the core of the ideal lies the very notion of deliberation which recommends collective and dialogic reasoning as a process of interactive argumentation in which participants offer each other their best arguments either in defense of their opinions, proposals or suggestions or against those of others. Participants engage in that process with a disposition to change their minds and preferences if persuaded by others (Elster, 1983, pp. 53–65; Mansbridge, 1983, pp. 8–10; Manin, 1987, pp. 349 and 350; Bohman, 1996, p. 65; Nino, 1996; Pettit, 2003, p. 157). The kind of persuasion relevant here is that of the force of the better argument (Habermas, 1981; Elster, 1983, pp. 53–65, 1995 and 1998a; Mansbridge, 1983, pp. 8–10; Manin, 1987, pp. 349 and 350; Cohen, 1989, p. 22; Fishkin and Laslett, 2003, p. 2). Hence, the deliberative procedure is considered as a process of free and rational will formation (Manin, 1987, pp. 345, 349 and 350).

A delicate issue arises in this context: what counts as an argument, or more precisely, what does it mean to offer a reason for something? To start with, a position is deliberatively justified if others can reasonably accept it. This is not, however, an empirical, contingent matter. It is not a matter of verifying if people actually accept something. We consider that a group of individuals believes that policy X is justified if it believes that X is reasonably acceptable by others in general, and not only because it is acceptable to them in particular. Thus, X can be deemed justified by some people, even if they do not think it is with respect to them. If justifiability is not a matter of fact, the same may be said of the notion of reason or argument. For something to count as a reason, it must fit certain criteria independent from public evaluation. But a central question remains: what and which are the criteria for the acceptability of arguments in public deliberation?

It is crucial to clarify this feature of rational argumentation because it enables us to distinguish deliberation from other patterns of communication based on irrational persuasion or the use of coercion and threats, such as negotiation or bargaining (Sunstein, 1988, pp. 150 and 151; Cohen, 1989, pp. 17 and 18; Elster, 1995, p. 237, and 1998a, pp. 5 and 6; Gutmann and Thompson, 1996, pp. 1 and 4; Bohman, 1998, p. 400; Pettit, 2003, pp. 139 and 140; but see Mansbridge, in Chapter 6). In a negotiated agreement, consensus may be reached by deception, lies, threats or promises of reward, but it never implies a reasoned change of mind, and parties are openly motivated by self-interest. Deliberation, by contrast, aims at a reasoned consensus achieved through rational persuasion by strong arguments, and deliberating parties are supposed to be impartially motivated.

This is not to say that real deliberation is incompatible with self-interest or with strategic behavior, which are pervasive states of mind. In fact, hypocrisy about self-interested motivation can sometimes be a suboptimal situation by comparison to open manifestations of self-interest claims (Elster, 1995). In those circumstances, the exploration of self-interest can even be considered a necessary condition for a fair resolution of conflicts (Mansbridge, in Chapter 6).

Deliberation should also be distinguished from voting; the rational transformation of preferences differs from their mere aggregation (Manin, 1987, pp. 349–53; Sunstein 1988, pp. 144, 145 and 150; Cohen, 1989, pp. 17 and 18, and 1998, pp. 185 and 186; Gutmann and Thompson, 1996, pp. 1 and 4; Bohman, 1998, p. 400). Obviously, under real conditions (of limited time and bounded rationality) the fact of pervasive disagreement makes voting necessary (Manin, 1987, p. 359; Waldron, 1999a, pp. 91–93, and 1999b; Besson, 2003 and 2005). A realistic deliberative democracy theory should account, therefore, for voting and explain the use of majority rule, not as a necessary evil, but as a fair procedural institution. Deliberation and voting clearly differ, however: the logic of argumentation that prevails in democratic deliberation presupposes the ideal aim of convincing others, while the logic of pure voting remains indifferent to any interaction or communication among voters.

That being said, the theoretical distinction between deliberation, negotiation and voting should remain at the conceptual core of the ideal of deliberative democracy. It is clear indeed that all three will be present in actual political settings. Given the pervasiveness of deep and generalized disagreement, we cannot expect that deliberation necessarily leads to consensus. On the contrary, time constraints usually imply that we have to bring our deliberations to a close with a vote (Manin, 1987, p. 359; Bohman, 1998, p. 413; Waldron, 1999a, pp. 91–93, and 1999b; Besson, 2003). Alternatively, a close study of parliamentary politics makes it clear that negotiation is inescapable, but also useful to reach an agreement that permits mutual understanding, and thus is necessary for political approximations to just outcomes (Mansbridge, in Chapter 6). All this shows that reality does not always match the ideal. Thus, while the ideal of deliberative democracy still favors those institutional settings that promote deliberation and in which the weight of negotiation and voting is reduced, we should keep in mind that mirroring the ideal can sometimes be counterproductive (Estlund, in Chapter 4).

