Reflections on Habermas on Democracy

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Abstract. Jürgen Habermas is a radical democrat. The source of that self-designation is that his conception of democracy—what he calls "discursive democracy"—is founded on the ideal of "a self-organizing community of free and equal citizens," co-ordinating their collective affairs through their common reason. The author discusses three large challenges to this radical-democratic ideal of collective self-regulation: 1) What is the role of private autonomy in a radical-democratic view? 2) What role does reason play in collective self-regulation? 3) What relevance might a radical-democratic outlook have for contemporary democracies? The author addresses these questions by considering Habermas' answers, and then presenting alternative responses to them. The alternatives are also radical-democratic in inspiration, but they draw on a richer set of normative-political ideas than Habermas wants to rely on, and are more ambitious in their hopes for democratic practice.

I. Radical Democracy

Jürgen Habermas is a radical democrat (Habermas 1996a, xlii–iii). The source of that self-designation is that his conception of democracy—what he calls "discursive democracy"—is founded on the abstract ideal of "a self-organizing community of free and equal citizens," coordinating their collective affairs through their common reason (Habermas 1996a, 7). In this paper, I discuss three large challenges to this radical-democratic ideal of collective self-regulation:

1) What is the role of private autonomy in a radical-democratic view?
2) What role does reason play in collective self-regulation?

3) What relevance might a radical-democratic outlook have for contemporary democracies?

I will address these questions by considering Habermas' answers, and then presenting alternative responses to them. The alternatives are also radical-democratic in inspiration, but they draw on a richer set of normative-political ideas than Habermas wants to rely on, and are more ambitious in their hopes for democratic practice.

1.

Habermas offers two lines of argument in support of his radical-democratic ideal of discursive democracy: In brief, he claims that it is rooted in reason and practically relevant to contemporary political societies. First, then, Habermas locates the bases of democracy in a general, "post-metaphysical" theory of human reason, which he presents in the theory of communicative action, and of argumentation as the reflective form of such action. The intuitive idea is that democracy, through its basic constitution, institutionalizes practices of free, open-ended, reflective reasoning about common affairs, and tames and guides the exercise of coercive power by reference to those practices. To be sure, democracy does not guarantee the subordination of sovereign will and the coercive power it guides to the force of the better argument—what *could* guarantee that practical reason guides political power?—but it establishes conditions favorable to such subordination. Moreover, the promise to subordinate political will to practical reason is a justifying ideal underlying democratic practice. By requiring a more complete subordination of political will to practices of reasoning, then, we hold democracy to its own internal standards.

Second, Habermas aims to show how "the old promise" of a community of free and equal members, guiding their collective conduct through their common reason, can be redeemed if it is "reconceived under the conditions of complex societies" (Habermas 1996a, 7). He offers such redemption by elaborating the content of the democratic ideal—he describes the rights that citizens must assign to one another—and showing how it can serve as a practical guide once it is reinterpreted in light of modern conditions of social and political complexity, including a market economy and an administrative bureaucracy.

2.

I will say very little about the philosophical bases of democracy in the communicative account of reason, and concentrate instead on the content of Habermas' conception of democracy and its implications. I steer clear of the wider philosophical framework—Habermas' post-metaphysical theory of

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human reason, communicative action, and argumentation—because I think that political argument should not be made to depend, or presented as dependent on, a philosophical theory about the nature of reason. Philosophical theories about the nature and competence of reason do not provide the common ground for equal citizens that is desirable in public argument in a democracy. An appeal to *reason* cannot help us "get behind" the plurality of competing moral, political, religious, metaphysical outlooks, because the nature and competence of reason is one matter on which such outlooks disagree. Thus, a post-metaphysical conception of reason, which ties the account of reason to the presuppositions of argumentation, will not find favor with a natural law theorist who believes that reason delivers substantial metaphysical truths and insights about the best human life.

Instead, I accept (with Rawls) the *relative autonomy of political reason*. Political reason is autonomous in that it can and should proceed in articulating a conception of democracy without relying on an encompassing philosophy of life or claiming to resolve the controversies among them, including controversies about the nature and competence of reason. It is only relatively autonomous, because autonomous political argument needs to make sense in light of the diverse and conflicting encompassing philosophies that (at least some) citizens endorse: Citizens must judge, from within those separate philosophies, that autonomous political argument is appropriate, and accept, as a public matter, that the diversity of such philosophies recommends an autonomous political reason. Political reason, we might say, lacks *public foundations*, because there is no single, publicly authoritative basis for its principles and modes of argument. But it may well have a plurality of non-public foundations, different for different citizens.

3.

So I will put to the side claims about the bases of democracy in a theory about the nature and competence of reason, and come back to the substance of Habermas' radical account of democracy. That account takes its fundamental orientation, I said, from the idea of a self-organizing community of free and equal citizens.[1] Radically understood, democracy is not simply a matter of selecting among competing elites (through regular elections), nor simply a matter of ensuring, through such selection, a protected framework of private liberties, founded on antecedent liberal commitments. Instead democracy is a form of self-rule, and requires that the legitimate exercise of political power trace to the free communication of citizens, expressed through law. For the radical democrat, the fundamental fact of political sociology is

[1] For this reason, Habermas understands his view as having important affinities with anarchist and socialist ideas, once the "normative core" of those ideas is properly understood. That's because he supposes (correctly, I think) that the normative core is provided by the ideal of a free association among equals, guiding the exercise of their collective power through their common reason.

not the distinction between a decision-making elite and others subject to the decisions of that elite, and the consequent need to organize the exercise of power by that elite, but the horizontal, communicative relation among equal citizens; democracy establishes a framework for that relation and makes the exercise of collective power sensitive to it.

Such a conception of democracy has two components. First, one must describe the *content* of the abstract conception: What, more precisely, is it for a political society to be a self-organizing community of free and equal citizens, and for the exercise of collective power to trace to the free communication of citizens? Assume as background that the conception is addressed to a pluralistic society, whose members embrace competing philosophies of life; a reflective culture, that self-consciously embraces a distinction between the fact that a practice is socially accepted and the legitimacy of the practice (between facticity and validity); a society whose complexity, size, and pluralism preclude social coordination through communication alone, as distinct from market exchange and administrative power; and a society whose members engage in strategic action (Habermas 1996a, 25). What could popular self-organization and self-government possibly amount to under these conditions? How could free communication among citizens play a regulative role in the political life of such a society? Perhaps under these conditions the ideal of a self-organizing community of free and equal citizens loses its capacity to guide social and political arrangements. The first task, then, is to address this concern: to show "how a radically democratic republic might even be conceived today" (Habermas 1996b, 471).

Second, one needs to consider whether such a society is *possible*. Here we take the content of the normative ideal—say, of Habermas' discourse model of democracy—which is developed on the social-political assumptions just noted, which include no unfavorable assumptions about power and human motivation. And we ask: Can this ideal be realized, given the realities of contemporary power and human motivation? Or do sociological and psychological realism imply that we must reduce our normative expectations, and adopt a more minimalist understanding of democracy, according to which democracy is a system of competitive elections in which citizens chose who will rule, rather than in any more substantial sense a system of self-rule?

Of the three questions that I propose to discuss in this essay, two fall under the problem of content, the third under the problem of possibility.

1) I begin with the role of rights of private autonomy in a democratic constitution. The place of such rights in a radical democratic view is uncertain. One might think that a radical democrat, concerned with the self-rule of citizens, will make the protection of personal liberties dependent on how the people choose to exercise their collective power. But a radical-democratic view that cannot provide personal liberties with a secure basis will seem, to that extent, unreasonable. In response to this concern, Habermas argues that rights of private and public autonomy (rights of participation) are equally

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fundamental (co-original): Indeed, each is required to explain one another. More particularly, both kinds of rights of autonomy are founded on the conjunction of the rule of law and the discourse principle—a requirement of impartiality that provides the basis for judgments of the legitimacy of law.

Though I agree with Habermas' conclusion, I find the argument for it unpersuasive, and I outline an alternative view that shares radical-democratic inspiration but founds rights of private autonomy on ideas of deliberative justification and reasonable pluralism, both devised for democratic conditions. My alternative strategy of argument makes richer normative assumptions than Habermas does: reasonable pluralism instead of mere legality, deliberation among persons understood as free and equal rather than the impartiality required by the discourse principle. But I think such richer assumptions are necessary, and also defensible if our aim is to articulate a conception of democracy, and not to found that conception on a general philosophical theory of reason and action.

