

Response Paper: Week Two

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### *Horse-Trading, Not Horse-Racing*

The deliberative conception of democracy has radical implications for preference-based reasoning. Preferences are exogenous to many formal models of political activity, with the result that opportunities for *altering* preferences are given short shrift. Such preference alteration has been the core of democratic activity in most societies that have practiced democracy – the contemporary American habit of making speeches to cameras in empty chambers before casting an unpersuaded vote is decidedly an aberration. But if we take the idea of preference alteration seriously, this raises several new questions. Can we make sense of people being wrong about their own interests? Does the form of preference-alteration matter, or should we confine our attention to the result? And who exactly should do the deliberating?

To begin with, preference alteration subsequent to good-faith deliberation implies that at least some preferences were wrongly-held. This limited violation of the rational actor assumption clashes violently with the assumptions underlying much of social choice theory. If preferences fail to correspond with interests, then preference aggregation prior to deliberation will reach Pareto-suboptimal results. There is thus a deadweight loss associated with voting that must be remediated by a process that aligns preferences with interests. Deliberation is an ideal candidate procedure, but we can imagine others – compulsory reflection (recalling Rawls' reflective equilibrium) or propaganda, for example.

Framing the issue as one of public competence, Arthur Lupia emphasizes the costs of squandering limited attention on ineffective competence-generating schemes. He investigates whether deliberation can enhance civic competence, and identifies a set of necessary conditions for competence-generating deliberation, comprising existence conditions (there must be a better argument and some people must know it), persuasive conditions (deliberation must cause at least

*some* net change towards the better argument, requiring that the argument be presented in terms interlocutors can parse), and “cognitive victories”: the argument must win battles for attention (anything distracting may impair uptake), memory (people must be able to remember it) and choice (the new argument must correlate better with interlocutors’ past observations). These parameters recall the requirement in Condorcet’s jury theorem that participants have a slightly greater chance of being right than wrong. Lupia’s persuasive conditions are therefore not guaranteed by the rules of the system, and must be supplied elsewhere – by culture, training or experience.

Second, if preferences can be aligned with the public interest by means of deliberation, the form of persuasion seems to matter greatly. We must expand our concern to take in more than just the result of deliberation – the process itself is significant because it strongly colors impressions. I may be persuaded to act, or cajoled, or bargained with, or coerced, but my attitude toward both my interlocutor and the deliberative process as a whole is likely to be quite different in each case. So what form will this persuasion take? Jon Elster distinguishes between two types of speech acts – arguing and bargaining. These take the form of discussion, which is based on the power of the better argument, and bargaining, which is based on the resources that make threats and promises credible. Each is subject to criteria – arguing to validity criteria, bargaining to credibility criteria.

Elster identifies two axes – intra-political vs. extra-political bargaining and horizontal bargaining among legislators vs. vertical bargaining between the government and legislators. For Elster, credibility is the core feature of bargaining. He also identifies a “threat-warning ambiguity” which leads to breakdowns and misunderstanding in negotiation. Elster follows Habermas in arguing that speakers who aim at understanding rather than success are committed

to three validity propositions: propositional truth, normative rightness, and truthfulness. Speakers who wish to *appear* to aim at understanding must also commit themselves to these validity propositions. In this sense, as we will see later, deliberation depends on some quorum of individuals genuinely committed to the public good.

On Elster's account, bound mandates from one's constituents and other strategies of pre-commitment (burning one's ships) enhance credibility. "Parties that bargain within a pre-existing institutional framework can use it for strategic purposes."<sup>1</sup> Elster discusses the strategic uses of purportedly non-strategic arguments, citing threats issued as warnings and self-interested claims grounded in impartial principle. He offers four reasons why individuals might find it in their self-interest to substitute an impartial argument for an expression of their own interest. First, "if others believe that one is truly arguing from principle, they may be more willing to back down"<sup>2</sup> because they anticipate intransigence. Second, legislative coalitions may use public-regarding language as a fig leaf for backroom deals. Third, "by citing a general reason one might actually be able to persuade others."<sup>3</sup> Finally, there may be a social norm against outright expression of self-interest and in favor of expressing everything in terms of the public interest. Elster makes the fascinating point that all four of these reasons are dependent on the existence of genuinely impartial actors in the system – if everyone believes that everyone else is motivated by self-interest, then these strategies are unworkable. "Impartiality is logically prior to attempts to exploit it."<sup>4</sup>