Another benefit of the theoretical distinction between deliberation, negotiation and voting is that it enables us to identify clearly the main alternatives to deliberative democracy, a need emphasized by Follesdal (in Chapter 3). On the one hand, there are theories that emphasize the role of voting and aggregation of preferences as a way of building a collective set of preferences to be maximized. These theories refer to voters as consumers and to democracy as a market and are usually associated with a social choice approach. Broadly speaking, they can be referred to as economic theories of democracy.⁶ On the other hand, there are

⁶ See note 2 and accompanying text.

also theories of democracy that emphasize the role of democratic negotiation and bargaining among citizens or among groups of interests; they deny the existence of a distinct common good and try to avoid the domination of one group over the others. These theories are best exemplified by pluralist accounts of democracy (Dahl, 1956 and 1989; Truman, 1968; Ely, 1980). Finally, in the last few years, another democratic alternative has been growing in importance. It emphasizes the centrality of conflict and division in politics, thus rejecting any attempt to rescue consensus as an ideal end and underlining the importance of self-identity. These are often called agonistic theories of democracy (Laclau and Mouffe, 1985; Mouffe, 1993 and 2000; Tully, 1995). While defenders of agonistic theories of democracy present themselves as competitors to deliberative democracy theories – and generally to any liberal democratic theory – some authors have tried to approximate these two models (see, for example, Dryzek, 2000; Besson, 2005; and Mansbridge, in Chapter 6).

Hard Questions

Although the ideal of deliberative democracy has already been discussed in depth by defenders and critiques of deliberative democracy, it is still ridden with important and persistent controversies.

Justifications of deliberative democracy A first example of these difficulties involves the justification of the model of deliberative democracy and the kind of legitimacy it is supposed to bring to bear on political decisions. The most crucial question to arise is the tension between procedural and substantive accounts of legitimacy, which provide instrumental (epistemic) or intrinsic justifications to the model (Estlund, 1993 and 1997; Gutmann and Thompson, 1996, pp. 26–39, and 2004, pp. 21–23; Christiano, 1997 and 2004; Martí, 2005a). On the one hand, deliberative democracy may indeed be justified as a procedure valuable for its intrinsic fairness and its respect for autonomy, equality and the dignity of participants, and, as such, it may be said to provide its outcomes with procedural legitimacy. On the other hand, deliberation may also be justified in terms of its capacity to produce just outcomes, that is, in terms of its epistemic reliability, and in this sense its outcomes may be regarded as substantively legitimate. While both justifications seem conceptually compatible, there are tensions between them that challenge the coherence of the ideal of deliberative democracy.

This is the topic analyzed and discussed by Cristina Lafont and José Luis Martí in Chapters 1 and 2. Both confirm the prevalence of epistemic justifications of deliberative democracy. Martí examines the main arguments offered by epistemic approaches, trying to show that a coherent defense of deliberative democracy must endorse such an approach. He also argues for the necessity of combining procedural values with substantive ones in order to avoid the trend towards elitism implicit in deliberation (Martí, in Chapter 2). Lafont focuses on a more theoretical and conceptual dimension of the same problem, i.e. the tensions resulting from

the coexistence of two ideals in deliberative democracy: the deliberative and the democratic one. She reinterprets the whole model of deliberative democracy to save its coherence (Lafont, in Chapter 1). A more practical discussion of legitimacy and deliberation can also be found in Deirdre Curtin's argument in Chapter 7.

