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978-0-521-17538-8 - Rational Choice and Democratic Deliberation: A Theory of Discourse Failure

Guido Pincione and Fernando R. Teson

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## 1

## Introduction

## 1.1. The Allure of Deliberation

It is generally assumed that political deliberation is one of our most cherished values. Ideally, it precedes democratic decisions and enhances their legitimacy. Deliberative democracy, a form of political organization that fosters robust deliberation among citizens, is attractive because it appears as the only alternative to various undesirable things.<sup>1</sup> First, deliberative democracy excludes elitist conceptions of politics. Deliberation stands in

<sup>1</sup> The literature is extensive. Representative works include Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder, Colo.: Westview Press, 1996); Robert E. Goodin, *Reflective Democracy* (Oxford: Oxford University Press, 2003) (emphasizing internal deliberation, as well as deliberation with others); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Belknap Press, 1996); Carlos Santiago Nino, *The Constitution of Deliberative Democracy* (New Haven, Conn.: Yale University Press, 1996); the essays in James Bohman and William Rehg, eds., *Deliberative Democracy: Essays in Reason and Politics* (Cambridge, Mass.: MIT Press, 1997); Jon Elster, ed., *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998); and James S. Fishkin and Peter Laslett, *Debating Deliberative Democracy* (Oxford: Blackwell, 2003). Among political scientists, Benjamin Page and Robert Shapiro have expressed optimism about political deliberation. See Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1991), esp. pp. 1–66 and 362–6. Not all epistemic defenses of *democracy* (understood as defenses of majority voting) are sympathetic to deliberation, however. In particular, some epistemic defenses of democracy based on the Condorcet theorem require independence of judgment, and thus little or no deliberation. For a discussion of this and related issues, see Luc Bovens and Wlodek Rabinowicz, “Complex Collective Decisions: An Epistemic Perspective,” *Associations*, Vol. 7, No. 1 (2003), pp. 37–50. For a discussion of democracy centered on voting, see David Estlund, “Democracy Without Preference,” *Philosophical Review*, Vol. 99, No. 3 (1990), pp. 397–423. We examine the Condorcet theorem in section 4.7.

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[More information](#)

the way of the ambitions of self-appointed philosopher-kings. It vindicates self-government and the views of ordinary citizens. Because everyone's opinion counts, and because everyone participates in the formulation of public policies, deliberative democracy evokes the values of autonomy and civic equality. Second, deliberative democracy rejects political irrationalism. By placing faith in rational argument, theories of deliberative democracy conjure up the image of a political forum analogous to the scientific forum, where critical thinking improves our beliefs and the decisions based on them. Just as scientific deliberation increases our knowledge of the world and improves our technologies, so political deliberation furthers our moral and factual understanding of society and the selection of policies based on that understanding.

The undoubted appeal of deliberation and its role in democracy has led many writers to cast it as the cornerstone of a good polity. They have attempted to substitute a deliberative model of democracy for traditional, liberal models of constitutional democracy – that is, of rights-constrained majority rule. The relationship between theories of deliberative democracy and theories of liberal democracy may assume various forms. Most versions of deliberativism declare themselves to be compatible with traditional liberalism; they simply insist that deliberation enhances the legitimacy of laws and policies.<sup>2</sup> Some deliberativists go further and question the attempt by traditional liberal philosophers to establish the priority of rights or justice over democracy.<sup>3</sup> At any rate, while various liberal models may assign varying degrees of importance to deliberation, they give pride of place to substantive principles such as rights, justice, consent, political representation, and the collective will. In those theories, principles of justice are prior to political discussion – they are not its outcome. The legitimacy of political decisions primarily depends on the satisfaction of those foundational principles.<sup>4</sup> And principles of justice constrain

<sup>2</sup> Notably Amy Gutmann and Dennis Thompson, and Carlos Nino (see citations in previous note).