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<sup>1</sup> Elster, J. "Two Constituent Assemblies." *Journal of Constitutional Law*, March 2000. p.394

<sup>2</sup> *Ibid* p.408

<sup>3</sup> *Ibid* p.408

<sup>4</sup> *Ibid* p.409

If preferences can be altered either by reasoned argument or strategic bargaining, it seems desirable to separate these activities so as to avoid misunderstandings. A Pareto-optimal outcome might be achieved by an initial round of good-faith deliberation, followed by a second round of bargaining. Alternately, those who are to conduct the bargaining might be elected from those who conducted the deliberation. These methods maximize interest discovery prior to bargaining, ensuring that each individual is bargaining towards a goal that actually serves their interests.

Gerald Mackie argues that voting rules shape deliberation.<sup>5</sup> He cites examples from Papua New Guinea and Colombia to conclude that plurality-rule voting diminishes the quality of deliberation by encouraging horse-race coverage, and that it throws away important information by only recording first-ranked preferences – a “centripetal” process tending to diminish public welfare. Preferential voting, by contrast, encouraged horse-trading and other “centrifugal” incentives to promote the public good. In short, electoral rules can incentivize “more general outcomes and a public discourse more oriented to the general good. For Mackie, “deliberation transforms preferences in the direction of the common good,” and voting and deliberation shape one another – deliberation informs voting and the known fact of voting improves deliberation by compelling speakers to be reasonable and gain the consent of their interlocutors.

Mackie stresses that deliberation itself is not a decision rule, and that even in cases of near-unanimous deliberation a vote would still be required. Mackie approves of this because deliberation at its worst can be coercive, and the requirement that voting be separate reduces the

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<sup>5</sup> Mackie, G. in Bachtiger, A. et. al. “*The Oxford Handbook of Deliberative Democracy* (Oxford: Oxford University Press) 2018.

likelihood of coercion. Similarly, Jane Mansbridge et. al argue that ideal deliberation presumes respect for one another and the absence of coercive power.<sup>6</sup>

Finally, who should be entitled to deliberate? In representative democracies, it seems clear that the most urgent need for civic competence can be found among the representatives. Elster cites efficiency arguments for property qualifications, and he concludes that “when rights and efficiency point in the same direction, they are more powerful than an argument of either kind opposed by an argument of the other kind,”<sup>7</sup> while acknowledging that when justifying particular constitutional arrangements right and efficiency arguments are to some extent fungible.

But should deliberation be limited to representatives? Is there some value to public deliberation as well? Mackie identifies a “mandate” value of voting – doing one’s part to instantiate the public good – that remains even when a vote is unlikely to sway the outcome. He also argues that the three central mechanisms of modern political democracy are public deliberation, voting and representation. I argue that there is a similar “mandate” value to public deliberation in the form of deliberative micropublics. Despite the fact that only a small proportion of the population is ever likely to be summoned to debate in a deliberative micropublic, the mere possibility confers legitimacy on the conclusions reached by the process. There is an analogy here with juries – most of us have never served on a jury, but we largely accept the legitimacy of their decisions because of the selection mechanism employed. Public deliberation therefore has two values – it engages in the same preference-discover and civic-

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<sup>6</sup> Mansbridge, J. et. al. “The Place of Self-Interest and the Role of Power in Deliberative Democracy.” *The Journal of Political Philosophy*: Volume 18, Number 1, 2010, pp. 64–100.

<sup>7</sup> Elster p.391

competence-enhancing processes we outlined above, while at the same time fostering legitimacy and confidence in the political process itself.