Democracy in deliberative democracy There is another central feature of deliberative democracy that has received very little attention in the literature: what account of democracy may be said to lie at the core of the model? More concretely, the question arises with respect to the degree and type of political participation and representation deliberative democracy implies (some exceptions are Mansbridge, 1992, 1999 and 2000; Gargarella, 1995; Urbinati, 2000; De Greiff, 2000; Martí, 2004, ch. 5; Besson, 2005). As hinted at earlier, deliberative democracy was at first ambiguously related to the renaissance of participatory democracy in the 1980s. Contrary to what is usually supposed by many commentators, however, deliberative democracy is not conceptually committed to a participatory or direct-democratic ideal. It is true that democratic deliberation ideally implies the participation in the decision-making process of all those affected by the decision to be made (Habermas, 1981 and 1990; Cohen and Sabel, 1997, pp. 332 and 333; Mansbridge, 1992, p. 36; Benhabib, 1994, p. 31; Bohman, 1998, p. 400; Elster, 1998a, p. 8; Dryzek, 2000 and 2001, p. 651). Moreover, some versions of the model explicitly argue for a broad and active participation in public deliberation (Barber, 1984, pp. 173–198; Fishkin, 1991 and 1995; Mansbridge, 1992, p. 36; Cohen and Sabel, 1997, p. 320; Cohen, 1998, pp. 186 and 187; Gargarella, 1998, p. 261; Fung and Wright, 2001, pp. 27–29 and 52; Fung, 2004). Other versions of the model, however, limit their discussion to representative institutions, often for reasons related to the alleged irrationality and passionate will of the people (see Burke, 1989; see also Bessette, 1980 and 1994; Will, 1992; Gregg, 1996; Bell, 1999, p. 74; Wolfensberger, 2000).

Philip Pettit expresses fears of that kind in Chapter 5, where he defends a depoliticized version of deliberative democracy based on a two-dimensional ideal of democracy. According to Pettit, public deliberation should not be restricted to representatives and politicians. The people should be able to deliberate as well. He finds powerful reasons, however, to limit their deliberation to the evaluation of government and to identifying the matters that deserve the attention of politicians (Pettit, in Chapter 5). The difficulty Pettit unveils is the following: to be engaged in deliberation means, among other things, to be ready to change our minds or our preferences in the light of the best argument. Good deliberation in representative settings implies therefore viewing political representation as a formal relationship that preserves the representatives' independence and leaves them relatively unconstrained by their constituents' desires or preferences (Elster, 1998a, p. 3; Goodin, 2000, pp. 58 and 59; Martí, 2004, ch. 5; Besson, 2005). However, if we adopt such a conception of political representation, the public and informal deliberation that takes place in the public sphere and in which all those affected take part becomes almost irrelevant since what counts in determining

a political decision is nothing more than parliamentary deliberations. This implies giving up defending participatory democracy and, still worse, neglecting one important trend in deliberative democracy literature: that based on the public sphere (Habermas, 1962, 1981 and 1992; O'Neill, 1989; Calhoun, 1992; Benhabib, 1992; Fraser, 1992; Bohman, 1996). However, if we want to keep the value of informal deliberation in the public sphere and enhance the way in which the people can participate directly in political decision-making or at least can determine what their representatives can do or approve, then we have to constrain the independence of these representatives and view them as simple delegates of their constituents. By doing so we would make true deliberation impossible in the parliament since representatives would then have to limit themselves to strictly exposing the preferences and opinions of their constituents, and any change of mind or position would be considered as an act of bad faith. Pettit's solution consists of leaving political deliberation to politicians (restricted to parliament and other representative bodies) and limiting public, popular deliberation to matters of identification and evaluation of government's functions (Pettit, in Chapter 5).

Democratic boundaries of deliberation Deliberative democracy, like other political models, cannot escape globalization and has to face the challenges the new legal and political global reality raises for our models of political decision-making. One of these challenges pertains to the boundaries of democracy and hence of the *demos* in democratic deliberation both at the national and post-national levels.

In principle, self-rule – which lies at the core of democracy – also implies self-constitution; the community which binds itself by the laws it generates also defines itself as a democratic subject by drawing boundaries (Whelan, 1983; Offe, 1998). The difficulty is that these boundaries are usually not only civic, but also territorial. In fact, these territorial boundaries often match pre-political territorial boundaries. As a consequence, the will of the democratic sovereign can only extend over the territory under its jurisdiction. The problem is that the territorial limits of the polity contradict the democratic requirement that all those affected by a decision be given a voice in the decision-making process. This is also known as the *paradox of the democratic polity*. This paradox transfers with greater acuity to cosmopolitan democracy in a global world (Archibugi, 2004, p. 461). Even though political boundaries need no longer be conceived in state-centric terms, and although post-national citizenship need not be grounded in nationality or other pre-political elements of collective identity, they remain committed to locality (Benhabib, 2004, ch. 4). Post-national democratic governance is mostly thought to draw boundaries and create rules of membership at some locus or another, even if it is smaller or larger than those of a national state.