2) Next, I consider a pair of related questions about the conception of democracy itself. First, why should a radical democrat insist on reason: Assuming mass participation, why is it important for democracy to be deliberative? And second, once we decide to insist on a requirement that law be reasonable (rooted in practices of argumentation), why is it important for deliberation to be democratic: Assuming reasonable outcomes, why insist on mass participation?

To explore Habermas' answers to this pair of questions, I sketch his "two-track" discourse model of democratic process. Democracy, thus conceived, comprises both an informal track of free public communication, founded on the dispersed associations of civil society, and a formal track of deliberative decision-making by conventional political institutions that are responsive to the informal discussion of the first track. Working together, the two tracks suggest a way to combine mass participation, through the informal public arena, with competent and reasonable political decisions, through deliberation in formal politics. By displacing the principal locus of participation from formal politics to the informal public sphere, Habermas suggests a way that the public can come into politics, without requiring small-scale states or large, long meetings.

The answers to the questions about democracy and deliberation that Habermas proposes on the basis of this model are suggestive, but once more I think that conceptions of deliberative justification and reasonable pluralism, both suited to democratic conditions, provide more compelling responses.

3) Finally, I discuss the possibility problem: Is the radical democratic ideal of any practical relevance to the exercise of power in a modern political society? If Habermas' two-track scheme is to describe a way to join mass participation through the informal public sphere with competent and reasonable formal decision-making, then it must be possible for associations in the opinion-forming public sphere to exercise autonomous influence on politics. Otherwise radical democracy dissolves into a scheme in which open-ended

debate among citizens proceeds in splendid isolation from the exercise of political power.

Habermas makes a case for the possibility of such autonomous influence, and his case has some force. Understood as an account of democracy in its most compelling form, however, I think it is unnecessarily restrictive. To sharpen the point, I contrast Habermas' model of discursive democracy with a more institutionalized version of radical democracy, based on an idea of "directly-deliberative polyarchy" that Charles Sabel and I (1997) have presented elsewhere. This conception ties practices of deliberation more closely to the exercise of collective power than does Habermas' model of separate tracks.

This is a very full plate, and I can't hope here to discuss any of these issues in detail. Instead, my aim is to provoke further debate about certain fundamental elements of Habermas' statement of the radical democratic outlook. I share the fundamentals of that outlook, but think that some of its elements can be presented in more compelling ways. In general terms, Habermas' account is insufficiently explicit about the normative substance of radical democracy, in part because he seeks to found it on a general theory of human reason rather than the political values associated with democracy, and, in turn, insufficiently ambitious in specifying possible institutional ideals that are suggested by radical democracy.

II. Co-Originality and Private Autonomy

1.

According to Habermas, political philosophy has always misconceived the relationship between civic autonomy, and the equal political liberties associated with it, and private autonomy, and the equal personal liberties associated with it: "Thus far no one has succeeded in satisfactorily reconciling private and public autonomy at a fundamental conceptual level," as is "evident" if we consider the tensions between ideas of "human rights and popular sovereignty in social-contract theory" (Habermas 1996a, 84).

Liberalism, in Habermas' stylization, defends public autonomy in terms of its capacity to protect private autonomy, thus turning democracy into an instrument for the protection of private liberties: Democracy is the response to tyranny, understood as the systematic deprivation of basic personal liberties. Republicanism makes the protection of private autonomy contingent on democratic collective decisions, thus rendering liberty dependent on popular judgments about the best means for achieving collective aims or on the collective commitments contingently embraced by a particular community. Stuck between these two options, "political philosophy has never really been able to strike a balance between popular sovereignty and human rights, or between the freedom of the ancients and the freedom of the moderns" (Habermas 1998a, 258).

Habermas rejects the idea that either public or private autonomy is more basic: The requirement of ensuring private autonomy cannot legitimately be imposed on a people, but a legitimate legal order cannot fail to protect private autonomy. Instead, he argues that civic and private autonomy are co-original—equally fundamental: "The universal right to equal liberties may neither be imposed as a moral right that merely sets an external constraint on the sovereign legislator, nor be instrumentalized as a functional prerequisite for the legislator's aims" (Habermas 1996a, 104). In Habermas' own explanation of co-originality, each form of autonomy is required to explain the other; they are, as it were, co-originating, as well as co-original. But the claim about co-origination is best understood as a theory about why the two forms of autonomy are co-original, and not as identical to the thesis of co-originality itself.[2]

More particularly, the notion of co-originality implies the following: A democratic process of legitimate lawmaking must ensure a variety of equal liberties to citizens, including both communicative-participatory liberties and personal liberties. Providing both is constitutive of a process of legitimate law-making. So, for example, just as a process of legitimate law-making cannot ensure rights of political participation, association, and expression only for some, it cannot establish a system of legal rights in which the rights of conscience, privacy, or bodily integrity required for personal independence in pursuing a "private conception of the good" are available only to some citizens. Though the specific rights of private autonomy that receive protection are not given by the principle itself, but need to be specified through a democratic process, liberties of both kinds are constitutive of a process of legitimate lawmaking.

The argument for this conclusion proceeds (schematically) as follows.[3]

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[2] Thus, Rawls agrees that both forms of autonomy are equally fundamental but argues for this conclusion by connecting each to a fundamental aspect of the moral powers of citizens, rather than by showing that each is in some way required by the other (see Rawls 1995; 1987, esp. secs. 5, 6). Dworkin (1996, 19–26, esp. 25–6), too, endorses the idea that both forms of autonomy are equally fundamental, arguing that (roughly) democracy fosters freedom only if the subjects of the laws can also regard themselves as its authors. But to regard themselves as its authors, they must identify with the political community—understand themselves as its "moral members." And they can understand themselves as *moral* members only if they preserve *independent* judgment about the values that will govern their own individual lives and about the quality of the community's decisions. Personal liberties are, in turn, required for this requisite independence. Dworkin's account seems close to at least part of what Habermas identifies as the intuitive idea behind his account of the "mutually presupposing" character of public and private autonomy: "That [. . .] citizens can make adequate use of their public autonomy only if, on the basis of their equally protected private autonomy, they are sufficiently *independent*" (Habermas 1998a, 261, emph. added). Still, Rawls and Dworkin present explicitly normative treatments of the importance of such individual independence, whereas Habermas' theory aims to derive the requirement of independence, and associated rights of private autonomy, from the need to institutionalize popular sovereignty and democratic process through law. My own discussion is also explicitly normative, and draws on the idea of respect for those who hold views that are "reasonable, politically speaking." See below, sec. III.

[3] I am not confident that I have the argument right. I draw particularly on discussions in Habermas 1996a, 1998, and on discussions with Joshua Flaherty, Kenneth Baynes, and Oliver Gerstenberg.

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Step 1. Begin with the fact of law: that coordination and regulation under modern conditions proceed through law. This is a basic fact of modern social life, following from the "functional requirements of a complex society," with a considerable degree of decentralized decision-making.

Step 2. The rule of law leads to a scheme of minimal personal liberty. Two aspects of the rule of law lead to this result. First, law is "Janus-faced": Law is a distinctive form of social coordination in that it permits individuals to choose whether to comply for strategic or normative reasons—from fear of sanctions or from respect for the law's legitimacy—thus assigning "latitude to act according to personal preferences." By leaving reasons for compliance open to choice, and by rejecting the idea that individuals can be held accountable for their reasons for compliance, legal regulation establishes a minimal order of liberty, the liberty not to give an account of reasons for conduct: "Private autonomy extends as far as the legal subject does *not* have to give others an account or give publicly acceptable reasons for her action plans" (Habermas 1996a, 120).

Moreover, it is a feature of a legal order that individuals are at liberty to act as they wish unless the law prohibits it: "Modern law as a whole implements the principle that whatever is not explicitly prohibited is permitted" (Habermas 1998a, 256). That is, individuals are to be free specifically from coercive collective power unless it is used to enforce valid law.

I don't propose to focus on these claims about what is ingredient in the rule of law as such, though I do want to draw attention to two limitations of the scheme of liberty that follows from the rule of law. First, the claim is not that legality as such—the very existence of a legal code—gives us a requirement of equality or a principle of equal subjective liberties, according to which each person is entitled to the same liberties as others. Instead, the existence of a legal code implies only that some individuals have some rights of private autonomy. Furthermore, the rights of private autonomy that emerge from the principle that whatever is not prohibited is permitted are very weak in that there are no limits on what might be prohibited, or for what reasons.

