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***Deliberative Democracy,
Deliberative Polls and Citizens'
Juries***

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Political Science

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2009

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*This thesis is dedicated to my family,
because whatever I hope for, they hope for it too –
Brendan, Anne, Deirdre, Jackie, Aidan and Laura.*

Contents

Abstract	1
Summary of methods	2
Acknowledgements	2
Introduction	4
Chapter 1 The normative case for deliberative democracy	30
1.1 Deliberation, discussion, communication and reflection	31
1.2 Arguing for deliberative democracy	34
1.3 Arguments for deliberative democracy	45
1.4 Conclusion	78
Chapter 2 Varieties of deliberative democracy	80
2.1 Republicanism and deliberative democracy	82
2.2 John Rawls and deliberative democracy	95
2.3 Jürgen Habermas and deliberative democracy	109
2.3.1 The foundations of Habermas's deliberative politics	112
2.3.2 Habermas's deliberative politics	130
2.4 Discussion	142
2.4.1 The insulation of deliberation from the public	142
2.4.2 Monological and dialogical deliberation	148
2.4.3 Deliberative democracy and patriotism	158
2.5 Conclusion	170
Chapter 3 Deliberative democracy in complex societies	172
3.1 Deliberation and moral disagreement	174
3.2 Public communication	187
3.3 Conclusion	200

Chapter 4 The effects of public discussion	202
4.1 The theory of face-to-face discussion	207
4.1.1 Cognitive and epistemic effects	207
4.1.2 Affective and moral effects	211
4.1.3 Group dynamics	213
4.2 Evidence for micro effects	216
4.2.1 Cognitive and epistemic effects	216
4.2.2 Affective and moral effects	228
4.2.3 Group dynamics	237
4.3 Deliberative polls and citizens' juries	238
4.3.1 Public involvement and deliberative democracy	238
4.3.2 Deliberative polls and citizens' juries	247
4.3.3 Evidence from deliberative polls and citizens' juries	259
4.4 Conclusion	267
 Chapter 5 The TCD Dublin Citizens' Jury on Waste Incineration	 271
5.1 Jury design	272
5.2 Deliberation day	279
5.3 Selection bias and attrition	282
5.4 Opinion change	291
 Chapter 6 Inside the Dublin Citizens' Jury	 298
6.1 Stability of opinion change	298
6.2 Knowledge	301
6.3 Attitudinal constraint	303
6.4 Political efficacy	306
6.5 Participation rates	309
6.6 Group polarisation	314
6.7 Accounting for opinion change	321
6.8 Discussion	332
 Conclusion	 349
 Appendices	 362
 Bibliography	 381

Abstract

This thesis contains a critical analysis of deliberative democracy. I present the normative arguments for the theory in the context of a discussion of how to explicate democracy more generally, and I assess these arguments throughout the thesis. I defend a Habermasian interpretation of the deliberative ideal, and I argue that we should conceive of deliberative democracy in participatory, dialogical, and adversarial terms. I discuss the implications of acute moral disagreement and the necessarily mediated nature of much deliberative exchange. I then review the empirical literature, and analyse a citizens' jury that was held in Dublin. The experiment was carried out both to assess the potential of the jury model as a way to institutionalise citizen deliberation, and to provide an opportunity to test empirical predictions that are part of deliberative democracy's normative justification. Overall, the empirical claims of deliberative theorists have not as yet found very robust support, though there have been positive findings. In the experiment, the choice of a live political issue had unanticipated but instructive consequences that should caution us against too readily assuming that these events will afford unrestricted deliberation. If the case for deliberative democracy has been effective however, considered as a whole, the need for continued experimentation and effort in convening these processes should also be apparent.

Summary of Methods

Chapters 1 and 2 largely involve abstract or conceptual argument, as does Chapter 3, in addition to some relevant empirical literature. Chapter 4 reviews the empirical literature on deliberation, while Chapters 5 and 6 involve an experimental and survey design carried out in the context of the Irish Election Study (IES). Here in addition I analyse non-participant observer data. I use a number of parametric and non-parametric significance tests, I use Cronbach's alpha for scale reliability to measure attitudinal constraint, and I model jurors' opinion change with OLS regression.

Acknowledgements

The material in Chapters 5 and 6 of this thesis was part of a collaborative research project with Professor Michael Laver. It contains the expansion of material from a joint paper. The jury experiment had already been planned when I joined the Department of Political Science in Trinity. Michael was responsible for contacts with personnel and practical organisation. We devised the questionnaire instruments together – I produced a provisional set of questions, and Michael made revisions. In the first draft of the joint paper, Michael described the organisation of the event and analysed juror

representativeness and opinion change on the day. I wrote on the theoretical background, and edited the paper, and Michael did some further editing. Subsequently I wrote extra material in response to journal reviewers' requests, and Michael re-edited the paper. I have carried out his analysis independently, and I have conducted additional analysis for this thesis that does not feature in the paper. The material in Chapter 5 was therefore done jointly, though with a greater input from Michael. The material in Chapter 6 is my own. All of the data analysis found in this thesis has been done or redone by myself. I want to thank Michael for giving me the chance to become involved in the jury project. He has been very encouraging and I have learned a great deal from him. I would also like to thank my supervisor James (Eddie) Hyland. Aside from his many helpful suggestions, Eddie has influenced me enormously. Eddie also did what every supervisor should do. He encouraged me when I needed the reassurance, and I can't say how grateful I am for that. I must express my thanks to the Irish Research Council for the Humanities and Social Sciences (IRCHSS) for a two-year Government of Ireland Postgraduate Award, and Atlantic Philanthropies for funding the Citizens' Jury experiment. Thanks must also go to the ESRI for their participation in the jury experiment, and to those involved in the Irish Election Study (IES) by means of which we conducted the panel waves for the project. Finally, I would like to thank my internal and external examiners for the content and tone of their very constructive comments.

Introduction

Deliberative democracy is a perspective in political theory that has generated a great deal of interest, even excitement, in recent years. It is the subject of a large and ever-increasing literature, with many book-length contributions and articles in journals such as the *American Political Science Review*, *Journal of Philosophy*, *Journal of Political Philosophy*, *Public Opinion Quarterly*, *Journal of Politics*, *Political Communication*, *Political Theory*, *Philosophy and Public Affairs*, *Political Psychology*, *British Journal of Political Science*, *Political Studies*, *Polity*, *Yale Law Journal*, *Harvard Law Review*, *Columbia Law Review*, and *Supreme Court Review*, among others. Deliberation now has its own journal (the *Journal of Deliberation*), while writers on deliberative democracy come from a variety of disciplines, including political theory, political science, political psychology, sociology, law, history and feminism. The appeal of deliberative democracy lies partly in its theoretical promise, resting especially on the application of the recent work of Jürgen Habermas and John Rawls to democratic theory. This, in turn, is due partly to the intrinsic interest of their work, and partly to the fact that – as its reception would seem to show – their work rescues and renews elements of a classical democratic tradition whose absence from currently dominant theoretical perspectives has come to be missed. Finally, the appeal of the

theory also lies in the scope for practical experimentation and potentially fruitful empirical inquiry.

This thesis consists of a critical analysis of deliberative democracy, which I generally defend as an attractive and relevant political ideal. The core of the ideal is deliberation, which can refer to private reflection, but which is generally meant to involve reasoned and open-minded discussion – though the latter may refer either to face-to-face interaction or more loosely to the web of communication transmitted via the media. The content of the theory can briefly be sketched in this way: *first*, deliberative democracy is an ideal of democratic legitimacy. This ideal states that democracies ought to be governed by means of collective deliberation. Convincing arguments should determine policies and programmes, rather than bare numerical majorities, or threats, manipulation, and unequal social and economic power. The legitimacy of decisions rests on their being tied to processes of freely conducted deliberation rather than strategic bargaining. This view is defended either because deliberation is thought to be necessary for the pursuit of the common good, or because it is thought to be necessary for outcomes that all citizens can reasonably accept, or because the legitimacy of binding decisions is understood in terms of proceduralized reason.

Second, deliberative democracy is an ideal of citizenship. This ideal says that citizens ought not seek to promote a narrow individual or group interest in the political process, but should argue for proposals by reference

to a conception of the public good. Citizens ought to favour only those policies and programmes that others who are similarly motivated could reasonably accept.

Third, deliberative democracy involves empirical claims about the systemic and individual-level effects and consequences of deliberation. At the systemic level, collective deliberation is expected to improve not just the legitimacy but also the rationality of decision-making. Deliberation imparts information, and ideally, ensures that all relevant perspectives are heard and accounted within the decision-making process. At the individual level, participation in public deliberation is thought to potentially have a number of benefits. Citizens should become more informed, should develop more stable and more integrated attitude structures, and should acquire a greater sense of political efficacy. Deliberation may also have the potential to temper self-interest, enlarge people's concern, increase tolerance of opposing viewpoints, and promotes positive civic attitudes

The theory of deliberative democracy has developed from a number of diverse streams. While the outline description I have given above appears relatively neat, the theory is in fact a complex mix of convergent (and sometimes conflicting) ideas. It is important to note that any one theorist need not be committed to the full range of claims. Habermas's view is best captured by the first kind of claim, while the second is arguably more prominent in Rawls. Habermas does address the third, empirical dimension,

but only at the macro level of the democratic order, and he does not investigate micro level processes in any sustained way. It is not Rawls's purpose to address *either* of these in a sustained way. Throughout this thesis I will often treat deliberative democracy as a single perspective, but there are major theoretical differences that need to be borne in mind. I will try to keep these in view without labouring the presentation too much, and I will consider these differences in their own terms in Chapter 2.

In the remainder of this introduction I will provide a context for the chapters that follow, and indicate how the thesis will develop. First, in order to convey something of the different streams from which deliberative democracy has emerged, I provide a brief account of the genesis of the theory. I will then relate it to the earlier classical and participatory democratic traditions in order to bring out the continuities. Having sketched deliberative democracy and its heritage, I will then describe the nature of the analysis of deliberative democracy that this thesis contains, the nature of the contribution I hope to make, and the division of labour between the chapters.