Three contributions in the book address the very issue of who should be deliberating, thus identifying the relevant people who can take part in democratic decision-making in a globalized world where all those affected by a decision do not always get to participate in national and supranational decision-making

processes (Cheneval, in Chapter 8; Besson, in Chapter 9; and Bohman, in Chapter 10). All three focus on the European Union (EU) as the most advanced example of institutionalized post-national democracy, but they also argue and draw conclusions for democracy beyond the state in general. The three contributors share the view that deliberative democracy constitutes a perfect model with which to conceptualize the new boundaries of democracy in a global world; deliberation can cope with fluid boundaries and allows for transnational communication (Thompson, 1999, pp. 120–25). What matters for deliberative democracy is indeed the character of political interaction, rather than its locus. As such, deliberative democracy broadens the scope of democratic accountability beyond national borders (Dryzek, 1999, p. 44; Gutmann, 1999; Gutmann and Thompson, 2004, p. 36 ff.; Gerstenberg and Sabel, 2002; Eriksen and Fossum, 2000; Schlesinger and Kevin, 2000; Blichner, 2000; Lord, 2004; Lord and Magnette, 2004).

All three contributors emphasize the importance of realizing the plurality of *demos* affected by the same democratic processes and of identifying the means of ensuring democratic legitimacy within this plurality. The three contributors differ, however, with respect to the ways in which this is to be achieved. Francis Cheneval argues for the inescapability of the territorial *demos*, but emphasizes the benefits of deliberation in a larger epistemic community and thus the existence of a broadly moral *demos* additional to each national political *demos* (Cheneval, in Chapter 8). By contrast, Samantha Besson claims that deliberation cannot be usefully decoupled from political decision-making channels and argues for the deterritorialization of a functional and truly political European *demos* made of (territorial and national) *demos*; she makes different proposals as to how to accommodate these new requirements of deliberative democracy in institutional practice (Besson, in Chapter 9). Focusing more particularly on the recent constitutional exercise in the EU, James Bohman analyzes ways of mending the democratic deficit in Europe; he argues that the EU must meet the repeated challenge of creating the conditions for democratic non-domination. Given that meeting this challenge demands a transnational democratic minimum, the constitutional debates in the EU could well be, he argues, a precursor to a process that could be iterated in many different polities and many different institutions (Bohman, in Chapter 10).

3 The Second Step: ... and Back to Practice

The second and final move in this critical analysis of the current state of deliberative democracy theory implies returning to practice and exploring ways of making deliberation work institutionally. While all authors agree that deliberative democracy constitutes an ideal, it is not always clear what this implies in practical terms.

The Passage from Theory to the Practice of Democratic Deliberation

One of the first questions to solve is precisely that of the relationship between the ideal of deliberative democracy and its practical institutional design. Many contributions in this volume face, in one way or another, the question of how we should move from ideal considerations to practical recommendations. In their contributions to this book, Estlund and Mansbridge explicitly explore some of these difficulties.

Against the widespread Habermasian belief that public discourse must necessarily mirror an ideal procedure of democratic deliberation, David Estlund holds that sometimes this mirroring exercise involves serious distortions. Instead of trying to maximize the “resemblance” between our real institutions and ideal procedures, Estlund follows Marcuse in proposing a principle of wide civility that escapes formalism and promotes sharp, disruptive and informally expressive political action under certain circumstances as a way to prevent deliberative distortions (Estlund, in Chapter 4). In her contribution to this volume, Jane Mansbridge argues in the same vein that the exploration of self-interest, contrary to the classical ideal of deliberation, can be a necessary condition for a fair resolution of conflicts in practice (Mansbridge, in Chapter 6). She argues, we should “integrate normatively the legitimization of ongoing conflict in material interests with a larger commitment to the public good. Accomplishing this goal requires repudiating the position that self-interest has no legitimate role in deliberation, along with the position that negotiation and even bargaining in all their forms are contradictory to, and thus must be excluded from, democratic deliberation” (Mansbridge, in Chapter 6). Conflicts of interests are inescapable in real politics, and “a fair resolution almost always requires not only acknowledging but also exploring these conflicts, some of which cannot be simply subsumed into an overarching common good. Refusing to allow on the table statements of self-interest and the reciprocal questioning of self-interest inhibits self- and mutual-understanding and makes it almost impossible to craft even relatively fair partial resolutions to the ongoing conflict” (Mansbridge, in Chapter 6).