<sup>3</sup> See Jürgen Habermas, *Between Facts and Norms*, William Rehg, trans. (Cambridge, Mass.: MIT Press, 1996), pp. 135–6, 159–60, and 463–90. For a full discussion of this issue, see Gerald Gaus, *Contemporary Theories of Liberalism* (London: Sage 2003), pp. 119–47.

<sup>4</sup> This liberal tradition, broadly understood, encompasses writers otherwise as diverse as John Locke, Immanuel Kant, Robert Nozick, and Ronald Dworkin. John Rawls is a special case. In *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), he joins the traditional liberal camp (priority of justice over democracy), whereas in his more recent work he endorses some themes of deliberative democracy. See “Public Reason Revisited,” reprinted in John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 138–40.

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[More information](#)

democratic decisions, independently of how much deliberation preceded those decisions. In contrast, whatever their attitude toward foundational principles, theories of deliberative democracy argue that political deliberation ought to be promoted. Deliberativists urge more deliberation in existing fora, such as legislatures, and sometimes recommend the creation of new fora. Typically, deliberative theories claim that political deliberation enhances the legitimacy of political decisions, or otherwise improves the quality of political life and promotes the values of mutual respect and the quality and effectiveness of social policies.

Deliberativists often use an epistemic argument: Deliberation improves the empirical or normative soundness of our beliefs. Indeed, it would be odd for one to promote political deliberation if one thought of it as an exchange of ideas and arguments unrelated to the search for the truth. The idea of deliberation as a vehicle to truth is old and venerable. It was best put by John Stuart Mill in his defense of free speech: Vigorous and lively discussion leads to the survival of the better ideas in society.<sup>5</sup> Deliberative democrats regard deliberation as a means to enhance the legitimacy of political coercion by, among other things, approaching truth in politics as closely as can be feasibly done.<sup>6</sup> Though perhaps neither necessary nor sufficient for the legitimacy of political coercion, on this view deliberation contributes to that legitimacy by enlightening political discourse.

Deliberation enlightens us, it is thought, on two counts. On the one hand, it gets us closer to the truth. This is a central theme in the philosophy of science. By constantly probing into alternative hypotheses, the

<sup>5</sup> See John Stuart Mill, *On Liberty* (1859). Mill defends political deliberation in *Considerations on Representative Government* (1861) not on epistemic grounds but by reference to the value of participation. See Chapters II and VI. His view that institutions should ensure that the superior of mind should govern, however, does not seem particularly congenial to modern deliberativism. See *Representative Government*, especially Chapter VIII. At least one specialist claims that “Mill inclined to the view that the mass or multitude was not in a position to acquire a clear understanding of the appropriate criteria for public conduct.” R. J. Halliday, *John Stuart Mill* (London: George Allen & Unwin, 1980), p. 69. As Gaus suggests, Mill’s opposition to democratic equality is grounded in epistemic considerations. See Gaus, *Contemporary Theories of Liberalism*, p. 165. It seems fair to conclude that Mill was worried about the epistemic infirmities of political deliberation, notwithstanding his defense of the practice against nonparticipatory institutions (e.g., absolute monarchy and aristocracy).

<sup>6</sup> See Chapter 2, note 15. We explore in section 4.5 to what extent deliberative democrats can use arguments for free speech. We will also address (sections 8.1 through 8.4) the view that deliberation may mitigate, if not eliminate, the otherwise coercive nature of majority rule.

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[More information](#)

scientific community moves science in the direction of truth.<sup>7</sup> On the other hand, deliberation enables us to reach moral truths.<sup>8</sup> If we believe that moral progress is possible, then we will endorse continual discussion, revision, and refinement of our moral beliefs, thus again improving our practical reasoning with a view to behaving correctly or virtuously. Finally, deliberative democracy may be defended on non-epistemic grounds. Thus, some writers value the symbolic function that deliberation can fulfill. Others claim that deliberation realizes individual autonomy or the equal moral standing of persons, or that it helps prevent social conflict.