Deliberative democracy and its heritage

The writings of Jürgen Habermas, beginning with *The Structural Transformation of the Public Sphere* (first published in German in 1962), have been hugely significant for deliberative democracy. Thomas McCarthy

has described the latter work as “a historical-sociological account of the emergence, transformation, and disintegration of the bourgeois public sphere” (Habermas, ed. McCarthy 1991 [1962]). In this book and in *Legitimation Crisis* (1975 [1973]), Habermas was preoccupied with the idea of the legitimation of political power through free and extensive public debate in an independent civil society, rather than through its periodic acclamation by a largely apathetic mass public. Attention to more foundational concerns followed, during which time Habermas, in response to the pessimism of the later Adorno and Horkheimer, developed his theories of communicative action, communicative competence, universal pragmatics and the reconstruction of historical materialism (see Habermas 1984 [1976], 1986 [1981], 1989 [1981]). This culminated in his two-volume *The Theory of Communicative Action* (1986 [1981]). He returned to the idea of deliberative politics in *Between Facts and Norms* (1997 [1992]), applying to democracy the perspective developed in the interim. As we will see below, his notion of constraint-free discourse, elaborated in the attempt to rescue the notion of universal moral norms from the anti-foundational and relativistic tendencies of contemporary theory, has been used as a model for the legitimacy and practical rationality of the democratic process. In a postmetaphysical context, moral norms can only take their epistemic validity, and laws their legitimacy, from a procedural model of unrestricted discourse. The constitutional framework of democracy institutionalises processes of argumentation

(together with fair bargaining processes) by means of which the exercise of legislative and administrative power is tied to critical public opinion. The notion of an ideal speech community in which participation is open and governed by norms of equality and symmetry, and in which the aim is impartial rational consensus, provides a regulative ideal against which to judge distortions of public discourse. Habermas's ideas pervade deliberative democratic thought, but theorists significantly influenced by him include John Dryzek (1994 [1990], 2002 [2000]), Seyla Benhabib (1996), James Bohman (1996) and, though from a highly critical feminist standpoint, Iris Marion Young (1989, 1996, 2000).

A second stream informing deliberative democracy is the work of John Rawls (1971, 2005). Rawls has lately identified himself as a deliberative democrat, but prior to this, other deliberative theorists drew upon his early work. Joshua Cohen (1997*a* [1989]; see also Cohen 1997*b*) uses three intuitions about democracy presented in *A Theory of Justice* (Rawls 1971) as the basis for his account. First, in a well-ordered democracy, political debate is focused on identifying the public good. Second, the democratic process has egalitarian implications that must be satisfied in ways that are manifest to citizens. Third, democratic politics should be ordered to provide a basis for self-respect, to encourage the development of political competence, and to contribute to the formation of a sense of justice. As a systematic elaboration of these three intuitions, Cohen develops a conception

of deliberative democracy as a moral ideal independent of fairness, and concerned with collective decision-making. As it turns out, Cohen's account of the conditions that should obtain if the social order is to be manifestly regulated by deliberation owes much to Habermas – in particular conditions of equality and symmetry to ensure that no force except that of the better argument determines outcomes (Cohen 1997a, 74/5).

Rawls has also influenced deliberative democratic theory with the idea of reasonable agreement in a context of moral pluralism. This is the basis of his own perspective, and it is related to Thomas Scanlon's (1999) account of morality in terms of principles that could not be "reasonably rejected" by those seeking fair terms of social cooperation. A somewhat similar idea – the sense of reciprocity – became the focal point of Amy Gutmann and Dennis Thompson's major contribution *Democracy and Disagreement* (1996). On their account, deliberative democracy obliges citizens to attempt to resolve public controversies such as abortion, affirmative action and health care by deliberating together in mutual tolerance. They distinguish 'deliberative' and 'non-deliberative' disagreement – disagreements in which both sides hold "morally respectable" positions and those in which they do not. In deliberative disagreement, participants should seek 'an economy of moral disagreement' in which they try to accommodate the views of their opponents as much as possible without compromising their own convictions. Citizens best respect one another's

equal dignity and citizenship through their willingness to engage in tolerant deliberation of this sort. In the book Gutmann and Thompson attempt to identify the positions that conscientious deliberators would reach on controversial issues like these. Cohen (1997*b*) has also incorporated idea of reasonable pluralism in his account of mutual justification.

A third major stream informing deliberative democracy is historical and legal scholarship on the place of the republican tradition in U.S. constitutional thought and legal practice. Notable contributors here include James Bessette (1980, 1997), Frank Michelman (1986, 1988, 1989), Cass Sunstein (1982, 1984, 1985, 1988, 1993, 1995) and Bruce Ackerman (1984, 1991). On the one hand it is argued that the framers of the U.S. constitution envisaged a deliberative democracy, and accordingly designed institutions to facilitate deliberation, to check self-interest, and (as argued by Bessette) to counter the perceived danger of excessive populism. On the other, it is claimed (by Sunstein in particular) that much judge-made public law comprises canons for the invalidation of statutes resting on 'naked preferences' – the distribution of resources or opportunities to one group rather than another solely on the ground that the group has exercised the raw political power to obtain them. Republican thought is evident in the requirement that citizens should forego the pursuit of particular interests where these conflict with the public good.

A number of other writers have contributed to the popularity of deliberative democracy. Jon Elster (1997 [1986]) highlighted the opposition between 'aggregative' and 'deliberative' democracy (see chapter 1) by identifying the former with 'the market' and the latter with 'the forum'. Central to his analysis was the notion of adaptive preferences, preferences that depend on perceptions of the feasible set of alternatives. As Sunstein (1995) has also argued, preferences are never simply given or final. Expressed preferences in aggregation procedures may lack autonomy if favoured alternatives are chosen by a consciousness adapted to unjust background conditions – or if choices are due to ignorance or poor information. Moreover, collective political decisions are not on a par with consumption decisions, since democratic associations may wish to implement collective aspirations, and since collective decisions are imposed on all while consumption decisions significantly affect only the chooser. In consequence, democratic procedure ought to have a deliberative dimension, enabling citizens to sift and potentially transform their preferences by engaging in mutual justification.

Bernard Manin (1987) made an early contribution in relation to the deliberative transformation of preferences, in his critique of what he found in Rousseau and the early Rawls – the requirement of unanimity, the absence of deliberation, and the predetermined will of individuals. Manin claims that Rousseau's idea of the general will and Rawls's derivation of principles of

justice from “the original position” both rest on an implausible and unnecessary expectation of unanimity on moral questions. Rousseau in fact forbids communication and requires individuals to arrive at the assembly with a pre-formed will, while Rawls can populate the original position with a single individual chosen at random, identical to all others in what she will choose. Both, for Manin, fail to recognise that individuals will only arrive at a determined will in the course of interpersonal deliberation. Prior to deliberation individuals possess fragmentary and incomplete information, and they are unlikely to have complete and transitive preferences on the available alternatives. Deliberation helps to clarify and sharpen preferences, and it may even alter those preferences. Manin suggests that the liberty of all is best achieved in a collective decision-making procedure that is deliberative, hence legitimacy requires deliberation:

It is, therefore, necessary to alter radically the perspective common to both liberal theories and democratic thought: the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is, deliberation itself. An individual's liberty consists first of all in being able to arrive at a decision by a process of research and comparison among various solutions. As political decisions are characteristically imposed on *all*, it seems reasonable to seek, as an essential condition for legitimacy, the deliberation of *all* or, more precisely, the right of all to participate in deliberation. We must, therefore, challenge the fundamental conclusion of Rousseau, Sieyès, and Rawls: a legitimate decision does not represent the *will* of all, but one that results from the *deliberation of all*. It is the

process by which everyone's will is formed that confers its legitimacy on the outcome, rather than the sum of already formed wills (Manin 1987, 351/2).

Others that have contributed to the popularity of deliberative democracy include Thomas Christiano (1996), David Ingram (1995) and Thomas Spragens (1990). Benjamin Barber (2003 [1984]) and Jane Mansbridge (1980, 1992, 1996) have bridged the participatory and deliberative traditions, and I will turn to these in a moment. Edited collections have also been important in disseminating the theory. James Bohman and William Rehg's *Deliberative Democracy* (1997) brought together major statements from Elster (1997 above), Habermas (from 1997), Cohen (1997a above) and Rawls (from 2005). It also included later statements and critical analyses from Michelman, Estlund, Gaus, Christiano, Knight and Johnson, Bohman, Richardson, Young, and Cohen. Jon Elster's edited collection by the same name (1998) gathered together a series of papers first presented at a Chicago conference in 1995, largely concerned with theorising the dynamics of interpersonal deliberation. The contributors were Gambetta, Fearon, Mackie, Elster, Stokes, Przeworski, Johnson, Cohen, Sunstein and Gargarella. Seyla Benhabib's edited *Democracy and Difference* (1996) contained a number of important papers, including statements from Benhabib, Habermas, Cohen, Young and Mansbridge. Stephen Macedo's edited *Deliberative Politics* (1999) contained the first reactions to Gutmann and Thompson's *Democracy and Disagreement* (1996). Also worth mentioning is the collection of

responses to Habermas's book *The Structural Transformation of the Public Sphere* (1991 [1962]), edited by Craig Calhoun (1992). Worthwhile article reviews from this time include James Bohman (1998), Maeve Cooke (2000) and Samuel Freeman (2000). Other important contributions will feature in the main body of this thesis.