Step 3. Next, moving from legality as such to legitimate law, we introduce a principle of legitimacy: The discourse principle, an interpretation of the idea of impartiality, according to which practical norms, whether legal or moral, are *legitimate* if and only if all possibly affected persons could agree to them as participants in rational discourses (Habermas 1996a, 107). This Principle explicates the claim to justifiability or rightness characteristic of the Janus-faced law as such, one face of which looks to legitimacy.

I say that "we introduce" this principle, but the claim is that the discourse principle explicates the claims to normative validity characteristic of the (Janus-faced) law as such. If that is right, then the discourse principle is law's own implicit standard of validity, and any implications that follow from applying the discourse principle to the legal medium are implicit elements

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of legality as such (though the connection between legality and those implications is not analytic).

Step 4. A legal code, which must establish some system of rights, can be approved by all affected parties (approved by them through rational discourses) only if that code assigns equal liberties to each person, which strengthens the assurance of personal autonomy; for only if the code incorporates this equal liberty principle can the addressees of the legal code also regard themselves as its authors:

Norms appearing in the form of law entitle actors to exercise their rights or liberties. However, one cannot determine which of these laws are legitimate simply by looking at the *form* of individual rights. Only by bringing in the discourse principle can one show that *each person* is owed a right to the greatest possible measure of *equal* liberties that are mutually compatible. (Habermas 1996a, 123)

The precise argument for this claim about how the discourse principle (the requirement of impartiality) leads to equal liberties is not entirely clear, though the basic idea is familiar, at least since Hobbes' derivation of the second law of nature: Assuming that individuals are legitimately concerned to protect their own fundamental interests, we cannot expect universal agreement on the code unless it provides equal protection of personal liberty. Thus, if law as such implies a minimal order of liberty, legitimate law requires a stronger scheme of rights to liberty.

Step 5. To apply the discourse principle to law—using it to judge the acceptability of legal regulations—requires that law be available as a medium for collective regulation. But citizens can only apply the discourse principle to law if that same legal order already ensures their rights of public autonomy: That is, they can only judge whether those affected could consent after reasoned consideration if they have rights to reflect, to communicate, to associate, and to bring their judgments to bear on proposed regulation. So, we get a requirement of democracy, as the way in which the discourse principle is brought to bear on evaluating proposed laws.

So public autonomy requires private autonomy because public autonomy requires a legal order, which order is legitimate only if it ensures equal liberties; and private requires public, because the legal regulation of private autonomy is legitimate only if it emerges from a discursive process that ensure political rights. Thus we have co-originality.

The equal liberty principle that comes with legitimate law only gives us the requirement that there be some system of equal liberties for all; it does not give determinate content to that system. In particular, specifically liberal rights —to conscience, bodily integrity, privacy, property, etc.—do not emerge simply from the requirement that the legal code be specified through a process that satisfies the discourse principle, but emerge instead (if they do) from the actual exercise of civic autonomy under particular historical conditions: basic rights "must be *interpreted* and *given concrete shape* by a political legislature in response

to changing circumstances" (Habermas 1996a, 125). Such exercise—democratic process—"saturates" (ibid.) the otherwise abstract principle of equal subjective liberties, and gives us a system of rights that can be understood as embodying the equal liberty principle. But, as comparative and historical reflection on constitutional democracies suggests, there may be many such systems.

So there is an important difference in status between specifically liberal rights (to conscience, and personal privacy) and the abstract principle of equal subjective liberties. Satisfying the equal liberty principle by establishing some determinate system of equal liberties is required for actual decision-making to be discursively democratic: Antecedent to any actual exercise of public autonomy, we can say that the system of rights adopted through democratic discourse, whatever its precise content, must ensure equal liberties. If it does not, then collective decision-making would not count as an application of the discourse principle to the law—just as the system of collective decision-making would not count as an application of the discourse principle to the law if it failed to ensure the political liberties necessary for public autonomy. In contrast, the specification of the concrete liberties— say, the liberal liberties—essentially involves actual discourse: The conjunction of legality and discourse simply does not yield a determinate system of private liberties, only the requirement that some system of equal private liberties for each must be adopted.

The argument for the constitutive status of the equal liberty principle is based, so to speak, on the theorist's or reflective person's own application of the discourse principle: put otherwise, it is based on hypothetical discourse rather than actual discourse. This, I believe, is the force of the idea that "private autonomy" is "at first abstractly posited" (Habermas 1996a, 121). We, as theorists or reflective citizens thinking about constitutional issues, ask what system of rights is normatively justified: What rights must citizens "accord one another if they want to legitimately regulate their common life by means of positive law" (Habermas 1996a, 82). To answer this question, we ask what kind of system can be impartially justified; and we approach this issue by asking what system the addressees of the law could agree to under idealized conditions. We then argue, by appeal to the discourse principle, that they (or we) could only agree, with reason, to a system of equal liberties for all. Of course we may bring this argument to actual discourse: But the argument we would make is an argument about what idealized discourse would deliver, together with an argument to the effect that idealized discourse reconstructs our understandings of normative validity.

In contrast, the specification of the concrete liberties—say, the liberal liberties—essentially involves actual discourse through a democratic process. The conjunction of legality and discourse simply does not yield a determinate system of private liberties, but only the requirement that some system of equal private liberties for each must be adopted: "Specificity results inasmuch as the external perspective taken initially by the theorist is, in the course of

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elaboration, internalized in the system of rights" (Habermas 1996a, 122). So we know from the argument at Step 4 that if actual political decision-making does not yield a constitution that meets the equal liberty principle, then that decision-making is not suitably discursive: The argument at Step 4 shows that satisfying the equal liberty principle is constitutive of actual discursiveness. To underscore, I am not claiming that actual decision making is discursive only if citizens already operate within a legal order that satisfies that principle of equal liberty, but that actual decision-making is discursive —an application of the discourse principle (as implicitly understood or explicitly articulated) only if participants endorse the equal liberty principle.

2.

I am in general sympathy with this line of thought—with the idea that both forms of liberty are equally fundamental, the associated claim that personal liberties are constitutive of a process of legitimate lawmaking, and the idea that this constitutive role flows from the requirement (expressed in the requirement of discursive justification) that the addressees of the law must be able to see themselves as its authors.

Still, I have three concerns about (perhaps objections to) this line of argument: I am not sure why the legal form itself plays an essential role in the argument; I don't find the equal liberty principle itself compelling, as distinct from a principle that assigns special importance to basic or fundamental liberties; and—the point I propose to concentrate on here—I don't see how the discourse principle gives us equal liberties. The problem is that the discourse principle, which states, again, that practical norms are *legitimate* if and only if all possibly affected persons could agree to them as participants in rational discourses, appears to rely on a highly generic account of reasons—not an account restricted to political argument in a democracy of equal members. But with no restriction on what can count as a reason, and with the full panoply of pragmatic, ethical, and moral reasons in play in the relevant forms of discourse, it would seem that anything could come from discourse. If all we need is that all possibly affected persons could agree to them as participants in rational discourses, and there are no constraints on acceptable reasons, then what constrains the "discursive equilibrium" in the way that Habermas proposes?

3.

Let me suggest, then, an alternative argument for the constitutive role of non-political liberties, based on two central ideas: the idea of reasonable pluralism and a deliberative conception of political justification, framed by the fundamental democratic idea of citizens as free and equal.[4] Though these

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[4] The discussion that follows draws on Cohen 1998.

assumptions appear to be normatively more substantive than the notions of impartiality and Janus-faced legality that Habermas officially relies on, I don't think they (or similarly richer normative ideas) can be avoided in a successful case for liberties (and co-originality).

1) I begin with the fact of reasonable pluralism: The fact that there are distinct and incompatible philosophies of life to which people, who are reasonable politically speaking, are drawn under favorable conditions for the exercise of practical reason. By a *philosophy of life*—what Rawls calls a "comprehensive doctrine"—I mean an all-embracing view, religious or secular in foundation, liberal or traditionalist in substance, that includes an account of all ethical values and, crucially, provides a general guide to conduct, individual as well as collective. People are *reasonable, politically speaking*, only if they are concerned to live with others on terms that those others, understood as free and equal, can also reasonably accept: only if they accept what Rawls calls the "criterion of reciprocity" (see Rawls 1999, 578).