This book challenges those claims. None of these arguments or others we will address in due course provides a satisfactory defense of political deliberation. Political deliberation as a prelude to majority vote is plagued with deficiencies that undermine its aptitude to lead to better government. Those deficiencies are mainly epistemic. To put it simply, citizens will be systematically mistaken in their beliefs about the social world, and no realistic amount of deliberation can put them right. Further, typical political deliberation will undermine non-epistemic goals, such as various ideals of justice. We hasten to reaffirm the importance of the *freedom* to deliberate. But the reasons usually offered for political deliberation, understood as the public debate preceding political decisions in typical liberal democracies, are unconvincing.

We will proceed in the following sequence. In the next section, we locate our argument within the rational choice tradition in social science. In Chapter 2, we diagnose the pathologies that affect political deliberation. We introduce the key notion of discourse failure to explain those pathologies. Chapter 3 discusses the place of moral judgment within the rational choice framework, indicates how our use of rational choice assumptions combines with principles of epistemic rationality, and suggests directions for empirical testing of our theory. Chapter 4 replies to various attempts to save the epistemic credentials of deliberation. In Chapter 5, we show that standard rational choice assumptions accommodate apparently self-defeating political positions; in particular, we

<sup>7</sup> Similar views obtain if “higher predictive power” and other notions that need not be given a realist interpretation substitute “truth.” Our assessment of the epistemic defense of deliberation will not turn on any particular account of science.

<sup>8</sup> Here again (see note 7), by writing “moral truths” we do not mean to endorse moral realism. The deliberative argument, and our critique, can be cast in realist, coherentist, expressivist, and perhaps other conceptions of moral judgment, provided that they allow for degrees of moral plausibility.

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[More information](#)

argue that counterproductive positions cannot be vindicated as symbolic behavior. Chapter 6 fends off attempts to save such positions as non-consequentialist moral outlooks. In Chapter 7, we reject non-epistemic defenses of deliberation, such as those relying on autonomy, impartiality, or equality. In Chapter 8, we explore the obscure relationships between deliberation, majority rule, and consent and show why theories of deliberative democracy find it difficult to bring those notions into a coherent whole. Finally, in Chapter 9 we outline a form of social order capable of overcoming deliberative flaws; we explain why, unlike the utopian features of deliberative democracy, the utopian features of our proposal are innocuous. We also underscore why allowing people to actually consent to institutional arrangements (in contradistinction to the nonconsensual features of modern democracy) will help reduce those deliberative flaws.

### 1.2. Rational Choice and Political Discourse

In this book we use rational choice theory to diagnose the flaws of deliberativism. Rational choice theory relies on an instrumental account of rationality. It assumes that agents pursue their goals (maximization of votes, glory, money, power, and so forth) at their lowest personal cost, given their beliefs. Local producers, for example, can easily see that protectionist measures are in their interest. Moreover, they can sometimes influence the political outcome in their favor – by lobbying, for example. Special-interest legislation results from strategies pursued by political actors who stand to gain by that legislation. Thus, agents will undertake rent seeking (a term used to denote gains obtained through political action, as opposed to action in private markets) as long as their expected benefits exceed their expected costs. This simple dynamic of self-interest in political decision making has been analyzed in detail in the literature.<sup>9</sup> Rational choice models yield predictions about the strategies of rent seekers. Among other things, the models broadly predict what positions they will publicly defend – for example, in their paid advertisements. Thus, within the instrumental rationality framework, local producers in our example will likely hire professionals (economists, journalists, lawyers, and others) who will publicly defend protectionist views.

Much rational choice analysis assumes that voters are self-interested. On this view, they vote for candidates who they think will support policies

<sup>9</sup> See, for example, Glenn Parker, *Congress and the Rent Seeking Society* (Ann Arbor: University of Michigan Press, 1996).