While these writings have appeared quite recently for the most part, deliberative democracy is not an utterly novel development. It is continuous with a much older classical and radical democratic tradition, the preoccupations of which it has renewed. A useful point of departure here is Benjamin Constant's distinction between "the liberty of the ancients" and "the liberty of the moderns" (Constant 1988 [1819], in Fontana (ed.)). Constant implicitly distinguished negative and positive liberty, and identified a concern for the former with modernity, and a concern for the latter with antiquity. He anticipated Anthony Downs's (1956) mathematical observation that the influence of the individual on collective decisions becomes increasingly imperceptible as the citizenry increases in size. In modern nation states citizens cannot possibly enjoy anything like the level of continuous participation in political affairs that Athenian citizens did. While the positive liberty of the Athenian was very real, rights of political participation give modern citizens correspondingly less control over collective affairs, hence the greater necessity for constitutional limitations on the coercive use of state power. This disjunction between individual liberty and active political

participation became a familiar one in liberal thought, especially in those liberal thinkers who equated the valuation of positive freedom with organic and incipiently totalitarian images of society (Berlin 1969, Talmon 1970). When this priority of values was fused with elite theory (Michels 1962 [1911/2], Mosca 1960 [1896]), Pareto 1991 [1901]), and with the burgeoning survey literature of the mid-twentieth century which appeared to confirm the apathy and ignorance of ordinary citizens (such as Berelson *et al* 1954), the result was a revisionist, “democratic elitist” (Bachrach 1969) conception of democracy. Joseph Schumpeter (1976 [1942]) provided an influential redefinition of democracy as no more than the institutional *method* of choosing between competing leaders. This definition was supposed to represent descriptive reality more adequately than the wholly unrealistic assumptions about citizens’ capacities that Schumpeter claimed to find in the eighteenth and nineteenth century conception of democracy. Schumpeter’s account was followed by Robert Dahl’s more optimistic but nevertheless revisionist conception of “polyarchy”. Dahl observed with satisfaction (though not without reservation) that despite large-scale apathy, the governments of contemporary democracies are responsive within broad parameters to the urgent concerns of crosscutting, politically active minorities (Dahl 1956, 1961, 1971).

The critical response to these developments from participatory theorists (Duncan & Lukes 1970; Bachrach 1969; Pateman 1970;

Macpherson 1973, 1977) attempted to rescue the classical and radical tradition that I have mentioned. It was argued that the use of empirical findings to motivate a redefinition of democracy congruent with the realities of existing democracies, not only elided substantive values without supporting normative argument, but also was fallacious. The slide from “what we have come to call democracy” to “democracy” is illicit. In any case, the turn to democracy as method failed to do justice to the concerns of classical theorists like Rousseau and John Stuart Mill, though both were acutely aware of the difference between normative ideal and practical realities. Chief among these concerns was the ideal of continuous active participation by the citizenry, and lying behind this was a belief in the developmental and ennobling effects of participation – the tempering of self-interest, community identification, and an outlet for the growth of autonomy. While Marxists desired authentic political participation so that democracy would not be a fig leaf for class oppression, classical democrats like Rousseau and Mill saw democracy as not only a means for the protection of interests, but as a ground for the development of excellences of character. The critics of democratic revisionism charged that while empirical findings certainly do touch normative theory at the edges, revisionists had simply given up the ideal of active participation without any inquiry into what it could now mean, or how it might be rescued in contemporary conditions. Furthermore, it was argued that in the context of the historically specific

experience of twentieth century totalitarianism, revisionists had smuggled new normative criteria into the discussion without adequately theorising them – “system stability”, “equilibrium”, “balance”, “the health of the democratic order” and so on. As explanatory concepts, these were operationally vague at best, and at worst empty. Arguments about the necessity of apathy, for one thing, were not operationalised in a way that permitted an assessment of the degree to which a stable democratic system could tolerate an appreciably higher level of participation. Without sufficient normative and empirical argument, the mass apathy and non-participation identified by survey data had been translated into a positive virtue rather than interpreted as signalling the need for greater democratisation.

Carole Pateman’s *Participation and Democratic Theory* is continuous with the current empirical literature on deliberation insofar as she examined the relationship between the normative goals envisaged by democratic theorists – in particular the classical image of the citizen, schooled by democracy into a greater sense of efficacy – and practical and institutional means by which these might be realised. In an examination of the relationship between political participation and political efficacy, followed by a more extensive discussion of workplace authority structures and workplace democratisation, she found some empirical support for Duncan and Lukes’s suggestion that efficacy is a function of the opportunities available for participation in decision-making (Duncan & Lukes 1970). On

this account, the findings of survey researchers could be interpreted as the consequence of the lack of opportunities provided by the elite character of contemporary democratic practices (to the extent that elite theory was descriptively accurate), rather than as a justification for elitism.

Other participatory theorists providing a bridge to deliberative democracy, as I noted, include Jane Mansbridge (1980) and Benjamin Barber (2003 [1984]). Mansbridge anticipated (if she did not introduce) the distinction between deliberative and aggregative democracy. She equated the combination of electoral representation, majority rule and equal voting rights with “adversary” democracy. “Unitary” democracy on the other hand involves attempting to resolve disagreements by reasoning together with the aim of reaching consensus. She suggested that when interests conflict, adversarial institutions are needed to protect individuals’ interests, while when interests are common, these are best identified by means of unitary institutions. The core of the book involved two extended case studies of participatory institutions – town meeting government in a small community, and workplace democracy in a radical collective association involved in operating a helpline for those experiencing personal and social problems. The ethnographic method used by Mansbridge was effective in highlighting some of deliberation’s dynamics – in particular issues like the greater respect accorded to social status and the avoidance of conflict in the town meeting case, where status differentials were highly marked and interests sometimes

clashed. The background to Mansbridge's book was an interest in participatory ideas and she did not use the term deliberative democracy (it was first introduced in a publication of the same year by James Bessette (1980)). In retrospect her book can however be seen as one of the first major contributions to deliberative concerns.

Benjamin Barber (2003 [1984]) also anticipated what was to follow. In his well-known book he contrasted "thin" to "strong" democracy. Thin or liberal democracy tends towards anarchism, realism and minimalism. Men and women are viewed as largely autonomous beings with needs and wants independent of community relations. Politics is the domain of coercive enforcement, deterrent, incentive and sanction – conditioning the pursuit of private interests and the use of power. Liberal democracy is an instrument for restraining leaders and protecting individual liberty. Strong democracy, on the other hand, "is a distinctively modern form of participatory democracy. It rests on the idea of a self-governing community of citizens who are united less by homogenous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or their good nature" (2003 [1984], 117). While Barber's proposed strategies for the institutionalisation of strong democracy show his participatory concerns – neighbourhood assemblies, television town meetings, initiatives and referendums, sortition, rotation, pay for political service and so on – his

discussion of the potential for “talk” to generate empathy touches on issues central to later empirical studies of face-to-face deliberation.

Deliberative democracy then, is continuous with classical and participatory views insofar as it aims to maximise participation, and wishes to do so at least in part because it shares an interest in the psychological consequences of participation. The difference is that the role specifically played by deliberation, rather than participation more broadly, is now the focus of theory and empirical investigation.

The analysis of deliberative democracy: on what follows

The different parts of this thesis find their coherence in a particular understanding of political theory. This centres in normative appraisal, but it requires a complex form of inquiry that addresses philosophical-theoretical, normative and empirical questions. For a good part of the twentieth century, due to the popularity of logical positivism and emotivism, normative ethical theory was no longer thought possible. Its rehabilitation is said to have begun with John Rawls’s *A Theory of Justice* (1971). James Hyland (1995) has given an account of political theory that makes explicit the full range of elements it may require. This has helped me to put some shape on views of mine that led in the same direction, though they lacked the same clarity (and

any misinterpretation is mine). My previous sense of discomfort with normative political theory was due to the feeling that it would leave me in the dark about politics itself, about how it works, what happens and why – and that these things mattered for normative appraisal. Certainly, philosophy and empirical social science do not require identical skills and training. People can be good at one or the other, and it is no doubt better to leave things to those who are best equipped, and not to ask too much by way of integration. Sometimes however, conceptual and empirical issues cannot be isolated and adequately dealt with separately.

We can begin to account for this by noting as Hyland does (1995, 8ff), that political theory (as opposed, say, to political science) is not a theoretical but a practical discipline. Its aim is not the unified explanation of a distinct set of phenomena, but an essentially praxis-oriented one, the directive influence on a set of human practices in a particular domain. Not *theōria* but *techné*. The central purpose of this kind of inquiry is to formulate the principles that should be embodied in the practice. While the core of this is normative and conceptual, inquiry will invariably branch out in a number of ways:

For our purposes, the most important features of a practical intellectual discipline, such as I am claiming political theory to be, are threefold. Firstly, it is essentially normative; its whole purpose is to formulate principles for the direction of action, to specify, that is, the norms that should govern its associated practice. Secondly, the formulation of such norms will be

radically incomplete unless it is based on an experientially grounded understanding of the relevant dimensions of the concrete practices it is meant to direct. And thirdly, particularly when we are concerned with practices that have complex goals, these relevant dimensions can be many and diverse, resulting not just in the necessarily empirical substantive aspect of the discipline being integral, but also in the intellectual diversity of the resources that need to be called upon (Hyland 1995, 9).

Hyland uses the analogy of the study of architecture to bring out the point. Its purpose would be an associated complex of practices, the designed construction of buildings. It is essentially normative, being concerned with the principles that should govern the practices. This normative dimension will however be regulated by the kinds of demands people put on buildings and the resources, including knowledge and skills, that builders have available. The complexity of this demand factor makes the intellectual resources that architecture draws upon extremely diverse – including the sciences of physics, chemistry and mathematics on the one hand, and philosophy, aesthetics, psychology and economics, on the other. Buildings must meet our structural, functional and aesthetic standards – a well-designed house will endure and withstand the weather, and it will balance our needs to eat, sleep, relax, entertain, work, study, raise children and so on; while residential and public buildings raise questions of aesthetic appearance, spatial planning, conservation and the environment, and so on. Indeed, the architecture analogy is even closer because buildings and political

institutions both provide second-level structures within which people pursue their first-level goals, and to that extent, condition the pursuit of those goals and their possibility of satisfaction.

Hyland relates this account of practical intellectual disciplines to the analysis of political ideologies by saying that any such ideology will have three interlocking levels – a programmatic core comprised of the social and political institutions and principles to which it is committed; a logically more fundamental level of values and principles that can be invoked to justify its programme; and background theories or assumptions about human nature, society, knowledge and so on. The third background level would ground the other two levels in, for instance, social-scientific explanatory models of human beings, epistemological theory, metaphysics, and so on. The task of political theory as an intellectual discipline then has three corresponding dimensions. The first is an analytic strand concerned with identifying and clarifying the content of the programme or system of government in question (e.g. saying what ‘democracy’ is). It will however be impossible to conclude on this level without prejudging what is desirable, and without prioritising some view capable of contestation on normative grounds, and thus short-circuiting the normative debate. On this second and inescapable normative dimension, attention turns to the critical evaluation of the frameworks used to justify the programme (e.g. is democracy is the best form of government, and if so, why?). The third dimension involves the appraisal of background

claims such as those which, in the case of twentieth century democratic theory, have questioned the possibility or desirability of democracy's real world achievement by reference to socio-psychological theories of motivation, political behaviour and culture, organisation and collective behaviour, and so on (e.g. is there an iron law of oligarchy, and are citizens really as competent as democratic theory seems to require?).