I say "reasonable, politically speaking," because the relevant notion of reasonableness is suited to political questions: Generically speaking, a reasonable person is someone who gives due attention to the considerations that bear on an issue, and acts in light of that attention. So the notion of being reasonable, politically speaking, is a matter of giving due attention *to the facts about the political relation of citizens in a democracy*: the fact that political power is the collective power of citizens, understood as equals. The fact of reasonable pluralism, then, is that conscientious, good-faith efforts in the exercise of practical reason, by politically reasonable people (thus understood), do not converge on a particular philosophy of life—that such philosophies are matters on which (politically) reasonable people disagree.

2) A deliberative conception of democracy puts public reasoning at the center of political justification. According to the deliberative interpretation of democracy, then, democracy is a system of social and political arrangements that institutionally ties the exercise of collective power to free reasoning among equals. This conception of justification through public reasoning—the core of the deliberative democratic ideal—can be represented in an idealized procedure of political deliberation, constructed to capture the notions of free, equal, and reason that figure in the deliberative democratic ideal. The point of the idealized procedure is to provide a model characterization of free reasoning among equals, which can in turn serve as a model for arrangements of collective decision-making that are to establish a framework of free reasoning among equals. Using the model, we can work out the content of the deliberative democratic ideal by considering features of public reasoning in the idealized case, and then aiming to build those features into institutions.

3) Thus, in an ideal deliberative procedure, participants are and regard one another as *free*: Recognizing the fact of reasonable pluralism, they acknowledge that no comprehensive moral or religious view provides a

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defining condition of participation or a test of the acceptability of arguments in support of the exercise of political power. To represent participants as free is not to say that their philosophy of life is, morally or metaphysically speaking, a matter of choice. To someone who has a religious view and takes God's laws as the touchstone of morality, for example, believing the view is a matter of believing what is true and acting on it a matter of fulfilling obligations that are not self-legislated, and are perhaps more fundamental than political obligations. But politically speaking, citizens are free in that it is open to them to accept or reject such views without loss of status.

Moreover, participants regard one another as formally and substantively *equal.* They are formally equal in that the rules regulating the ideal procedure do not single out individuals for special advantage or disadvantage. Instead, everyone with deliberative capacities—which is to say, more or less all human beings—has and is recognized as having equal standing at each of the stages of the deliberative process. Each, that is, can propose issues for the agenda, propose solutions to the issues on the agenda, offer reasons in support of or in criticism of proposed solutions. And each has an equal voice in the decision. The participants are substantively equal in that the existing distribution of power and resources does not shape their chances to contribute to deliberation.

In addition, they are *reasonable* in that they aim to defend and criticize institutions and programs in terms of considerations that others, as free and equal, have *reason to accept,* given the fact of reasonable pluralism and on the assumption that those others are themselves reasonable.

4) Which considerations count as reasons? Generically speaking, a reason is a consideration that counts in favor of something: in particular, a belief, or an action. That is not meant to be illuminating analysis of the concept of a reason: I doubt that illuminating analysis is available, or that it would be helpful in answering our question. What is needed is not an account of what a reason is, but of which considerations count as reasons. And the answer to this question depends on context: Whether considerations count in favor in the relevant way depends on the setting in which they are advanced. Applying this point to the issue at hand: A suitable account of which considerations count as reasons for the purposes of an account of democratic deliberation will not take the form of a generic account of what a reason is, but a statement of which considerations count in favor of proposals within a deliberative setting suited to the case of free association among equals, understood to include an acknowledgment of reasonable pluralism. This background is reflected in the kinds of reasons that will be acceptable: meaning, as always, acceptable to individuals as free and equal citizens.

I have specified the relevant deliberative setting as one in which people are understood as free, equal, and politically reasonable, and as having conflicting, reasonable philosophies of life. Under these conditions—within the idealized deliberative setting that captures them—it will not do simply

to advance considerations that one takes to be true or compelling. For such considerations may well be rejected by others who are themselves reasonable—in being prepared to live with others on terms that are acceptable to those others, given their different comprehensive views—and endorse conflicting comprehensive views. One needs instead to find reasons that are compelling to others, where those others are regarded as (and regard themselves as) equals, with conflicting reasonable commitments. Considerations that do not meet these tests will be rejected in the idealized setting and so do not count as acceptable or sufficient political reasons. Let's say then that a consideration is an acceptable political reason just in case it has the support of the different comprehensive views endorsed by reasonable citizens.

5) These observations about reasonable pluralism, and the role of background understandings of citizens as free, equal, and reasonable in constraining the set of political reasons—thus giving content to democracy's public reason—plays an important role in understanding the essential role of non-political liberties within the account of democracy.

First, people hold some of their commitments—for example, religious commitments—on faith, and those commitments impose what they take to be overriding obligations. Such commitments are not, as such, unreasonable. To be sure, faith transcends reason, even as "reason" is understood within the tradition to which the commitments belong. Still, beliefs held on faith—perhaps beliefs in what are understood to be revealed truths—are not as such unreasonable. But such beliefs can reasonably be rejected by others, who rely on the darkness of an unconverted heart. So they cannot serve to justify legislation. And the fact that they cannot will impose pressure for personal liberties—say, religious, expressive, and moral liberty.

Second, acceptable considerations will have different weights in political justification. And the weight will depend on the nature of the regulated conduct, in particular the weight of the reasons that support the conduct. Take considerations of public order, for example. They provide acceptable reasons for regulating conduct. Different views have different ways of explaining the value of public order: utilitarians will found it on considerations of aggregate happiness, Kantians on the social preconditions of autonomous conduct, others on the intrinsic value of human life and human sociability. Moreover, people are bound to disagree about what public order requires. But it will not be acceptable to suppose that, as a general matter, the value of public order transcends all other political values. Except perhaps in the most extreme circumstances, for example, a state may not impose a blanket prohibition on alcohol consumption—including consumption in religious services—in the name of public order. The reasons that support such consumption include considerations of religious obligation—more generally, considerations of fundamental obligation, which are normally overriding—which will provide a suitable basis for rejecting a justification

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cast in terms of the value of public order, except in the most extreme conditions. To be sure, not all citizens acknowledge the obligations in question. But even those who do not can see the weightiness of those reasons, within the outlooks of other politically reasonable citizens.

As these two observations indicate, pressure for liberty comes from at least two sources: The pluralism of philosophies of life among political reasonable citizens leads to the rejection of some bases of restriction as politically weightless; other bases of restriction will not be weightless, but insufficient to outweigh the reasons that can be acknowledged, consistent with reasonable pluralism, as commending or commanding conduct. Taking these two considerations together, we have the basis for a strong case for religious, moral, and nonpolitical expressive liberties: Conduct in these areas is supported by strong (perhaps compelling) reasons, as when religious exercise is a matter of obligation according to a person's reasonable religious outlook. Moreover, standard reasons for restriction—religious and sectarian moral reasons—will often be weightless.

Given this deliberative rationale for personal liberties, we can see why their protection would be constitutive of democracy, and how, therefore, we get co-originality. For imposing regulations in the name of reasons that are either weightless or of insufficient force to override reasonable demands is a violation of the fundamental democratic idea that the authorization to exercise state power must arise from the *collective decisions* of the equal members of a society who are governed by that power—that it must be supported by reasons that can be shared by the set of politically reasonable citizens over whom power is exercised. Decisions to regulate are not suitably collective, for the addressees of the regulations cannot all be included in their collective authorization.

III. Discursive Democracy

1.

Habermas' conception of discursive democracy provides an idealized, normative account of democratic process. Set within a constitutional order that protects personal and political liberties, discursive democracy ties together two elements or "tracks" of a process of collective decision-making: The informal discussion of issues in an unorganized, "wild," decentered (not centrally coordinated) public sphere that does not make authoritative collective decisions, and a more formal political process, including elections and legislative decision-making, as well as the conduct of agencies and courts. In the formal process, candidates and elected legislators deliberate about issues, make authoritative decisions by translating the opinions formed in the informal sphere into legal regulations, and monitor the execution of those decisions by administrative bodies. Whereas discourse in the public

sphere is open-ended, the decision-making procedures are subject to conditions of deliberative-democratic legitimacy: for example, that decisions are to be founded on reasons; that the processes are to be open and fair; that they are to be free of coercion; and that results are to be determined by the better argument (Habermas 1996a, 305–6).