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Excerpt

[More information](#)

that will benefit them. Such models often involve a narrow understanding of what is in someone's interest. Thus, a usual behavioral assumption is that political agents maximize wealth as much as traditional economic agents do. Things are not so simple, though. *When combined with those behavioral assumptions*, rational choice models of voting behavior have difficulty explaining voter turnout.<sup>10</sup> Why do so many people vote, given that the expected utility of voting is arguably negligible (or even negative, given the cost of going to the polling booth)? One way to address this concern is to relax the assumption of self-interest. People are motivated in multifarious ways. Some regard voting as a civic duty or as a means to express adherence to a value or principle. Alternatively, some voters may be wrong about the real impact of their vote or even about what rationality (moral or otherwise) requires them to do. The kind of rational choice theory that we adopt in this book may safely assume that most people make room for moral considerations in their decisions. This approach makes it easier to accommodate voting behavior: We should simply recognize that sometimes being moral can be costly. Of course, it is a matter of substantive morality whether individuals have an *obligation* to discharge their duty even at a prohibitive cost to themselves. What seems certain is that *more* people *will* discharge their duties if they can do so at low personal cost. As Geoffrey Brennan and Loren Lomasky argue, many citizens will express their civic commitments through voting because voting is cheap.<sup>11</sup> This twist on classical rational choice theory is of great importance, because it explains away an apparent anomaly in the theory. Once we understand that even morally motivated people are cost-sensitive, we can see why citizens will go to the polls, even though they know that their vote is inconsequential: They want to convey their commitment to values or principles by voting, and they use cost-effective means to achieve those expressive aims. Moreover, this broader understanding of voters' self-interest does not affect the theory's testability: We should expect morally committed voters (as indicated by independent empirical evidence) to vote in less proportions as their expected costs rise (because of, for example, new legislation increasing the probabilities

<sup>10</sup> The qualification in italics is frequently ignored in critiques of rational choice theory that point to voter turnout. An example is Donald P. Green and Ian Shapiro, *Pathologies of Rational Choice Theory: A Critique of Applications in Political Science* (New Haven, Conn.: Yale University Press, 1994), pp. 47–71.

<sup>11</sup> See Geoffrey Brennan and Loren Lomasky, *Democracy and Decision* (Cambridge: Cambridge University Press, 1993).

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Excerpt

[More information](#)1.2. *Rational Choice and Political Discourse*

7

that voters will serve jury duty, on the assumption that they regard such service as onerous).<sup>12</sup>

We build upon these ideas to address heretofore-unexplored questions: Given the structure of incentives faced by political actors, will they engage in truth-sensitive deliberative practices? Is it possible to discern not just patterns of *political decisions* (how people vote or legislate, how much they will invest in which sorts of lobbying, and so on) but also patterns of *political beliefs* and *public positions*? We answer “no” to the first question and “yes” to the second. Citizens will predictably deliberate in a truth-insensitive manner. As a result, defenses of deliberative democracy that rest on the presumed epistemic virtues of deliberation are utopian. Moreover, deliberative processes give competitive advantages to morally objectionable positions. It follows that the use of social coercion to implement majoritarian views under those circumstances will often be morally objectionable as well. Nor can political deliberation be saved by appealing to the expressive or symbolic value of publicizing certain political positions, or to the moral nature of such positions, in a sense of “moral” that exempts deliberators from scrutiny of complex causal claims. We will explore forms of social organization that may overcome the pathologies we identify in typical liberal democracies and better protect the liberal and egalitarian values that underlie many theories of deliberative democracy. We also reaffirm the importance of the right to free speech that makes deliberation possible. But we do challenge the view that a large segment of people’s lives should be subject to rules for collective decision making that, in a sense we hope to clarify, are nonconsensual. The values espoused by theories of deliberative democracy, including the value of ideal deliberation, will be better served by a society in which most outcomes are the result of a highly decentralized, and so more consensual, decision-making structure.

<sup>12</sup> For further discussion of the cost of being moral, see sections 3.6 and 5.1.