In the spirit of this account, my aim in this thesis is to produce a critical analysis of deliberative democracy as a political ideology. Its purpose is the appraisal of deliberative democracy as a theory whose object is to direct our political practice. The core of the analysis will be a presentation and examination of the normative arguments in favour of deliberative democracy. Since the ideal can be given different interpretations, my aim will also be to identify the most adequate way of defending deliberative democracy, if it can be defended. This assessment will make reference to epistemological, sociological and psychological claims, including claims about deliberation's desirable effects and its relevance to contemporary conditions. The value or merit in embarking on this is, I think, commensurate with the interest that deliberative democracy has generated, its relative newness, and the complexity of its various, knotted strands.

My contribution in this thesis is an evaluation of the justifiability of deliberative democracy that integrates philosophical-theoretical, normative, and empirical elements as part of a single study. In particular, the

justification of the ideal of deliberative democracy rests in part on claims about what will happen when people are brought together to deliberate, and the consequences of this for the participants and the democratic order. The empirical part of this thesis will address these claims in detail as part of the overall evaluation that is initially abstract and conceptual rather than empirical.

In the empirical part of the thesis I explore the general literature that bears on deliberation, but I pay particular attention to *deliberative polls* and *citizens' juries*. These are two of a variety of recent innovations in citizen deliberation. There has recently been a substantial growth in the use of these, where the aim is to recruit panels of citizens for the purpose of face-face deliberation, often using opinion-polling methods. This growth has taken place against the background of public consultation by state agencies, though the events are often organised by independent research institutes. Deliberative polling was initiated in the late 1980s by James Fishkin in the U.S. as an alternative to conventional opinion polling. After receiving briefing materials, several hundred people are brought together at a single location for several days, where they put questions to experts and political leaders, and deliberate in small-group and plenary sessions on some political issue. Participants' opinions are surveyed before and after the process, and their opinions at the conclusion of the event are intended to represent what the public as a whole would think if it had deliberated. Citizens' juries were

initiated in the early 1970s in the U.S. by Ned Crosby (though ‘planning cells’ which are similar to these were started around the same time by Peter Dienel in Germany), and like deliberative polls, their use has spread internationally. Citizens’ juries involve a much smaller number of participants (usually from 12-24) and they are based on the model of trial juries. Participants are given balanced briefing materials and usually meet for several days to hear from expert witnesses, and to deliberate on the issue chosen for the event before coming to a “verdict”.

Deliberative polls and citizens’ juries provide opportunities to investigate the properties of deliberation in real-world contexts, and thus, to shed light on deliberative democracy and its possibility of achievement as an ideal of democratic engagement. A substantial part of this thesis is the analysis of an event I co-organised in Dublin that combined elements of these two models. This was the first large-scale event of its kind in Ireland, and we chose a live political issue – the issue of waste incineration and a proposed municipal incinerator for Dublin – in order to try maximise the external validity of our conclusions. I use the TCD Dublin Citizens’ Jury to test hypotheses about the effects of deliberation. In addition, our choice of issue had unanticipated results that are instructive for the use of the model as a means of supplementing standard representative institutions with citizen deliberation. The experiment led to some of the more striking or unusual findings of this thesis.

Chapter outline

In **Chapter 1** I relate the normative assessment of deliberative democracy to the prior question of how to define 'democracy'. I then present and discuss a series of positive arguments in favour of deliberative democracy. In **Chapter 2** I distinguish the three main traditions or varieties of deliberative democracy – republicanism, Rawls, and Habermas. I present interpretations of these perspectives, critically analyse some major points of disagreement, and make a number of critical claims about how deliberative democracy should be understood. In **Chapter 3** I consider two significant facts about contemporary societies that put the real world applicability of the deliberative ideal in question – first, moral pluralism and moral controversy, and second, the mediated nature of political communication. In **Chapter 4** I present a set of hypotheses about the effects of face-to-face discussion, and examine how well supported these are in the empirical literature. I then introduce public involvement methods, and deliberative polls and citizens' juries in particular, before reviewing the evidence about the effects of discussion that can be garnered from these. In **Chapter 5** I detail the design and organisation of the TCD Citizens' Jury on Waste Incineration, and describe how the event unfolded, before reporting selection bias and attrition, and opinion-change. In **Chapter 6** I explore the dynamics of the jurors' deliberations and the effects of their participation. I also discuss the potential

of citizens' juries as a model of citizen deliberation to supplement representative institutions. The **Conclusion** draws together the argument and findings of the thesis.

1

The Normative Case for Deliberative Democracy

In this chapter I develop the concept of deliberative democracy in the context of a discussion of how to specify the concept of 'democracy' more generally. The account of deliberative democracy will not need to be very detailed, and will remain pretty abstract at this stage. A more detailed account will be given in Chapter 2, but here we can focus our attention on some central ideas. This should help us to see what a normative justification of deliberative democracy should involve. Part of the discussion will involve a description of the other currently popular, aggregative conception of democracy, against which deliberative theorists marshal their arguments (Michelman 1986, 1989; Elster 1997; Manin 1987; Cohen 1997*a*; Benhabib 1996; Young 1996, 2000; Bohman 1998; Dryzek 2002; Warren 1992; Knight & Johnson 1994; Freeman 2000; Goodin 2005). I will then outline the principal arguments in favour of deliberative democracy, as Maeve Cooke (2000) has helpfully distinguished these. I will critically assess the arguments and offer a view on the normative justifiability of deliberative democracy, insofar as it is possible to do so at this stage.

1.1 Deliberation, discussion, communication and reflection

Since deliberative democracy is about ‘deliberation’, I need to say what I understand by this before we get to the main issues. John Gastil defines it as “discussion that involves judicious argument, critical listening, and earnest decision making” (2000, 22). Maeve Cooke says that deliberation refers to an “unconstrained exchange of arguments that involves practical reasoning and always potentially leads to a transformation of preferences” (2000, 948). Adam Przeworski (1998) defines deliberation as the endogenous change of preferences resulting from communication, while James Fearon (1998) simply talks about the benefits of “discussion”. Robert Goodin marks a distinction between “external-collective” and “internal-reflective” deliberation (Goodin 2005). The former involves actual interpersonal engagement, while the latter goes on inside people’s heads.

For me there are two levels worth distinguishing here. First, we can build normative criteria into the definition (judicious argument, earnest decision making and so on) or we can instead offer a more neutral definition that picks out an observable activity that may not always meet normative criteria (as Fearon does with ‘discussion’). Second, we can distinguish the places or settings “where” deliberation occurs. This allows us to separate face-to-face contexts, mental reflection, and the exchange that occurs via the media. Up till now my use of ‘deliberation’ has bundled all of this together.

Rather than overcomplicate things by running through the permutations here, I might just state that I will make frequent use of 'deliberation', 'discussion', and 'communication'. I will understand 'deliberation' as an ideal-typical phenomenon; an image held by normative theorists that involves a standard to met. 'Discussion' and 'communication' will refer to everyday practices. 'Reflection' will not really be used very often, but when it does it will refer to thought that is in some way conscientious (it is hard to imagine inviting people to 'reflect' or 'think' without loading this with normative freight). The need for the terms 'discussion' and 'communication' in place of 'deliberation' is somewhat unfortunate, because deliberative theorists do not think that discussion and communication of any kind at all can be expected to have the benefits that interest them. Political or public issues must be involved in some way, and there must be some effort to explore these in some degree of depth, so that different points of view can be exchanged. We need however to keep the ideal-type distinct from the empirical unit of analysis.

Deliberation will refer to an ideal-typical form of open-minded exchange that involves careful consideration and the extensive give-and-take of information and reasons, though (see below) it may also involve testimony and rhetoric on the condition that the aim is not to deceive or manipulate.

Discussion will refer to face-to-face exchange that may or may not meet these normative criteria to a high degree.

Communication will refer to mediated exchange that may or may not meet these normative criteria to a high degree.

Reflection will refer to conscientious thought.

Difference theorists like Iris Marion Young (1996, 2000; see also Sanders 1997) have pointed out that public deliberation should not be interpreted too narrowly. An over-reliance on formal or agonistic argument, to the exclusion of other forms of discourse such as testimony or storytelling, is likely to advantage those who are more used to this style of speaking. Young suggests that the model of deliberation derives from specific institutional contexts of the modern west: scientific debate, modern parliaments, and courts. Parliaments and courts privilege speech that is assertive and confrontational over speech that is tentative, exploratory, or conciliatory. If deliberation is to be identified with this, then its norms must value speech that is formal and general, that is framed in terms of generalities and principles, and that is dispassionate and disembodied. Deliberation would privilege confident assertion and formal argument over hesitancy and emotion. As a result, Young argues, the characteristic idioms of women, racial or ethnic

minorities, and working-class people would be devalued. For these reasons, she says that we should not exclude testimony and rhetoric. I incorporate these above. The inclusion of rhetoric is conditional however – when used to deceive or manipulate it runs counter to deliberative intent.

