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Guido Pincione and Fernando R. Teson
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Rational Choice and Democratic Deliberation

A Theory of Discourse Failure

This book offers the first comprehensive and sustained critique of theories of deliberative democracy. In public political deliberation, people will err and lie in accordance with definite patterns. Such discourse failure results from behavior that is both instrumentally and epistemically rational. The deliberative practices of a liberal democracy (let alone repressive or nondemocratic societies) cannot be improved so as to overcome the tendency for rational citizens to believe and say things at odds with reliable propositions of social science. The theory has several corollaries. One is that much contemporary political philosophy can be seen as an unsuccessful attempt to vindicate, on symbolic and moral grounds, the forms that discourse failure takes on in public political deliberation. Another is that deliberative practices cannot be rescued even on non-epistemic grounds, such as social peace, impartiality, participation, and equality. To alleviate discourse failure, this book proposes to reduce the scope of majoritarian politics and enlarge markets.

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Fernando R. Tesón is a leading scholar in the field of international law and ethics. He is the author of *Humanitarian Intervention* and *A Philosophy of International Law.*

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A Theory of Discourse Failure

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Preface

Much has been said about the disenchantment that people have with democratic politics. Many have voiced their concerns about the excessive influence of money or special interests, or the role of the media, or partisanship, or lack of accountability, or the cumbersome and even corrupt nature of the workings of legislatures, or politicians' breaching promises or deceiving the public. People may differ on their diagnoses or may place different emphases on the factors responsible for democratic degradation. But everyone seems to agree that democratic societies need to *promote* deliberation, participation, and civic education. Whatever else we can do to improve our democratic practices, surely facilitating access to deliberative fora so that citizens can debate, confront one anothers' ideas, and thus ultimately move toward the political truth, or at least increase our chances of enacting wise public policies, is primordial.

This book dissents. It offers a sustained critique of theories of deliberative democracy. Its theme is that public political deliberation will inevitably display certain patterns of error that we call *discourse failure*. As we developed our thoughts, we realized that our theory of discourse failure would not serve its polemical purposes unless we defended its assumptions about epistemic and instrumental rationality. Why do people say the false things they say in political contexts? Do they believe those things? And, if they don't believe them (if they know better), why do they persist in publicly displaying them? Our book tries to solve this puzzle by offering a comprehensive theory of political discursive behavior. People err because it is rational for them to err. Politicians lie because it is rational for them to lie. And, interestingly, they don't err or lie in a random way: Public political utterances conform to identifiable patterns. Moreover,

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we came to the conclusion that no feasible improvement in the deliberative practices of a liberal democracy, let alone illiberal or nondemocratic states, can overcome rational citizens' propensity to believe and say things at odds with the most reliable propositions of social science. Our theory has several corollaries. One is that much contemporary political philosophy, whether explicitly deliberativist or not, can be seen as an unsuccessful attempt to vindicate, on symbolic or moral grounds, the forms that discourse failure takes on in public political deliberation. Another is that deliberative practices cannot be saved even on non-epistemic grounds, such as social peace, impartiality, participation, and equality.

So we ended up writing an interdisciplinary book. By this we do not mean that we approach a subject from different angles, but rather and, we hope, more interestingly, that we offer a unified theory whose propositions conventionally pertain to moral and political philosophy, political science, and economics (in particular, the foundations of rational choice theory).

As we said, our conclusion is grim: Political deliberation does not serve cognitive goals, and it often drives us further from the truth. One natural reaction is to say that democracy is morally unavoidable; to paraphrase Churchill, bad as democratic politics are, everything else is worse. Our answer is that, because the propensities to err and posture are intimately tied to the subjection of a vast area of peoples' lives to majoritarian distributive politics, we could overcome discourse failure by enlarging markets and reducing politics. Even though the psychological factors that make people believe or say falsehoods cannot be easily eradicated, eliminating or reducing the incentives to err and posture can in general bring people's discursive behavior closer to the truth. In other words, designing institutions so that people will internalize the costs of their discursive mistakes will lead to fewer such mistakes.