This discursive model of democratic process appears to be founded on an hypothesis about the connection between idealized discourse and actual democratic decision-making (understood as proceeding along both tracks). The central idea is that "democratic procedures should produce rational outcomes"—where rational outcomes are those that would emerge from idealized discourse. Suppose, then, that we think collective decision-making as a form of problem solving: "The production of legitimate law through deliberative politics represents a problem-solving procedure that needs and assimilates knowledge in order to program the regulation of conflicts and the pursuit of collective goals" (Habermas 1996a, 318). Then, a discursively democratic process of decision-making provides grounds for expecting reasonable solutions to problems:

> The democratic procedure is institutionalized in discourses and bargaining processes (assumed to be fair) by employing forms of communication that promise that all outcomes reached in conformity with the procedure are reasonable [...]. Deliberative politics acquires its legitimating force from the discursive structure of an opinion- and will-formation that can fulfill its socially integrative function only because citizens expects its results to have a reasonable quality. (Habermas 1996a, 304, 296)

More generally,

> democratic procedure makes it possible for issues and contributions, information and reasons to float freely; it secures a discursive character for political will-formation; and it thereby secures that fallibilist assumption that results issuing from proper procedure are more or less reasonable. (Habermas 1996a, 448)

In achieving such reasonable results, the two tracks of deliberative politics play distinct roles, which correspond to different stages in an idealized process of problem-solving. Informal communication in the public sphere provides a close-to-the-ground and unregulated arena for detecting new problems, bringing them to public view in a non-specialized language, and suggesting ways to address those problems: Because information is not controlled and communication is unrestricted, "new problems situations can be perceived more sensitively" (Habermas 1996a, 308). Thus "the communicative structures of the public sphere constitute a far-flung network of sensors that react to the pressure of society-wide problems and stimulate influential opinions" (Habermas 1996a, 300). It is founded on a network of associations that "specialize [...] in discovering issues relevant for all society, contributing possible solutions to problems, interpreting values, producing good reasons, and invalidating others" (Habermas 1996a, 485).

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Formal political processes—elections, legislatures, agencies, and courts—provide the second stage in an idealized problem-solving system. They provide institutionally regulated ways to assess ideas: to deliberate about proposals under fair conditions, evaluate alternative solutions, and make authoritative decisions after due consideration. So on the second, institutional track we have a disciplined testing through reason of proposals that emerge from open-ended public discussion:

> The operative meaning of these regulations consists less in discovering and identifying problems than in dealing with them; it has less to do with becoming sensitive to new ways of looking at problems than with justifying the selection of a problem and the choice among competing proposals for solving it. The publics of parliamentary bodies are structured predominantly as a *context of justification*. These bodies rely not only on the administration's preparatory work and further processing but also on the *context of discovery* provided by a procedurally unregulated public sphere that is borne by the general public of citizens. (Habermas 1996a, 307)

Thus the case for the two-track process is founded on the claim that it will generate rational outcomes. And that claim is based on the interplay in discursive democracy between an open-ended exploration of problems and possible solutions, which "influences the premises of judgment and decision-making in the political system" (Habermas 1996b, 486–7), and a disciplined, rational assessment of proposed solutions. This interplay between discovery and justification supports the presumption that the results will conform to idealized, discursive problem solving. Because the two phases of reasoning in the actual process conform to idealized reasoning, the actual process will generate results like those that idealized discourse would generate:

> Thus the normative expectation of rational outcomes is grounded ultimately in the interplay between institutionally structured political will-formation and spontaneous, unsubverted circuits of communication in a public sphere that is not programmed to reach decisions and thus is not organized. (Habermas 1996b, 485)

Thus, Habermas interprets popular sovereignty procedurally, as the possible influence on authoritative political decisions of public discourses in an autonomous communicative network, rather than as the direct control of legislation by a determinate and coherent popular will. In this way, the two-track idea identifies a way that authorship of the terms and conditions of political association by free, equal, reasonable citizens can be made compatible with the modern organization of social and political power.[5] Think of the achievement this way: Habermas has shown that the pluralist critique of sovereignty and of a state-centered conception of politics, and associated insights about the importance of social organization in modern democracy

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[5] See Habermas 1998b, 251, on popular sovereignty as consisting in "interactions between legally institutionalized will-formation and culturally mobilized publics."

(about the social bases of democratic governance), can be freed from the pluralists' own theory of politics as bargaining between and among groups that represent well-defined interests. Those insights can be wedded instead to a conception of politics in which reasoning about the basic terms of association plays a central role. But the marriage requires the idea of the informal, discursive public sphere, in which all can freely participate, and which has the capacity to influence opinion through argument, and thereby shape the agenda of formal politics. This strikes me as a fundamental contribution to democratic thought: a remarkable reconception, with redemptive promise.

2.

So much for Habermas' view. Now I come to the pair of questions I identified earlier: Why should democracy be deliberative? And why should deliberation be democratic?

First, then, why is it important for democracy to be deliberative? Why should collective decision-making involve the giving of reasons of suitable kinds, rather than simply a fair aggregation of citizen interests? One rationale, already suggested, arises from concerns about the impartial justifiability of (or, as Habermas puts it, the rationality of) outcomes: the concern captured in Habermas' discourse principle. Suppose we have a hypothetical test of validity: Outcomes are justified only if they could be accepted by people who give suitable weight to the reasonable objections of others, assuming those others to be free and equal. Deliberative democracy, then, may seem a natural way to achieve such impartially justified outcomes. For it is a form of democracy that aims to mirror hypothetical conditions of good information, attentiveness to reasons, and regard for others as equals by requiring, in particular, that the exercise of power be justified by appeal to considerations that others acknowledge as reasons, and assuming a shared commitment to such justification. Bargaining under fair background conditions may also produce rational outcomes, but deliberation generates a stronger presumption because it requires attentiveness to reasons.

Rawls suggests this thought about the relationship between a hypothetical-contractual notion of justice and actual political decision-making when he remarks that his principle of participation—requiring fair political equality—transfers the requirement of equal standing that defines the original position into the design of the constitution: we have an effective political procedure that "mirrors" the "fair representation of persons in the original position" (Rawls 1993, 330). Deliberative democracy might be seen as giving this idea of connecting contractual and actual a "Scanlonian" twist. Scanlon's contractualism (1998, chap. 5) presents an idealized model of moral reasoning rather suggesting that rational choice under conditions of ignorance can provide a substitute for such reasoning. Correspondingly, then, instead of merely transferring a requirement of equal standing or fair representation,

deliberative democracy institutionalizes the concern for justifiability to others from their standpoint that defines Scanlon's ideal contractualism, moving that concern from the contractual to the actual, and applying it to the special case of binding collective choice.

Brian Barry (1995, sec. 16, 100) has a very illuminating discussion of this idea. He considers what he calls the "circumstances of impartiality": the social-political conditions that "approximate those of a Scanlonian original position." Borrowing this term, then, we might think of deliberative democracy as an essential part of the circumstances of impartiality. The idea is that if we wish to realize impartial justice—say, to satisfy Habermas' discourse principle—then we must embrace in our actual collective decision-making a commitment to mutual reason-giving (and institutional conditions that express and sustain that commitment) of a kind that approximates the idealized practice of mutual reason-giving that determines the requirements of justice. Put simply, impartial justice must, arguably, be aimed at to be achieved; and here, "aiming" at it means approximating its procedures.

If the requirements of justice are fixed by a kind of impartial reasoning under hypothetical conditions, then, even if we do not know what would be agreed to, we will, arguably, only achieve the requirements of justice—the outcomes that could or would be agreed to—if we make collective decisions using our best actual approximations to impartial reasoning. We cannot simply trust the achievement of justice to the pursuit of interests even under ideally fair conditions, for those fair conditions themselves are likely to erode without a commitment to democratically-deliberative decision-making.

I think this argument has much to be said for it, and it seems to be Habermas' idea about the relationship between the standard of justification stated in the discourse principle and deliberative-democratic practice:

The democratic procedure is institutionalized in discourses and bargaining processes (assumed to be fair) by employing forms of communication that promise that all outcomes reached in conformity with the procedure are reasonable [...]. Deliberative politics acquires its legitimating force from the discursive structure of an opinion- and will-formation that can fulfill its socially integrative function only because citizens expect its results to have a reasonable quality. (Habermas 1996a, 304, 296, 448)

They have such expectation because actual decision-making, under the conditions of the discursive model, approximates (in ways noted earlier) idealized deliberation.