1.2 Arguing for deliberative democracy

The idea of democracy is complex, ambiguous and contested. In the time since the Ancient Athenians it has mostly been a term of abuse, though in the contemporary world, very few political regimes would claim to be anything but democratic. Hyland (1995), noting Dahl's (1989) concern that in its current popular usage 'democracy' is so vague as to be almost empty, has brought out well the difficulties involved in delineating the concept more precisely. The anti-essentialism of modern analytical philosophy leads us to reject the supposition that democracy is something with a timeless essence, whether as a Platonic form, or as embodied in actual regimes considered democratic. If we treat the question instead as a matter for semantic legislation, there is, for one thing, the significance of the distinction between a dictionary definition and a conceptual analysis. A dictionary will give us synonyms, but will not even begin to touch the implicit complexity of most terms. If we treat meaning as a matter of rules for use that are implicitly mastered by competent speakers, conceptual analysis would involve the

attempt to identify these rules. If an exhaustive analysis were possible, it would involve an account of the set of characteristics shared by that indefinite number of situations to which the word applies, together with those situations in which its application would be unsuitable. This by itself would be insufficient – we would need to explain the point or purpose of categorising things and situations in the way at issue – and this would crucially involve unearthing background assumptions and relationships to other concepts. An analysis of ‘freedom’ for instance, might be situated within an account of ‘choice’ and its value, ‘voluntary action’, ‘coercion’ and so on. This would *still* be insufficient for the explication of a term like ‘democracy’ however, since we cannot explicate it in a value-neutral way, and hence without committing ourselves to a normative inquiry that – on the understanding of political theory that I have committed to here – will range over evaluative, empirical and foundational questions.

Hyland notes that for political theorists, the meaning of ‘democracy’ is not as vague as it is in ordinary language. This of course compounds the problem, since theorists give radically different accounts. W.B. Gallie is noted for having claimed that democracy is an “essentially contestable” concept; one of those concepts, “the proper use of which inevitably involves endless disputes about their proper uses on the part of their users” (Gallie 1964, 158). The conditions making this kind of disagreement possible, for Gallie, included that (1) the term be highly appraisive, (2) that its referent be

internally complex and hence variously describable, with the parts placed in different orders of priority, and that (3) the term be open and subject to a degree of change in meaning over time. In fact, typically words are what Wittgenstein (1997 [1953]) called 'family resemblance' terms. We don't apply words to particulars in virtue of a definite set of characteristics they all share to the same degree, but in virtue instead of the particulars being sufficiently similar in sharing some set of the total set of open-ended and imprecise characteristics. It is in the nature of linguistic meaning to offer scope for alternative formal specifications.

Theorists have tended for the most part to argue for deliberative democracy by indicating its various expected benefits – the ways in which it is normatively more attractive than aggregative democracy. The issue of feasibility aside, what is needed here in addition to these arguments is an explanation of the relationship between greater normative desirability and the concept of democracy. If we are to prefer deliberative democracy, then "more desirable" should mean "closer to what is meant by democracy".

Before I introduce the arguments for deliberative democracy and the nature of the connection between these and the explication of the concept, however, I will introduce the aggregative conception. I will do so initially by means of a highly stylised contrast, and then by describing the theories than can be classed as aggregative. This conception sees politics firstly as an *instrumental* activity (voters and interest groups *seek preferred political*

outcomes). Secondly it sees it as a legitimately *private* activity (voters and interest groups *permissibly pursue their particular interests*). Thirdly, in the absence of consensus these diverse (and conflicting) desires or preferences must, and can at best, be *amalgamated* in some way, either through voting or bargaining. Nothing precludes voters and interest groups from promoting the common good, but they are not obliged to do so, and it is not assumed that they will. Collective choices have no special quality apart from the fact that they are comprised of individual values weighted in a formally equal way. Later (in Section 3.1) I will defend voting in terms of preference satisfaction, but I will argue that it is more attractive when supplemented with deliberation. For the time being this stylised presentation helps to bring out the contrast.

In deliberative democracy, politics need not be seen in narrowly instrumental terms, since public discussion can be valuable for reasons other than its effect on decisions (it is argued that it has *educative* effects or that it builds *solidarity*). Second, political participation, unlike economic activity, should be focused on *the public good*. Third, though voting and bargaining will be needed if disagreement persists or no common interest can be found, since political activity is ideally focused on the public good, democratic decisions ideally represent a *collective judgment*.

We can distinguish three variants of the aggregative conception – *minimal liberalism*, *social choice*, and *pluralism*. *Minimal liberalism* places a

high priority on negative liberties, and sees democracy as instrumentally valuable for their protection. Constitutional limitations are important to prevent negative liberties from being overridden by democratic majorities. Electoral democracy ensures a degree of control over office-holders by virtue of the anticipated reactions of the electorate. Since individuals' wellbeing lies primarily in their self-chosen and unhindered plans and pursuits, community identification and participation in collective sovereignty have no great intrinsic value. Once these elements are in place – the Constitution, judicial oversight, elections – then deliberation, and in particular deliberation between citizens on any large scale, is not invested with any great significance. Although there are certainly differences in assumptions and concerns, this position involves the convergence and shared premises of views such as the utilitarianism of Bentham (1962 [1838-1843]) and James Mill (1976 [1820-8]); the democratic elitism of Schumpeter (1976 [1942]), Sartori (1965) and Riker (1982); and the individualism of Berlin (1969), Talmon (1970), Hayek (1960, 1976 [1944]) and Milton and Rose Friedman (Friedman & Friedman 1962, 1980 [1979]).

Social choice is a theory about the aggregation of individual interests or preferences into group decisions. It has both normative and logical aspects – the normative component specifies minimal conditions on acceptable aggregation mechanisms; the logical aspect is the identification of the class of logically possible aggregation mechanisms satisfying a given set of

conditions (Dryzek & List 2003, 2/3). Social choice has generally been concerned with findings that threaten the coherence of the democratic ideal – voting instability, the arbitrariness of outcomes under different voting systems, and impossibility theorems showing that no voting mechanism can ensure the simultaneous satisfaction of a set of minimal requirements (Arrow 1963, Riker 1982). The implicit assumption is that democracy is centrally (if not exclusively) concerned with the aggregation of preferences, and deliberation is pushed to the margins. The analytical assumption of exogenous preferences can become a normative commitment in what Cass Sunstein (1995) calls “subjective welfarism”. This is the claim that government should attend only to conceptions of welfare as subjectively held by its citizens, which is defended by opposition to paternalism and fears about the dangers of permitting governments to override subjective preferences. From this point of view the individual voter, like the consumer, is sovereign, and deliberation is again a matter of no great significance.

Pluralism sees democracy in terms of a competitive struggle between interest groups, in the context of the scarcity of valued resources and the fragmentation of social interests occurring in complex industrial societies. Its most significant theorists are Truman (1951) and Dahl (1956, 1961, 1971). Pluralists adduced a number of factors to present this struggle in relatively favourable terms. First, as Dahl argued in *Who Governs?* (1961), political power is dispersed, with no single centre. Political resources come in a

variety of forms, and while these are unequally distributed their distribution is non-cumulative. Second, concerns in the democratic tradition about tyrannous majorities were misplaced; interests are crosscutting and majorities are typically more apathetic than politically active minorities. Political entrepreneurs seek the support of an arithmetic majority of voters by packaging together concessions to each of a variety of groups, and political outcomes are the result of government attempts to mediate, adjudicate and appease their competing demands. Third, given the variety of countervailing interests and the multiplicity of political access points, policy emerges incrementally as a bartered equilibrium in the field of forces. Fourth, cultural consensus moderates political conflict, and fifth, the interest group system is open to potential interest groups if latent interests become significant. Dahl's view was that while the democratic ideal is nowhere fully met in real world democracies, a competitive pluralist system with reasonably free elections, multiple channels of access, and extra-constitutional consensus, would ensure that citizens' most pressing demands would be met to a large degree. The pluralist position was subjected to a number of critiques (Schattschneider 1960, Duncan & Lukes 1963, Bachrach & Baratz 1970, Lowi 1969, Lukes 1974, Gamson 1975, Lively 1975), and Dahl (and Lindblom) later came to modify the pluralist position (Lindblom 1977, Dahl 1978).

I said above that deliberative democrats offer what they believe to be a more normatively attractive interpretation of democracy, and that we need an account of how this meshes with the problem of the concept's contestability. Hyland's response to the contestability issue is to offer a 'constructional definition' of democracy (after Carnap; see Goodman in Schlipp (ed.) 1963). This is an initially stipulative definition that, while it captures some familiar intuitions, is tested by whether it can help to illuminate and give theoretical resolution to a wide range of questions and problems in democratic theory. The strategies of deliberative democrats have an affinity with this. Cohen (1997a) and Benhabib (1996) are good examples. Both would accept the anti-essentialist point, both would acknowledge major theoretical disagreement, and both would offer an account of democracy that is in some sense the outcome of a procedure of construction.

Cohen's approach is one of accounting for intuitions – an approach made familiar by John Rawls's notion of 'reflective equilibrium' (1971, 2005). The implicit strategy is to systematise intuitions by offering a theory (in this case a conception of democracy) claimed to be the most adequate reconstruction of our pre-reflective intuitions. When I mentioned Cohen in the introduction, I said that he makes use of three intuitions about democracy presented in Rawls's *A Theory of Justice*. First, in a well-ordered democracy, political debate is focused on identifying the public good. Citizens and parties ought not to "take a narrow or group-interested standpoint" (Cohen

1997a, 68), and parties and governments should be responsive to demands that are “argued for openly by reference to a conception of the public good” (Cohen 1997a, 68). Second, democracy has egalitarian implications that must be satisfied in ways that are manifest to citizens. Political opportunities and powers must have ‘fair value’; they must be independent of economic or social position, and this must be more or less evident to citizens. The democratic process must obstruct “the class legislation that can be expected from systems in which groups are effectively excluded from the channels of political representation and bargaining” (Cohen 1997a, 69). Measures to achieve this could include public funding of political parties and restrictions on private political spending, as well as progressive and potentially stringent tax measures to limit economic inequalities. Third, democratic politics should be ordered to provide a basis for self-respect, to encourage the development of political competence, and to contribute to the formation of a sense of justice. It should shape the way citizens understand themselves and their legitimate interests.