The Institutional Design of Democratic Deliberation

Once theoretical issues pertaining to the ideal of deliberative democracy and the passage from theory to practice have been addressed, it is time to turn to the problems related specifically to the institutional design of deliberative democracy in a specific constitutional framework. Here are some of the many questions that need to be tackled in this context: what are the adequate mechanisms by which the people can participate in deliberative decision-making? How must we modify the structure, composition and functioning of parliaments to make them more deliberative? What sort of deliberative relationship must there be between political institutions, such as the legislative, the government and the judiciary, or

among other institutions and governmental agencies? Is deliberative democracy compatible with judicial review?

Roberto Gargarella takes up the latter question in Chapter 11. He explores whether judicial enforcement of social rights, even against democratic laws, is acceptable to someone who endorses the ideal of deliberative democracy. Gargarella holds that it is if, and only if, the judiciary, and in particular the higher courts, play a deliberative role permitting those affected by the decision to express and defend their opinions based on constitutional arguments, protect the fundamental rights that are the very preconditions of deliberative democracy and, finally, participate in some sort of inter-institutional deliberation. What he rejects, from a deliberative democratic point of view, is judicial supremacy – as opposed to judicial review – that is, the model according to which higher courts have the competence to strike down democratic laws (Gargarella, in Chapter 11).

In her contribution, Deirdre Curtin also focuses on the issue of a deliberation-enhancing concrete design of EU institutions. She purports to verify whether these institutions meet basic requirements of political legitimacy and, in particular, those of transparency. She uncovers some important deficiencies, and argues that “[w]hat the European Union needs at this stage of its development is a much more sophisticated view of the relationship between transparency and legitimacy. Transparency is not a panacea for legitimacy; rather, the most important consequence of a transparent policy-making process is that citizens have the possibility to access and to control this process. To access and to control the different steps in the policy-making process and the way different actors act, transparency is a necessary condition and a first step.” And after studying the functioning of EU decision-making processes and policy-making, she concludes that the “central feature of modern society – the public sphere – is still largely missing at the EU level. In our further thinking on the evolution of the EU as a political system, it may prove more rewarding to imagine the EU as constituted by a multiplicity of gradually evolving communicative public spaces rather than to lament the non-existence of a single public sphere” (Curtin, in Chapter 7).

The Case of Post-national Deliberative Institutions

Post-national deliberation raises interesting issues of institutional design, which add to the difficulties in the conceptualization of deliberation beyond and across national boundaries. The three contributions that discuss deliberation in post-national conditions also offer useful insights into this issue.

In his contribution, Bohman makes various proposals as to the institutional contours of the constitutionalization of the EU and emphasizes the need for them to guarantee a complex and constant democratic iteration in different democratic polities in Europe (Bohman, in Chapter 10). A detailed account of this complex and multi-layered public sphere may be found in Curtin’s discussion of transparency in the EU (Curtin, in Chapter 7). Cheneval also concludes his argument for the deliberative and epistemic community beyond

the national polity by emphasizing the importance of institutionally linking the different territorial *demoi*; he starts by excluding the fatality of a world state and opts for a constructivist approach (Cheneval, in Chapter 8). According to him, “[p]hilosophical reflection cannot anticipate the concrete outcomes of this real deliberation about post-national institution-building. Cosmopolitanism can therefore not be anticipated counterfactually in a concrete statist form. The institutional setting created by deliberating *demoi* cannot be anticipated in normative theory.”

Besson develops this very argument further in emphasizing that institutional and normative considerations reinforce one another; the EU provides a unique institutional setting that promotes deterritorialized deliberative *demoi*-cracy in Europe, and as such constitutes a unique institutional basis for a normative argument, while also revealing important gaps and scope for reform along the lines of normative proposals she makes for institutional reform (Besson, in Chapter 9). Besson exposes different institutional proposals aimed at making the best of Europe’s deterritorialized democracy with respect more specifically to national, transnational and supranational fora of deliberation and to diversified forms of distant representation. All these institutional proposals may in turn be transposed, she argues, to other non-European post-national political processes where transnational and deterritorialized democratic deliberation may prove crucial to successful legal and political integration. The cosmopolitan democracy project is “still in its infancy” (Archibugi, 2004), and it is through institutional achievements like that of deliberative *demoi*-cracy in Europe that it can be further developed both in theory and in practice.

It was the aim of this introduction to map some of the most important controversies affecting the ideal of deliberative democracy and to offer a critical background against which to read the different contributions in this volume. Numerous controversies remain and many questions are left unanswered, but the floor is now open for further deliberation.

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