Still, the case for the importance of deliberation need not proceed solely in terms of the requirements on a system of collective decision-making that is to match the results that would be achieved were decision-making to be ideally deliberative. The virtues of the deliberative view are also more intrinsic, and allied closely with its conception of binding collective choice, in particular with the role in that conception of the idea of reasons acceptable

to others whose conduct is governed by those choices, and who themselves have reasonable views. By emphasizing the importance of reasons acceptable to all citizens, the deliberative view expresses an especially compelling picture of the possible relations among people within a democratic order; moreover, it states a forceful ideal of political legitimacy for a democracy. I take up these two points in turn.

First, the deliberative conception offers a forceful rendering of the fundamental democratic idea—the idea that decisions about the exercise of state power are *collective*. It requires that we offer considerations that others whose conduct will be governed by the decisions, and who are understood to be free, equal, and reasonable, can accept, not simply that we count their interests, while keeping our fingers crossed that those interests are outweighed. The idea of popular authorization is reflected not only in the processes of decision-making, but in the form—and as we have seen, the content—of political reason itself.

This point about the attractions of the deliberative interpretation of collective decisions can be stated in terms of ideas of *political autonomy* and *political community*. If a political community is a group of people sharing a comprehensive conception moral or religious view, or a substantive national identity defined in terms of such a view, then reasonable pluralism ruins the possibility of political community. But an alternative conception of political community connects the deliberative view to the value of community. To see how, notice first that by requiring justification on terms acceptable to others, deliberative democracy provides for a form of political autonomy. Without denying the coercive aspects of common political life, it requires that all who are governed by collective decisions—who are expected to govern their own conduct by those decisions—must find the political values that provide the *bases* of those decisions acceptable, even when they disagree with the details of the decision.

Through this assurance of political autonomy, deliberative democracy achieves one important element of the ideal of community. Not because collective decisions crystallize a shared ethical outlook that informs all social life generally, nor because the collective good takes precedence over liberties of members. Rather deliberative democracy is connected to political community because the requirement of providing reasons for the exercise of political power that are compelling to those who are governed by it itself expresses the full and equal membership of all in the sovereign body responsible for authorizing the exercise of that power, and establishes the common reason and will of that body.

The deliberative conception of democracy also presents an account of when decisions made in a democracy are politically legitimate and how to shape institutions and forms of argument so as to make legitimate decisions.

Generally speaking, we have a strong case for political legitimacy when the exercise of political power has sufficient justification. But, as a conceptual

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matter, a person can believe that the exercise of power is well-justified—therefore legitimate—while also acknowledging that others over whom it is exercised reject the justification. As a conceptual matter, legitimacy does not require that the relevant justification be acknowledged as such by those who are subject to the legitimate power: there need be no justification *to* them. But the background of democracy—the idea of citizens as free and equal—and the fact of reasonable pluralism are important in characterizing a more limited conception of justification: Because of these conditions, the relevant justification must be addressed to citizens, by which I mean that its terms must be acknowledged as suitable by those subject to political power. Given that citizens have equal standing and are understood as free, and given the fact of reasonable pluralism, we have an especially strong showing of legitimacy when the exercise of state power is supported by considerations acknowledged as reasons by the different views endorsed by reasonable citizens, who are understood as equals: No other account of reasons is suited for this case. The deliberative conception articulates an account of political legitimacy suited to democratic conditions, and through the ideal deliberative procedure it aims to specify the content of those conditions.

3.

I turn now to the second question: Why should deliberation be democratic? Assume, *arguendo*, that the discourse principle can only be satisfied by deliberative decision-making. Still, we need to ask why deliberative political decision-making needs to be democratic—to satisfy the principle of political equality, with its guarantees of universal political rights. The mere fact that the outcomes are to match those that could be accepted by all under idealized conditions does not seem to lead to this conclusion: not, anyway, without further argument. It might be argued that an ideal deliberative procedure is best institutionalized by ensuring well-conducted political debate among elites, which enables citizens to make informed choices among them and the alternatives they represent. Why does a deliberative view such as Habermas' require equal political liberties? How does it connect to concerns about participation and political equality? Why, in short, does the discourse principle become the democratic principle, once it assumes legal shape?

I am not sure that I understand Habermas' answer to this question. In at least one place, he notes that his view has a "dogmatic core" in its commitment to an "idea of autonomy according to which human beings act as free subjects only insofar as they obey just those laws they give themselves in accordance with insights they have acquired intersubjectively" (Habermas 1996a, 446). A different line of thought, that does not depend on this normative understanding of autonomy, runs parallel to the argument about why democracy needs to be deliberative. Here the idea would be that the best

way to determine what would be agreed to by all in idealized discourse is to see what is actually agreed to in actual democratic discourse, in which all have a right to participate. All we need to get this result is to add a non-normative assumption about personal autonomy, e.g., the thesis that individuals are the best judges and most vigilant defenders of the interests and concerns that they would have in idealized deliberation: "Nothing better prevents others from perspectivally distorting one's own interests than actual participation. It is in this pragmatic sense that the individual is the last court of appeal for judging what is in his best interest" (Habermas 1990, 67). A third argument is that equal political liberties are required because that's what applying the discourse principle implies: no democracy, no rational approval in idealized discourse (Habermas 1996a, 127).

Here, again, I think the first two points have some force, but that the bridge between an idealized account of political justification and actual democracy could be strengthened—and freed from a philosophy of life that assumes the supreme value of autonomy and from the empirical assumption of autonomy—by developing the third. And that means presenting a more explicit account of the nature of idealized justification and the kinds of reasons suited to it, given the background ideas of reasonable pluralism and members as free and equal. In particular, three considerations are important in an account of why deliberation should be democratic.

First, if we assume the equal liberty principle (or some analog to it, requiring personal liberties), the deliberative view can appeal to traditional *instrumental* reasons in support of institutions that ensure equal political rights. In particular, such rights provide the means for protecting other basic rights—for example, those that are protected under the equal liberty principle. Though such instrumental reasons are not the sole basis for equal political rights, part of the case for them turns on their protective role.

A second consideration turns on the issue of acceptable reasons. Consider conventional, historical justifications for exclusions from or inequalities of political rights. Those justifications—whether of formal exclusion or unequally weighted votes—have typically been based on considerations about racial, gender, ethnic, or religious differences. But such considerations will not provide acceptable reasons in public deliberation, given the background conception of members as free and equal, and so arrangements of collective decision-making cannot be justified by reference to them.

The third consideration is analogous to a central point that figured in the case for private liberties. A characteristic feature of different philosophies of life is that they each give us strong reasons for seeking to shape our political-social environment: for exercising responsible judgment about the proper conduct of collective life. The theories underlying those reasons cover a wide range: Aristotelian views about the central role of civic engagement in a flourishing human life; Rousseauean claims about the connection between realizing the personal autonomy that is essential to human nature and

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political participation in a democratic polity; and views, founded on religious convictions, about the commanding personal responsibility to ensure social justice and the corresponding personal sin of failing in that responsibility. Common ground among these competing, reasonable philosophies is that citizens sometimes have substantial, sometimes compelling reasons for addressing public affairs, and therefore a fundamental interest in favorable conditions for forming judgments about the proper directions of policy, and acting on their judgments.

The failure to acknowledge the weight of those reasons for the agent and to acknowledge the claims to political opportunities that emerge from them reflects a failure to respect the background idea of citizens as equals. We acknowledge the weight of these reasons is reflected in part by equal rights of participation.

4.

In my remarks about both personal liberty and democracy, I have been emphasizing in effect that we need to build into the actual process of political decision-making the conclusions of idealized, hypothetical deliberation, where the idealizations arguably articulate and organize ordinary understandings of acceptable political argument, under democratic conditions. To which Habermas might object that I am not giving suitable weight to actual deliberation. He says: "The justification of norms and commands requires that a real discourse be carried out and this cannot occur [...] in the form of a hypothetical process of argumentation occurring in the individual mind" (Habermas 1990, 68).