Cohen’s complaint against Rawls is his suggestion that these three conditions are the natural consequence of a demand for fairness, rather than elements “of an independent and expressly political ideal that is focused in the first instance on the appropriate conduct of public affairs – on, that is, the appropriate ways of arriving at collective decisions” (Cohen 1997a, 71). Rawls suggests that our political constitution should mirror the ideal fairness

of the 'original position' – his contractual device for the identification of principles of justice. On this account, Cohen says, it is not clear why political debate ought to be focused on the common good, or why manifest equality is important. An "ideal pluralist" conception of democratic politics, with "equal bargaining power and no barriers to entry" (Cohen 1997a, 71) would be an equally good mirror of the ideal of fairness. If we believe the common good would not be advanced in any real world form of this scheme, this would be for contingent psychological and sociological reasons. In that case the three conditions are accounted for on indirect and instrumental grounds. If instead, however, we develop a conception of deliberative democracy as a moral ideal independent of fairness, and concerned with collective decision-making, we can view it as a systematic elaboration that captures these intuitions. Cohen works up his view of deliberative democracy in terms of the notion of an *ideal deliberative procedure*. This is specified by its formal and substantive conditions. The formal conditions comprise: the existence of an ongoing and independent association, a shared commitment to deliberation as the basis of the legitimacy of terms of association, a diversity of evaluative outlooks, a preference for a manifest connection between deliberation and outcomes, and a mutual recognition of deliberative competence. The substantive conditions are that: deliberation is free (participants are bound only by their deliberations, and can implement its outcomes); deliberation is reasoned (and it is expected that reasons alone

determine the outcome); parties are equal (both formally in terms of procedural opportunities and substantively in that the distribution of power and resources does not make these ineffective); and finally that the ideal is consensus, though voting may occur in its absence.

Benhabib's claim, shared by Habermas, is that deliberative democracy is not simply a counterfactual ideal. The theory is the elucidation of the practical rationality sedimented in familiar democratic institutions and procedures; it is an explication of the rationale and logic of legislatures, parliamentary opposition, majority rule, freedom of expression and independent media, and so on. Deliberative democracy "is not a theory in search of practice; rather it is a theory that claims to elucidate some aspects of the logic of existing democratic practices better than others" (Benhabib 1996, 84).

I will develop this in some detail with reference to Habermas later on. For now I want to note the general point: the claim that deliberative democracy adheres more faithfully to what is properly meant by democracy is based on the claim that it accounts better for our basic intuitions about the concept of democracy, and that it better accounts for the logic of democratic institutions. I will introduce a set of positive arguments in favour of deliberative democracy, and I will revisit the suggestion that deliberative democracy accounts better for our democratic intuitions while discussing these arguments.

1.3 Arguments for deliberative democracy

Maeve Cooke (2000) has identified five distinct arguments in favour of deliberative democracy. Putting the arguments in a somewhat different order to the original presentation, they focus on (1) the fairness of the *procedure* of public deliberation, (2) the epistemic quality of *outcomes* of public deliberation, (3) the *educative* power of the process, (4) the *community-generating* power of the process, and (5) the *congruence* of the ideal with “whom we are”. In what follows here in part I explore and assess the conceptual or philosophical-theoretical aspects of the arguments, and I explore the relevant empirical literature later in the thesis.

The fairness of the procedure of public deliberation

Maeve Cooke writes that this argument “can be summarized as the view that the procedure of public deliberation improves the outcomes of the democratic process by making them more just, in the sense of more fair. In contrast to the...argument which as we shall see posits non-procedural *epistemic* standards...[this] argument advances a strictly proceduralist view...The crucial point about strict proceduralism is that there are no non-procedural standards of fairness, the only permissible standards of adjudication are internal to the procedure itself. In other words, if the

procedure is fair, the outcome is fair” (Cooke 2000, 950). Cooke says that we are familiar with a basic version of this idea of fairness: democratic decisions are fair (and legitimate) insofar as they are produced by a fair procedure of majority rule. Cohen (1997a) and Benhabib (1996), Cooke says, “upgrade the basic version to include deliberation...democratic decisions are fair or legitimate insofar as they are produced by a fair deliberative procedure” (Cooke 2000, 950).

Cooke’s objection, following an observation by David Estlund (1997), is that the idea of proceduralism at work here implicitly appeals to a non-procedural standards and is therefore either falsely characterised or incoherent. Estlund says that the epitome of fairness among people who have different preferences over two alternatives is a coin-flip. Nothing could be fairer, and if we think that this is an inappropriate way to decide some issue, we are going beyond fairness. Cooke admits that Benhabib and Cohen distinguish idealised procedure from real world procedures of decision-making, and to that extent, are free to say that actual procedures are not necessarily fair. They would only be fair to the degree that they approximate the restrictive procedural conditions of ideal deliberation. In this sense it is coherent to speak of a *procedural* standard independent of real-world procedure. Cooke says that a more precise formulation of the deliberative position would be that “fair procedures produce fair outcomes because the procedure is in some normative sense fairer than other procedures” (Cooke

2000, 951). Thus Cooke is suggesting that Benhabib and Cohen believe that real-world deliberation is supposed to be fairer than tossing a coin, presumably because it will resemble ideal deliberation, and this is the relevant standard of fairness. At this point Cooke raises two difficulties that I will address here.

Cooke claims, firstly, that Benhabib and Cohen have given us no explanation of why we should accept their conception of fairness. What, we have to ask, makes deliberation a fairer way to make decisions than other procedures? Second, Cooke claims the fairness argument involves a restricted view of deliberation. By its terms, what makes deliberation normatively valuable is the fairness of the conditions governing participation. Equally, she suggests, Benhabib and Cohen hold a less restricted view: deliberation is a means of producing decisions that are “qualitatively better – more just or fair in some epistemic sense” (Cooke 2000, 951). The first part of Cooke’s second objection, in her own words, is that Benhabib and Cohen cannot have it both ways. They cannot consistently maintain on the one hand that there are no non-procedural epistemic standards, and on the other, that deliberation contributes constructively to the quality of decisions according to such standards. The second part of this objection is that the deliberative theorists must either confine themselves to the fairness argument, or provide a better explanation of *how* deliberation contributes to better decisions.

My comments here on the two parts of the second objection will be brief, as I think the call for explanation is the more significant issue. First, the two parts of the objection are not internally consistent. Cooke cannot accuse Benhabib and Cohen of maintaining there are no non-procedural standards, and at the same time accuse them of failing to give us an account of how deliberation contributes to meeting such standards in collective decision-making. Second, the claims that deliberation is fair and deliberation is a means of making better decisions are not mutually exclusive. We can coherently maintain both claims, though we would of course have to admit that procedural fairness is not the only relevant normative criterion.

We need an account here of how majority rule contributes to the fairness of democratic decisions, and we can then ask what extra contribution is made by deliberation. I focus here on simply majority rule. Briefly, this is attractive because it prevents minority determination of outcomes. If we use simple majority rule, then at least half of the voters plus one, will have desired the alternative that is selected by the procedure. More voters will have wanted that alternative than those who did not. Lively (1975) has defended simple majority by saying that the alternative categories of decision-rule cannot guarantee this. He says that there are four types of decision-rules that can select an alternative as a function of expressed preferences: simple majority criteria, stipulated majority criteria, simple minority criteria and stipulated minority criteria. The latter two are

unappealing because they allow a minority to determine the outcome (as well as being redundant, since intelligent voters would vote for their least preferred outcome in order to push it over the threshold). Stipulated majority would seem attractive, since it promises that the alternative selected will have the support of a larger number of voters than half of them plus one. This would however give an effective veto to minorities. At the limit, if unanimity were required a single person could prevent an option preferred by all remaining voters from being selected. Thus simple majority alone ensures that more will be in favour of the outcome than oppose it.

This assumes of course that Lively's four-fold categorisation is exhaustive, but it is not (Hyland 1995). In particular it omits proportional voting rules that allocate retrospective influence in proportion to the size of the vote. The case for simple majority is a perfectly good one if the decision to be made involves a choice between two mutually exclusive alternatives – a winner-takes-all situation – but it is no longer valid when issues are divisible. The scenario in which this is most obviously true is the election of representatives. Imagine a single multi-member constituency. Ten seats are to be filled, three parties each field ten representatives, and party support across the electorate is distributed in the ratio 60:30:10. If each candidate was individually put before the electorate in turn, and voters were asked to either accept or reject the candidate, and simple majority was used, the result would give all ten seats to one party. Clearly, if seats were instead allocated in

proportion to the vote then the result would satisfy more voters than simple majority rule.

What I want to focus on here however is not the argument for PR, but the idea that voting is a means of satisfying preferences. Estlund suggests that the epitome of fairness is tossing a coin, but this obscures two distinct dimensions highlighted by Lively – prospective and retrospective equality. If an association chose to make a binding decision by implementing the preference of any member taken at random, this rule would guarantee that on each decision every member would have an equal *prospective* chance of determining the outcome. Looked at *retrospectively* however, in the case of each decision only one person's preference is effective. On any given decision, it is conceivable that everybody else would have preferred a different alternative. Would this be consistent with our intuitions about democracy? I'm sure that it is not. We understand a democratic voting procedure, therefore, to have something to do not only with voters having an equal chance to affect the outcome, but also with the selection of alternatives that they actually want. As Dahl (1989) puts this, our normal intuitions demand not only initial, prospective equality, but also a procedure that ensures that the *most preferred* alternative is selected. If each vote should have an equal weight, this implies that the *most preferred* alternative is the alternative *preferred by most*. This route leads us to simple majority rule

when we face binary choices (and PR as a better means of satisfying the preferences of as many voters as possible, when issues are divisible).

We can now turn to what deliberation adds to voting. If deliberative democracy is presented as a form of pure proceduralism, Cooke is right to demand an account of the deliberative conception of fairness. I do not however believe that deliberative democracy *is* best defended as a form of pure proceduralism. On the contrary, the appeal of the theory lies precisely in its departure from this, and it is by reference to this departure that we can clarify a key dimension of its normative justification. Dahl points out that perhaps the most common justification given for democracy is that it is essential to the protection of the interests of those subject to the regulations and actions of the state (Dahl 1989, 93). Dahl's justification of democracy rests on two premises – a principle of equal consideration of interests (based on the equal intrinsic worth of individuals) and a presumption of personal autonomy. The latter says that in the absence of a compelling case for thinking otherwise, adults should be assumed to be the best judges of their own interests. In the context specifically of the demand for equal consideration of interests, the reason for favouring democracy over a rule of philosopher kings is that we have no reason to believe in the existence of such fantastic creatures. And it is in large part because we want institutions that promote equal consideration of interests that we want to ensure

procedural equality in decision-making, with equal political rights and opportunities.