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[More information](#)

## 2

## The Epistemic Argument for Deliberation

## 2.1. Political Illiteracy: An Illustration

Consider one argument often given by people who defend trade barriers (e.g., quotas, tariffs, and subsidies). Protectionism is needed, they claim, to preserve domestic jobs. Domestic industries that lose out to foreign competitors have to downsize or go out of business, and thus lay off workers. Foreign workers and some local firms may gain from trade liberalization, but the welfare of our workers requires that we erect protectionist barriers. We owe a duty of solidarity to our fellow citizens in an economic context where what they lose, foreigners gain. If our goal is to preserve domestic jobs, we should protect industries threatened by foreign competition.<sup>1</sup>

The argument gains credibility from the obvious fact that domestic industries affected by foreign competition *do* suffer financially and so lay off workers. Who the precise losers and winners are is left obscure in

<sup>1</sup> Examples abound. During the 2004 presidential primary season in the United States, candidates received cheers from large audiences by opposing free trade in the name of protecting domestic jobs. In North Carolina, billboards read, “Lost your job to free trade or offshoring yet?” See Elizabeth Becker, “Globalism Minus Jobs Equals Campaign Issue,” *New York Times*, January 31, 2004, A12, col. 1. One of the candidates, Senator John Edwards, made headlines when he said that trade was a “moral issue” and that it was not right “to drive up stock prices if it drives down wages.” See “AFL-CIO: Looking for Unity,” *New York Times*, February 20, 2004, A16, Col. 1. On March 5, 2004, the U.S. Senate voted to bar most firms that win federal contracts from performing the work outside the United States (“outsourcing”), thus apparently endorsing the politicians’ claim that outsourcing labor is harmful to the country. The chairman of the Federal Reserve Board, Alan Greenspan, did not seem to convince many senators with his pro-free-trade testimony. See “Greenspan Warns Congress Not to Create Trade Barriers,” *New York Times*, March 12, 2004, C6, Col. 5.

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Excerpt

[More information](#)2.1. *Political Illiteracy: An Illustration*

9

this argument, but this much seems to be common to all protectionist positions: Trade is not mutually advantageous. Sometimes protectionists suggest that other nations' aggressive exporting strategies are unfair. This position is more moderate, as it would accept trade liberalization if trade volumes were roughly equivalent, or if everyone agreed not to protect.

Generally speaking, the protectionist argument from job loss is not supported by reliable economic theory or by empirical evidence.<sup>2</sup> To be sure, the relationship between trade liberalization and employment is quite complex. It seems fair, however, to draw the following conclusions from the literature:

- 1) Trade liberalization not only increases *aggregate* wealth in *each* trading partner but also benefits the poor as a class in each of them (we consider here, however, the argument from job loss only). These results are predicted by economic models that apply the well-established law of comparative advantages.<sup>3</sup> Trade liberalization,

<sup>2</sup> See, in addition to works cited in the notes that follow, Jagdish Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004), pp. 122–34.

<sup>3</sup> Explanations of the law of comparative advantages can be found in any textbook on international economics. It was first formulated by David Ricardo in his *Principles of Political Economy*, 1817. See, generally, Animash Dixit and Victor Norman, *The Theory of International Trade* (Cambridge: Cambridge University Press, 1980). For a more technical theoretical discussion, see Alan V. Deardorff, "The General Validity of the Law of Comparative Advantages," *Journal of Political Economy*, Vol. 88, 1980, pp. 941–57. Regarding empirical confirmation of the law, see James Harrigan, "Specialization and the Volume of Trade: Do the Data Obey the Laws?," working paper of the National Bureau of Economic Research, available at [www.nber.org/papers](http://www.nber.org/papers), December 2001; and Jagdish Bhagwati and T. N. Srinivasan, "Trade and Poverty in the Poor Countries," *American Economic Review*, Vol. 92, no. 2, pp. 180–3. A country has a comparative advantage in producing a good if its *opportunity cost* (i.e., the value of goods forgone) of doing so is lower than that of other countries. Standard trade theory predicts that countries will export goods in which they have a comparative advantage and regards free trade as a necessary condition for global efficiency. The law of comparative advantages entails that even nations lacking an *absolute* advantage in the production of any commodity (i.e., nations that cannot produce any good more cheaply than their trading partners) can gain from free trade if they concentrate on producing commodities for which they have *comparative* advantages (i.e., goods in which they had the smallest disadvantage in terms of forgone production). Most economists either accept the law of comparative advantages or qualify it for reasons (e.g., game-theoretical models of retaliatory tariffs) that are vastly more opaque and limited in scope than the protectionist arguments that we find in the political arena. Notice that a country *C* may possess a comparative advantage over country *C\** in producing a good without having an absolute advantage over *C\** in producing that good – that is, without producing it at a lower cost than *C\**. Moreover, every nation has a comparative advantage in something – namely, that product for which it forgoes least value relative to the rest of the world.