Here, I want in part to agree. It is not sufficient for political justification that outcomes be rationalizable—that the deliberative process issue in decisions for which appropriate reasons could be cited, and that it be left to another institution, say, a court, to determine whether that condition is met. Outcomes in a deliberative democracy are to be arrived at through discussion in which reasons of the appropriate kind are given by participants. Four considerations support the importance of actual deliberation:

1) Though deliberative justifiability itself is important, it must—as the Barry–Habermas argument about the circumstances of impartiality suggests—be aimed at to be achieved; that is, it will not in general be true that results achieved through a process of exchange or bargaining (under fair conditions), or outcomes that reflect a balance of power, will be defensible by reasons of an appropriate kind. So requiring actual deliberation helps to establish a presumption that results can be defended through reasons, and thus a presumptive legitimacy for outcomes of collective decision-making.

2) Offering reasons to others expresses respect for them as equal members of a deliberative body. So actual deliberation plausibly helps to foster mutual respect, which in turn encourages citizens to confine the exercise of power as

the deliberative idea requires. No similar result can be expected if we assign the job of assessing the justifiability of outcomes to a separate institution.

3) Actual deliberation is a way to acquire and master fundamental political principles and their rationale by drawing on those principles and having to defend them in open argument. The fact that the principles can be defended in hypothetical discourse of course does not suffice for their understanding or motivational impact.

4) In actual reason-giving, citizens are required to defend proposals by reference to considerations that others acknowledge as reasons, and not simply by reference to their own interests. To the extent that such public reasoning shapes preferences, conflicts over policy will be reduced, as will inclinations to strategically misrepresent circumstances. A crucial point here is that the extent of preference-diversity is not fixed, not given prior to political deliberation. Not that the *aim* of such deliberation is to change citizen preferences by reducing their diversity: The aim is to make collective decisions. Still, one thought behind a deliberative conception is that public *reasoning* itself can help to reduce the diversity of politically relevant preferences because such preferences are shaped and even formed in the process of public reasoning itself. And if it does help to reduce that diversity, then it mitigates tendencies to distortion even in strategic communication.

So actual deliberation is important. But an account of democracy as the source of legitimate law must give some account of what the relevant democratic background is, such that deliberation under democratic conditions, thus specified, results in legitimate law. And we can't simply say that the correct specification of those legitimacy-establishing conditions is itself to be the product of actual democratic deliberation, because we need an account of the conditions that make deliberation democratic and that make democracy deliberative. To be sure, the account of those conditions may receive support from actual deliberation, as citizens master its principles and the reasons for them; indeed, if they do not achieve such mastery and understanding, if the ideal is not actualized in the reflective political thought of citizens, there may well be problems about democratic stability. So actual deliberation can (perhaps must) renew the constitutive conditions of a democratic process of legitimate lawmaking. But it cannot bear the full weight of specifying those conditions.

IV. Problem of Possibility[6]

1.

Finally, I come to Habermas' answer to the question of how radical democracy is possible. Given the realities of social and political power, how is

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[6] This section draws substantially from Cohen and Sabel 1997.

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the abstract ideal of "a self-organizing community of free and equal citizens," coordinating their collective affairs through their common reason, of practical relevance? Habermas' answer draws on the two-track discursive model.

The two-track model indicates how (communicative) power might flow from citizens, reasoning in a dispersed network, through a deliberative legislature, to administration. But this flow from dispersed publics to administrative implementation is threatened by the control, perhaps manipulation, of formal and informal public discussion by organized social power and political agencies (including parties and interest groups) with interests and modes of argument fixed independently from the concerns and opinions of freely communicating citizens. The possibility of the proper flow, in turn, is founded on the capacity of associations in the informal, unspecialized public sphere autonomously to identify issues and concerns, including "encompassing social problems" (Habermas 1996a, 365), that lie outside the agenda of formal politics, bring those issues and concerns to wider public attention, propose solutions to them, and, by moving public opinion, influence the operations of the formal political system.

The key is "autonomously" (Habermas 1996a, 375; 1996b, 484). The discovery, articulation, and exploration of concerns, as well as the formulation on new understandings of reasonable practice, must not itself be subject to the initiation or subsequent control of organized political or social powers, with their specialized interests, routines, and vocabularies. Only when initiative and subsequent organized influence on legislative and administrative power come from outside institutionalized, routinized power—only if it breaks free from the "unofficial circulation of this unlegitimated power" (Habermas 1996a, 328)—can we say that the flow of power moves from equal citizens, through law, to administration (Habermas 1996a, 380). And if it can, then democracy is possible, despite the realities of organized social and administrative power.

The requirement of outside initiative strikes me as ill-conceived: Lots of political movements are initially provoked by developments internal to conventional institutions and actors—for example, by competition between and among elites who mobilize popular support with the expectation that that mobilization can be controlled—even though the subsequent evolution of those movements proceeds independently; when it comes to popular movements, genesis is not identity. But this is largely a matter of detail—though it does underscore the difficulties of giving empirical content to the relevant notion of "autonomy."

My larger concern with Habermas' answer to the possibility problem begins from the observation that this answer is, as Frank Michelman (1996, 3–8) has put it, "a dispiriting meltdown of popular sovereignty." On Habermas' account, radical democracy is possible largely because of the sporadic bursts of energy by social movements that, in their role as dispersed

sensors, detect popular concerns that are off the public agenda, suggest novel solutions to them, and perhaps influence legislation (and ultimately administration). To demonstrate that possibility, it suffices to show that "*under certain circumstances* civil society can acquire influence in the public sphere, have an effect on the parliamentary complex, [...] and compel the political system to switch over to the official circulation of power" (Habermas 1996a, 373). And to make this case, it suffices to show that "in a perceived crisis situation, the actors in civil society [...] can assume a surprisingly active and momentous role" (Habermas 1996a, 380).

In saying that this conclusion is—to use Michelman's word—dispiriting, I do not disparage at all the "momentous role" of the social movements—for example, feminist and environmental—that Habermas here has in mind (Habermas 1996a, 381). But the argument does make democracy, as reconceived, foreign to the settled institutional routines of a modern polity. Except for the exceptional conditions in which associations break free from the institutionalized circuit of power, so to speak, the system rules: a reconception with limited redemptive force.[7]

Before going further, a qualification is in order. The conclusions we should draw from Habermas' account of democratic possibility—how dispiriting we should find it—depend on which of two purposes we assign to the argument. On one construction, the aim is simply to show that the "old-fashioned," radical-democratic ideal of a self-governing association of free and equal citizens—authors of the laws, not merely their addressees—still can connect to modern politics, thus turning back realist arguments for less demanding accounts of democracy. Interpreted this way, the argument succeeds, even if Habermas is only able to point to occasional disruptions of the normal routines of institutionalized power. The disruptions suffice as proof of possibility.

Suppose instead that the purpose of the two-track model, with its sharp distinction between free-floating discourse in a network of autonomous associations and institutional decision-making and exercise of power, is to identify democracy's most attractive possibilities. Then the view strikes me as less compelling. Perhaps because he is principally concerned with the issue of possibility, Habermas thinks it suffices to make the case for autonomous influence flowing from the periphery, under conditions of crisis. But once that case is on hand, we can ask whether there are other forms of citizen participation that would more fully achieve the radical democratic promise. Those forms would need to meet three conditions: They must permit and encourage inputs that reflect experiences and concerns that may not occupy the current agenda (sensors, rooted in local experience and information); they must provide disciplined assessment of proposals through

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[7] In this respect, Habermas' view bears some resemblance to Bruce Ackerman's (1991) account of dualist democracy, with its distinction between normal and constitutional politics.

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deliberation that encompasses fundamental political values; and (here we go beyond Habermas' emphasis on social movements in periods of crisis), they must also provide more institutionalized, regularized occasions for citizen participation in collective decision-making (and perhaps, by so doing, improve the quality of discourse in the "informal public sphere"). In brief, they must be autonomous, deliberative, and institutional.

2.

Sabel and I (1997) have recently suggested some ideas along these lines, captured in the idea of a *directly-deliberative polyarchy*. The fundamental idea is to institutionalize direct problem-solving by citizens, and not simply to foster informal citizen discussion with promises of possible influence on the formal political arena. In directly-deliberative polyarchy, collective decisions are made through public deliberation in arenas open to citizens who use public services, or who are otherwise regulated by public decisions. But in deciding, those citizens must examine their own choices in the light of the relevant deliberations and experiences of others facing similar problems in comparable jurisdictions or subdivisions of government. Ideally, then, directly-deliberative polyarchy combines the advantages of local learning and self-government with the advantages (and discipline) of wider social learning and heightened political accountability that result when the outcomes of many concurrent experiments are pooled to permit public scrutiny of the effectiveness of strategies and leaders.