The problem with purely aggregative proceduralism can be stated here – all preferences and desires are treated as being on a par with one another, regardless of their substantive content. As Gutmann and Thompson (1996) and Cohen (1997*b*) have pointed out in this context, some interests are more fundamental than others (like the interest in life-saving medical treatment), while some moral obligations (for instance obligations of religious worship) are so stringent for the person concerned that any legal abridgement of the corresponding rights would violate fair terms of social cooperation. The normative value of an ideal deliberative procedure is that it would allow participants to discriminate preferences and desires of greater and lesser urgency, not based on their intensity, but based on their content (Cohen 1997*b*). This is because deliberation involves “ideal role-taking” (Benhabib 1996, Habermas 1997) in which deliberators imagine themselves in the position of others, either when they formulate an argument or when they listen to those of others. And because, of course, it is stipulated that deliberators would perform this conscientiously. An ideal deliberative procedure would on the one hand provide equal procedural opportunities for deliberative participation, while on the other, it would shape the substantive outcomes of decisions in particular ways.

On the account developed here, the argument for *real-world* discussion is not in fact that it is necessarily fairer than a coin-toss or majority-rule. Ideal deliberation is fair but it is also exacting, and real-world decision-making will always be imperfect by its standards. That aside, deliberative theorists do not assume that in contemporary democracies all disagreements will be resolved by deliberation. What is being argued is that deliberation (reflection, discussion and communication) should supplement voting. Where this occurs, deliberation is likely to improve outcomes on grounds of justice, if its exacting conditions are approximated to some degree – if important perspectives are included that might not have been otherwise, and the legitimacy of the corresponding claims are at least partially granted. Here deliberation has a greater probability of generating more substantively just outcomes than either a procedure in which an alternative is selected at random from the full range, or a procedure in which a bare majority can potentially determine the outcome without any consideration of the interests of the losing minority. In this context, to return to the discussion in 1.2 above, the intuition that deliberative democracy satisfies better than aggregative democracy is the intuition that democracy has something to do with the equal consideration of substantive interests, on the assumption that this principle is not indifferent to qualitative distinctions between interests.

One relevant feature of Habermas's account is missing from what has been said here. This is his account of uncoerced agreement. If people reach a

consensus on norms, and certain conditions are fulfilled (each person was fully informed, each had equal speaking rights, each was free to question procedural rules, each was free to agree or disagree with proposals, and so on), then the consensus will be based on shared insight rather than inadequate understanding, manipulation or force. Habermas's account will be discussed in detail later, but I might say at this stage that although deliberative democracy is not necessarily expected to produce *fairer* decisions, where this is understood strictly in terms of prospective or retrospective equality, Habermas does promote a distinctive ideal of *non-coercive* decision-making.

This, I would argue, incorporates an intuition that is part of the deep-structure of the normative framework of democracy that we have inherited from the democratic tradition, and from our culture more generally – an ideal of moral autonomy that explicates the idea of freedom of self-determination. The latter has to do with living under laws of one's own choosing; the former has to do with being governed by oneself, where critical reflection and the capacity for choices that reflect one's fundamental values are a significant part of wellbeing. Dahl links these as part of his account of the justifiability of democracy:

To live under laws of one's own choosing, and thus to participate in the process of choosing those laws, facilitates the personal development of citizens as moral and social beings and enables citizens to advance their most fundamental rights, interests, and concerns.

There is, however, a deeper reason for valuing the freedom to govern oneself, a reason having less to do than these with its usefulness as an instrument to other ends. This is the value of moral autonomy itself. By a morally autonomous person I mean one who decides on his moral principles, and the decisions that significantly depend on them, following a process of reflection, deliberation, scrutiny, and consideration. To be morally autonomous *is* to be self-governing in the domain of morally relevant choices (Dahl 1989, 91).

Habermas, as we will see later in his account of self and society, gives an intersubjective reading to this subjective interpretation of moral autonomy. He addresses this by way of attempting to rescue Adorno's utopian projection of undeformed individual autonomy, saying that if individuals were socialised as members of an ideal discursive community, they would acquire on the one hand the capacity to realize themselves in their own uniqueness, and on the other, the capacity to act from a framework of morally universal judgment that Habermas sees as being immanent to communicative structures. At this stage however, I might express the argument this way. An ideal of moral autonomy explicates the value of freedom of self-determination, which is part of the explication of democracy. Deliberative democracy captures the ideal of moral autonomy better than alternative views because of the importance it attaches to the exercise of judgement on collective issues, and to the conditions of the formation of

reflective, critical and authentic political preferences (see Sunstein 1995, Elster 1997a).

The epistemic quality of the outcomes of public deliberation

I have begun to consider how deliberation might improve decisions, since it has not been possible to separate this from the discussion of procedural fairness. The issue deserves attention in its own right. Cooke says that this particular argument rests on a distinction between the fairness of the procedure and the rationality of the outcome, and introduces it by reference to Habermas. She rightly points out that for Habermas, “public deliberations have a cognitive dimension: they are concerned with finding the best way of regulating matters of common concern, whereby the ‘best way’ is judged according to standards of rationality that have a certain objectivity” (Cooke 2000, 952). Her objections are instructive: she says that Habermas’s argument “appeals to an epistemic standard of rationality whose basis is quite unclear” and that “it does not explain how public deliberation contributes constructively to the rationality of outcomes” (Cooke 2000, 953).

Cooke’s objections rest on a distinction between “moral” and “democratic” discourses. Discourses are ideal-typical procedures of argumentation that can be formally specified both with respect to conditions governing access and participation, and modes of argumentation. For

Habermas moral claims are analogous to truth claims. Thus the vindication of the truth or rather the 'validity' of moral norms depends on: (a) the procedure of discourse, conducted according to exacting standards of fairness, (b) the principle of universalisability which functions as a general rule to allow participants to check whether proposed norms are equally in the interests of all affected (which relates to the general interests of persons as such), (c) the discursively achieved consensus that the norm in question is universalisable. By contrast, Cooke says, "the legitimacy of democratic laws depends on only two ingredients" (Cooke 2000, 953). These are condition (a) above, plus a condition parallel to (c) requiring a discursive consensus that the laws are acceptable to all affected (that is, citizens on whom the laws are binding). For Cooke, the source of the problem for Habermas is the absence of condition (b) or something in its place:

In the case of democratic discourses...the epistemic status of the laws that emerge is not a function of their genuine universalizability but of the fact that they are generally acceptable...However, de facto general acceptability cannot be the criterion of epistemic quality: if generally acceptable laws are to lay claim to any kind of objective epistemic status, some means of distinguishing between valid and invalid claims to general acceptability has to be available. In contrast to moral claims, where the universalizability principle acts as a test of objective validity, legitimate laws are not subject to this test (Cooke 2000, 953).

Cooke's second point – that it is not clear what constructive contribution deliberation makes to the quality of outcomes – is based on the observation that if the criterion for legitimate law is general acceptability (rather than universalisability), then it is not clear why deliberation is necessary. Voting or coin tossing, she says, could equally be used as a means of producing generally acceptable laws.

I believe Cooke's objections rest on a misreading of Habermas, and I will now try to clarify this. As I understand his account, there is no "democratic discourse" as such. He does distinguish the normative *principle* of morality from that of democracy (Habermas 1997, 110). While a moral norm is only valid if it could meet with the qualified assent of all human beings in a moral discourse, a law is only legitimate if it can meet with the qualified assent of citizens in a legally constituted and discursive procedure of lawmaking. The principle of democracy is not however a form a discourse. Habermas distinguishes three main kinds of discourse, corresponding to three kinds of questions (see Habermas 1997, 157-168; 2005, 1-18). *Pragmatic* questions relate to purposive behaviour and concern the choice of appropriate means to given ends. *Ethical* questions relate to authenticity and strong evaluations; how we understand our good, and whether we are living appropriately in light of who we are and want to be. *Moral* questions relate in Kantian fashion to the autonomous will; the identification of universal norms for the impartial regulation of conflicts of

interest. These types of question are hierarchically arranged – answers to pragmatic questions are constrained if they come into contact with ethical considerations, while both pragmatic and ethical choices must be consistent with our justified moral beliefs. All three kinds of question can arise both for individuals and political units. Thus, pragmatic questions arise for political collectivities when the issue is the practical or technical one of how to achieve a particular goal – for instance, how to maintain or increase current investment or employment levels. In the course of pragmatic decision-making, ethical and moral questions can however arise. Habermas lists the following as involving ethical issues: “ecological questions concerning the protection of environment and animals, questions of traffic control and city planning; or...questions of immigration policy, the protection of cultural and ethnic minorities, or any question touching on political culture” (Habermas 1997, 165). In contrast, moral issues are raised by “questions of social policy, of tax law, or of the organization of education and health-care systems, where the distribution of social wealth, life opportunities, and chances for survival are at stake” (Habermas 1997, 165). Here moral discourse is required: “such moral issues call for discourses that submit the contested interests and value orientations to a universalization test within the framework set by the system of rights as it has been constitutionally interpreted and elaborated” (Habermas 1997, 165). However, “Legal norms...can be justified not only with moral but also with pragmatic and

ethical-political reasons; if necessary, they must represent the outcome of a fair compromise as well. In justifying legal norms, we must use the entire breadth of practical reason” (Habermas 1997, 156).

The point here, firstly, is that Habermas is not saying we do not need to invoke the principle of universalisation when we make laws. We must do so when moral issues are at stake. Public debate in these situations should involve arguments about the content and application of universal norms (Habermas distinguishes ‘discourses of justification’ concerned with foreseeable typical cases, and ‘discourses of application’ concerned with specific cases; 1997, 162; 2005, 13/14). Second, pragmatic and ethical discourses have argumentative canons parallel to that of universalisation. Pragmatic questions can be debated on the basis of the empirical information relevant to conditional imperatives, when programmes must be identified and their consequences predicted. Thus the standards for pragmatic discourse are ultimately those of the empirical sciences generally. Ethical questions require hermeneutic reflection in which traditions can be critically re-appropriated, and a more adequate self-understanding achieved. For individuals the model is a therapeutic one; thus within ethical discourses we can distinguish ‘ethical-existential’ and ‘ethical-political’ discourses (1997, 96/97, 160). Ethical-political arguments turn on explications of identity and history in which we can collectively recognise ourselves – and on normative premises regarding how best to selectively renew or retain our deeply held values and

valued traditions, addressed to those who share and have been shaped by a common culture. For systematic methodological reconstructions of the kind of reasoning involved, Habermas cites the work of Gadamer and Macintyre (Gadamer 1990, Macintyre 1988; Habermas 1997, 160 n29).