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Excerpt

[More information](#)

on the other hand, produces individual winners and losers, yet what winners win is more than what losers lose.<sup>4</sup>

- 2) The effect of trade liberalization on employment depends in great part on the degree to which a country is labor-intensive. This is so by virtue of the Hecksher-Olin theorem.<sup>5</sup> The claim that “free trade causes loss of jobs” is ambiguous. We must distinguish between several issues (recall that these questions are asked against the undisputed background of national and global gains from free trade):
  - a) Does free trade lower the *rate of employment* in a country? The answer is generally negative because consumers as a whole improve, and the corresponding rise in demand will create new jobs in the more efficient industries. The consensus is that in the long run the rate of employment *increases* with trade.<sup>6</sup>
  - b) Does free trade lower the *real wages* in a country, while leaving unaffected the unemployment rate? Generally speaking, the

<sup>4</sup> The literature is extensive. See Lori G. Kletzer, *Import, Export, and Jobs: What Does Trade Mean for Employment and Job Loss?* (Kalamazoo, Mich.: Upjohn Institute for Employment Research, 2002), pp. 144–5 (increased imports cause job losses and the *resulting* increased exports cause job gains, but “the employment-enhancing effect of expanding exports is significantly greater than the employment-reducing effects of increasing imports”); Hian Teck Hoon, *Trade, Jobs, and Wages* (Cheltenham, UK: Edward Elgar Publishing, 2002), pp. 184–90.

<sup>5</sup> For a statement of the Hecksher-Olin theorem, see Thomas A. Pugel and Peter H. Lindert, *International Economics* (Boston: Irwin–McGraw Hill, 11th ed., 2000), pp. 61–72. To understand the Hecksher-Olin effect, imagine two countries, Ruralia and Textilia, and two products, cloth and wheat. In a situation of autarky – that is, without trade – each country produces both products. Cloth requires more labor and less land; wheat requires more land and less labor. However, Textilia has a lot of labor available, while Ruralia has less labor and more and better land. When trade is opened, the theory of comparative advantages predicts that Ruralia will specialize in wheat while Textilia will specialize in cloth. Ruralia will buy all the cloth it needs from Textilia, and Textilia will buy all the wheat it needs from Ruralia. There will be a net gain for both countries in the long run. However, former cloth workers in Ruralia will see their wages go down, because they now have to work in the wheat fields, where demand for labor, and hence wages, is lower. Land rents, on the other hand, will go up in Ruralia. Notice, however, how unrealistic the model is: Land is, of course, finite; you can’t “produce” more land. In any realistic situation where industries can expand by using more labor, the Hecksher-Olin effect will be less significant. But it is still true that if, say, the industries in which country *C* is relatively efficient require less labor than the industries in which *C* is relatively inefficient, those workers (usually unskilled) will suffer (will have to accept jobs at lower wages). Still, that will not affect the employment rate, and it will certainly be the case that the gains by other workers and by consumers at large will offset those losses. (The example is adapted from Pugel and Lindert, *op. cit.*, p. 64.)

<sup>6</sup> See Steven Matusz, “International Trade, the Division of Labor, and Unemployment,” *International Economic Review*, Vol. 37, no. 1, February 1996, pp. 71–83.