This conception is suggested by a range of political experiments, and reflection on how their separate energies might be combined.[8] Consider, for example, community policing: A strategy for enhancing public security that features a return of police officers to particular beats, regular discussions between them and organized bodies in the communities they are policing, and regular coordination between those bodies and agencies providing other services that bear on controlling crime. Or consider forms of school decentralization that—while shrinking school size and permitting parents to choose schools—also replace close controls by central bureaucracies with governance mechanisms in which teachers and parents play a central role. Or arrangements for local and regional economic development, that include strong components of training and service provision, and whose governance includes local community interests, service providers, representatives of more encompassing organizations, as well as local representatives of regional or national government.

These new arrangements are not conventionally public because, in solving problems, they operate autonomously from the dictates of legislatures or

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[8] For discussions of such experiments, see Meares and Kahan 1999; Luria and Rogers 1999; Meier 2000; Sabel, Fung, and Karkkainen 2000.

public agencies; they are not conventionally private in that they do exercise problem-solving powers, and their governance works through discussion among citizens rather than the assignment of ownership rights. Moreover, they are attractive because they appear to foster two fundamental democratic values—deliberation and direct citizen participation—while potentially offering advantages as problem-solvers that programs conceived within the limits of conventional representative democracies do not.

Stated without much detail or nuance, the fundamental idea comprises the following three elements:

1) Local problem solving through directly-deliberative participation, which is well-suited to bringing the relevant local knowledge and values to bear in making decisions. Direct participation helps because participants can be assumed to have relevant information about the local contours of the problem, and can relatively easily detect both deception by others and unintended consequences of past decisions. Deliberative participation helps because it encourages the expression of differences in outlook, and the provision of information more generally: The respect expressed through the mutual reason-giving that defines deliberation reinforces a commitment to such conversational norms as sincerity and to solving problems, rather than to strategic angling for advantage (perhaps by providing misleading information); furthermore, if preferences over outcomes themselves are shaped and even formed by discussion, and mutual reason-giving reduces disagreements among such preferences, then being truthful will also be good strategy.

2) With an eye to addressing the narrowness commonly associated with localism, an institutionalization of links among local units—in particular, the institutionalization of links that require separate deliberative units to consider their own proposals against benchmarks provided by other units. Because practical reasoning requires a search for best solutions, decision-makers need to explore alternatives to current practice. A natural place to look for promising alternatives—including alternatives previously unimagined in the local setting—is in the experience of units facing analogous problems. Thus alongside directly-deliberative decision-making we need deliberative coordination: deliberation among units of decision-making directed both to learning jointly from their several experiences, and improving the institutional possibilities for such learning. Extending deliberation across units allows each group to see its viewpoints and proposals in light of alternatives articulated by the others: in effect, it ensures that the exercise of practical reason is both disciplined and imaginative.

3) Responsibility for ensuring that deliberation within and among units meets these conditions, vested ultimately in authorizing and monitoring agencies—legislatures, agencies, and courts. In contrast to the conventional "division of deliberative labor," this responsibility, under conditions of directly-deliberative polyarchy, is to be discharged by ensuring that the

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relevant decision-making bodies act deliberatively, not—so far as possible—by substituting for their decisions.

As this observation indicates (and as the term "polyarchy" is meant to signal), directly-deliberative polyarchy assumes the continued presence of the legislatures, courts, executives, and administrative agencies, controlled by officials chosen through free and fair elections, in which virtually all adults have rights to suffrage, office-holding, association, expression, and face alternative, legally protected sources of information. Though the operation of these institutions and arrangements changes, they remain and continue to serve some of the political values with which they are conventionally associated: peaceful transitions of power, restraints on unbridled power, fair chances for effective influence over authoritative collective decisions, opportunities to develop informed preferences.

The shift in the locus of problem-solving, however, changes the operations and expectations of basic political institutions. Consider the role of legislatures. Directly-deliberative polyarchy is animated by a recognition of the limits on the capacity of legislatures to solve problems—either on their own or by delegating tasks to administrative agencies—despite the importance of solutions. The role of the legislature in directly-deliberative polyarchy is to empower and facilitate problem-solving through directly-deliberative arenas operating in closer proximity than the legislature to the problem. More particularly, the idea is for legislatures to declare areas of policy (education, community safety, environmental health) as open to directly-deliberative polyarchic action; state general goals for policy in the area; assist potential deliberative arenas in organizing to achieve those goals; make resources available to deliberative problem-solving bodies that meet basic requirements on membership and benchmarking; and review at regular intervals the assignments of resources and responsibility.

This changed role for legislatures does not exclude national solutions through legislative enactment when uniform solutions are preferable (because of limited diversity among sites) or when externalities overwhelm local problem-solving. Instead, the availability of alternative methods of problem-solving imposes on legislatures a greater burden in justifying their own direct efforts: They must explicitly make the case that the benefits of those efforts suffice to overcome the advantages of direct-deliberative solutions.[9]

Administrative agencies, in turn, provide the infrastructure for information exchange between and among units—the exchange required for benchmarking and continuous improvement. Instead of seeking to solve problems, the agencies see their task as reducing the costs of information faced by different problem-solvers: helping them to determine which deliberative bodies are similarly situated, what projects those bodies are pursuing, and

[9] For related discussions of federalism, see Gardbaum 1996, and the account of the "commandeering problem" in Dorf and Sabel 1998.

what modifications of those projects might be needed under local conditions.

3.

This is the barest sketch of the idea of directly-deliberative polyarchy, but I hope it is clear even from the sketch that it offers a different redemptive project than we find in Habermas' response to the problem of possibility.

Here, I want to emphasize two points of difference, both focused on the conception of the public sphere. First, in directly-deliberative democracy (and, by extension, directly-deliberative polyarchy) the public arena is *organizationally dispersed* in that public opinion crystallizes not only in reference to the national legislature, but also in the work of the local school governance committee, the community policing beat organization, and their analogs in areas such as the provision of services to firms or to distressed families. Nevertheless, the pieces of this dispersed public sphere are connected by the requirements of reason-giving, in particular the demand to respect basic constitutional values; the need for explicit comparison with other units which are themselves conducting similar comparisons; and a wider public debate informed by such comparisons and focused on national projects. In short, we do have a public sphere in directly-deliberative polyarchy: both because citizens participate in solving problems, and because of the deliberative, reason-giving terms of that participation.

Second, and more fundamentally, the public arena is the place where practicality in the form of problem solving meets political principle in the form of deliberation through reason giving among free and equal citizens. In directly-deliberative polyarchy, with direct problem-solving by groups of affected citizens, public deliberation cuts across the distinction between reflection on political purposes and efforts to address problems in light of those purposes. This marriage of principle and problem-solving might have the effect both of sharpening discussion in the informal public sphere; more immediately, it promises an effectiveness to public engagement that is absent from Habermas' account.

For Habermas, discussion within the "communicatively fluid" public sphere comprises all manner of topic and question, and is guided by experiential concerns to which citizens themselves are attentive. So the dispersed network of communication that constitutes the public comes as close as can reasonably be hoped to a free community of equals, autonomously debating the terms of their collective life—as close as can be hoped, if we take as an assumption that the principal political, problem-solving institutions remain fixed in design and conception, and that citizens are to discuss encompassing political directions, and not solve problems. Inevitably, then, the capacity of the public's contributions to subsequently steer the state remain an open question. The freer the communication within the public, the greater

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clarification it can attain. But even the most radical extension and deepening of the public sphere will be of limited consequence precisely because the technical demands, to which administration, parliament, and party must respond, limit the direction that might issue from a more encompassing, unrestricted discussion among citizens: "Communicative power cannot supply a substitute for the systematic inner logic of public bureaucracies. Rather, it achieves an impact on this logic in a siege-like manner" (Habermas 1992; 1996b, 486). In the end, radical democracy on this conception serves more as a series of reminders—that human communication need not be narrowly technical, that unsolved problems remain outside the purview of conventional institutions—and a source of new ideas in periods of crisis, than a program to redirect the ensemble of institutions to ensure a controlling role for the communicative power of free and equal citizens. I see no compelling reason for that self-limitation: We should not confuse a proof of possibility with a redemption of promise.

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