Writing this book has taken us several years. Our philosophical conversations go as far back as our friendship, more than twenty-five years. This book, however, started in 1999 with an idle talk about Robert Nozick and symbolism over a cup of coffee on a cold night in Mar del Plata, on the Argentine coast. The idea of discourse failure matured throughout several years on three continents, but mostly in prolonged periods of collaboration in the United States and Argentina, a lot of it over long after-dinner conversations (the fabled Argentine *sobremesa*). We would like to acknowledge several audiences that heard joint presentations of parts of the book. In the United States, we talked to the Arizona State University Moral, Political, and Legal Philosophy Discussion Group and

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to the University of Arizona Philosophy Department. In Argentina, the Universidad Torcuato Di Tella Law School heard presentations at the Conference on Moral Philosophy (1999) and at its regular seminar. We also delivered drafts to the Argentine Society for Philosophical Analysis and to the Universidad del CEMA Political Science Department. Finally, we talked to the Economics, Ethics and Law Workshop of the 22nd World Congress of the International Association for Philosophy of Law and Social Philosophy, held at the University of Granada, Spain (2005). We thank all these audiences for helpful comments and criticisms. We owe special thanks to Geoff Brennan, Loren Lomasky, Joseph Raz, Eduardo Rivera López, Seana Shiffrin, and Horacio Spector for their valuable comments on earlier drafts. Last, but not least, we thank two reviewers for Cambridge University Press, whose trenchant criticisms helped us to improve the argument dramatically.

Guido Pincione spent the academic year 2003–4 working on this book (with his co-author in Florida, through the marvels of NetMeeting technology) as visiting Fellow at the Center for Ethics and Public Affairs, Murphy Institute, Tulane University. While in that stimulating environment, he was able to do his most substantial work on this book. He especially thanks Jerry Gaus for his characteristically acute and thought-provoking suggestions, and an audience at both the Center and the Tulane Philosophy Department to which he presented an earlier version of Chapter 5. He also worked on this book as visiting scholar at Corpus Christi College (Oxford), the Research School of Social Sciences at Australian National University, Arizona State University College of Law, and Florida State University College of Law. A stay at the Social Philosophy and Policy Center at Bowling Green State University supplied him with an eleventh-hour opportunity to test our argument in exciting conversations with Fred Miller and Jeff Paul and allowed him to perform a final correction of the manuscript. He also expresses his gratitude to his home institution, the Universidad Torcuato Di Tella Law School, which awarded him generous leaves to visit all these places. His friend, colleague, Dean, and Provost Horacio Spector deserves credit for supporting our joint project and for promoting an intellectual environment where law, philosophy, and economics fruitfully interacted to the benefit of the project. Finally, he thanks the audiences at the Bowling Green State University Philosophy Department, the International Economics and Philosophy Society (Ninety-Ninth Annual Meeting of the American Philosophical Association, 2002), and the Torcuato Di Tella Law School, to which he presented earlier drafts.

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Fernando Tesón thanks his institution, Florida State University College of Law, and especially Dean Don Weidner, for unflinching support of his scholarship. Starting in 2002, Tallahassee provided an ideal working environment to bring this project to fruition. He also thanks Arizona State University for supporting his research in various ways during the many years he spent there. He presented the core of the book to members of the law and philosophy faculties at Florida State University in the fall of 2004 and benefited from the criticisms and comments then offered. Special thanks go to Greg Mitchell, Jon Klick, Amitai Aviram, and Adam Hirsch. Like Guido Pincione, Fernando Tesón owes a special debt of gratitude to the Universidad Torcuato Di Tella Law School in Buenos Aires, where he has been a regular visitor for the past ten years, and to Dean and Provost Horacio Spector for his multifaceted support for our project. Most important, he thanks his wonderful family: his wife, Bettina; his children, Fernando, Marcelo, and Carolina; and, in faraway Buenos Aires, his mother and brother, Marta and Daniel. They provided tremendous support and strength throughout; without them this book would not exist.

As usual, no one except us is responsible for our mistakes.

Guido Pincione and Fernando R. Tesón
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Chapter 5 largely reproduces our article "Self-Defeating Symbolism in Politics," *The Journal of Philosophy*, Vol. XCVIII, No. 12, December 2001, pp. 636–52.

Sections 6.1 through 6.8 present, in a version adapted to the argument of this book, our article "Rational Ignorance and Political Morality," forthcoming in *Philosophy and Phenomenological Research*.

We thank these two journals for permission to make use of material published there.

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