The point of democratic institutions and procedures for Habermas is that they institutionalise practical discourses in formal politics and the public sphere, in addition to regulated bargaining. On this view, the argument that deliberative democracy improves the quality of decisions rests broadly on two considerations. First, that democratic institutions and procedures institutionalise society-wide entry into the practical discourses that define the rationality of decisions. Second, that background social or extra-political conditions, including ideology and de facto political inequalities, are not so severe a problem that the prospects for an independent and politically effective civil society are not severely undermined. In relation to the first element, Habermas has I think provided an attractive defence of moral objectivity in the context of the challenges of emotivism and contextual relativism. I will set out the reasoning that underlies this in Chapter 2, and defend it in the context of a discussion of Rawls and Habermas. I will outline how Habermas's deliberative conception accounts well for the institutional structure of democratic polities. From this perspective, I believe that the first of the two claims can be supported. I will address the second claim in Chapter 3. A final assessment of the Habermasian claim that deliberative

democracy makes for better decisions, understood now in terms of the real-world democratic order, will therefore have to wait until then.

I have been sketching a Habermasian account of the epistemic quality of democracy in response to Maeve Cooke's objections. This is not the only way to defend deliberation's epistemic contribution, nor even is it the most obvious way. We could instead consider the likely benefits of discussion for individuals and groups in interactive contexts. First, I referred to Bernard Manin (1987) in my introduction. Manin draws on the work of Herbert Simon (1982) in claiming that the image of the agent in standard economic theories is a fiction. Certainly with respect to political issues, individuals invariably possess fragmentary and incomplete information, and may not have complete and transitive preferences. Discussion plausibly has benefits for individual cognition and group decision-making for two reasons distinguished by James Fearon (1998), also drawing on Simon. First, it reveals private information, and second, it lessens bounded rationality – the fact that our imaginations and calculating abilities are limited and fallible. Discussion may improve group choice either because it is “additively” valuable (we pool our respective ideas) or because it is “multiplicatively” valuable (we may think of possibilities or problems that would not have occurred to any of us prior to discussion). One important source of the lessening of bounded rationality is the fact, championed by Mill in *On Liberty*, that the dialectics of argumentation exposes weaknesses and

illuminates strengths in the claims of participants. Naturally, as Fearon points out, we have to acknowledge that discussants may make strategic uses of argument, and Elster (1997, 1998*b*, 2000) has explored some of the implications of these. I will come to this and the empirical literature in Chapter 4. In that chapter I review the evidence for individual-level cognitive gains from face-to-face deliberation of different degrees of formality, between people generally. To the extent that the results show that deliberation tends to produce more informed individuals with more reasoned attitudes, then we would have reason to believe that a democratic order characterised by widespread deliberation would be good for the quality of public opinion.

In concluding this section I might return again to how deliberative democracy accounts for democratic intuitions. The idea that deliberation may improve the quality of decisions is relevant because democratic decision-making is *about* something. It has a *purpose*. We want democratic institutions not simply because we want to settle disagreements according to a principle of political equality, as if we were otherwise indifferent to the quality of those decisions. When we must make collective decisions we want them to be good ones. Certainly, as David Estlund (1997) writes, it is not a necessary condition of the legitimacy of a democratic procedure that the outcome is correct, and when we find ourselves in the minority, we do not have to surrender our judgement to the procedure, as Rousseau would have

us do. This does not change the fact that democratic decision-making is an instrumental activity.

The educative and community-generating power of discussion

Since I have been discussing the normative justifiability of deliberative democracy, I have up till now been presenting it in ideal terms; I have been imagining what normative criteria would be satisfied *if* we had a perfect deliberative democratic system. The focus changes somewhat here. I am still concerned with evaluating the normative justifiability of the theory, but the justification turns on the properties of *discussion* as a real-world phenomenon. On the argument presented here, the reason why deliberative democracy is *desirable* is that *desirable things will happen when people engage in discussion*.

In fact I will consider two of the arguments distinguished by Maeve Cooke together here because while there is an analytical and psychological distinction to be made, the idea common to both is that there is an important interrelationship between political institutions and the psychological qualities and attitudes of their participants. The first argument is that deliberative democracy “should be advocated primarily because of the beneficial educative effects it has on citizens” (Cooke 2000, 948). Cooke mentions Mill (1910) and Arendt (1970) as proponents of this view. Aside from its

instrumental value in bringing about better decisions and laws, participation in public affairs is thought to be valuable because of its *personal* benefits. It improves the moral, practical or intellectual qualities of those who participate, making them “not just better citizens but better individuals” (Cooke 2000, 948). The second argument is the communitarian claim that “the individual can become aware of, and consolidate, her co-membership in a collective form of life only by way of practices of public reasoning with others who owe their identities to the same values and traditions” (Cooke 2000, 949). Cooke associates this with Barber (2003) and Taylor (1989*a*). She also suggests that deliberation’s “community-creating (or consolidating) power” is implied by Cohen (1997*b*), and that the ideal role taking spoken of by Benhabib (1996) and Habermas (1997) is itself a form of solidarity.

We can highlight the relationship between these arguments by reference to Carole Pateman’s (1970) observations on Mill and Rousseau. Before we get to this I might briefly outline Rousseau’s position. In *The Social Contract* Rousseau distinguishes sovereignty and government. In the context of a small-scale political unit characterised by rough economic equality, an assembly of citizens can alone legitimately frame laws as general commands. Sovereignty is inalienable; the people of England think they are free, Rousseau observed, but they are free only during the election of members of parliament, and they are slaves in the interim (Rousseau, Cole (ed.) 1983, 240) The everyday running of the state may however involve an

administration of magistrates who pass particular decrees, though its commands can pass for the general will where there is tacit consent. The aim of the assembly should be to identify the general will, which is comprised of those generally framed policies that are objectively speaking equally in the interests of all. This involves a substantive and a procedural dimension – the general will is whatever sustains the collective body, while laws must not single out individuals. In voting by majority rule citizens offer their opinion as to the content of the general will, and if they find themselves in the losing minority, this shows that they were mistaken.

Rousseau's insight, as Brian Barry (1967) has interpreted it, is that any group will have a will that is general in relation to its constituent members, but particular with respect to larger groups in which it is included. Any policy that is equally favourable to all the members of a given group will be less favourable to member *A* than the policy most favourable to *A*, less favourable to member *B* than the policy most favourable to *B*, and so on. Yet it will be more favourable to each of the members of the group than any policy that has to be equally beneficial to an even larger number of people. The general will is a single policy that is equally in the interests of the *entire* group, and it will usually be different from any of the policies mentioned before, and less beneficial to anyone than the policy most beneficial to herself considered in isolation. If, for example, a fixed sum were made available for wage increases in a certain industry, a given individual would

benefit most if she could commandeer all of it for herself. She would benefit less than this but better than others, if her union were able to secure all or most of the increase. All workers would however benefit equally if unions received an allocation proportionate to the size of their membership, and unions distributed their share equally among their own members.

For Rousseau, the establishment of the political community is a momentous development: "This passage from the natural to the civil state produces a very remarkable change in man, substituting justice for instinct in his conduct, and giving his actions the moral quality they had hitherto lacked" (Rousseau 1983, 177). Natural liberty is exchanged for civil right and civil liberty; we can now enjoy secure possession, and acquire the positive liberty to act in obedience to self-given law. The community is constituted through the psychological transformation by which we place ourselves under the direction of the general will.

Pateman describes the "educative" function attributed by Rousseau to participation in this way: "During this process [of participation in collective sovereignty] the individual learns that the word 'each' must be applied to himself; that is to say, he finds that he has to take into account wider matters than his own immediate private interests if he is to gain co-operation from others, and he learns that the public and private interest are interlinked" (Pateman 1970, 24/5). Similarly Pateman notes that John Stuart Mill distinguishes two aspects of good government. First, the good management

of public affairs and public business. Second, political institutions must be judged by “the degree in which they promote the general mental advancement of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency” (Mill 1910, 195; cf. Pateman 1970 28/9). A benevolent despotism might satisfy the first condition, but the development of the character of capacities of citizens would be stunted; their sentiments “narrowed and dwarfed” (Mill 1910, 203/4; cf. Pateman 1970, 29). When the individual is concerned only with private affairs and takes no responsibility for public ones, the capacities for impartiality and responsible action remain undeveloped: “The man never thinks of any collective interest, of any object to be pursued jointly with others, but only in competition with them, and in some measure at their expense” (Mill 1910, 217; cf. Pateman 1970, 30). In contrast, in public affairs the individual is obliged to “weigh interests not his own; to be guided, in the case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good” (Mill 1910, 217; cf. Pateman 1970, 30). Of course Mill spoke, unlike Rousseau, in the context of large-scale representative democracies. He envisaged a system of plural voting based on educational attainment and believed that elected representatives should not legislate, but discuss and then accept or reject legislation prepared by Crown commissions. He did however highlight the potentially fruitful area of local

government participation, and later, of workplace governance in the form of socialist inspired co-operatives, anticipating, as Pateman notes, the ideas of G.H.D. Cole (1919, 1920*a*, 1920*b*).

The potentially educative function of political participation is not confined to the development of mutual concern, but may extend to internal and external efficacy:

John Stuart Mill argued that an “active” character would result from participation, and [G.H.D.] Cole suggested that what we might call a “non-servile” character would be fostered, and it is possible to give these notions some empirical content. If one is to be self-governing in, for example, one’s workplace, then certain psychological qualities are clearly necessary. For example, the belief that one can be self-governing, and confidence in one’s ability to participate responsibly and effectively, and to control one’s life in an environment would certainly seem to be required...Now one of the most important positive correlations that has emerged from empirical investigations into political behaviour and attitudes is that between participation and what is known as the sense of political efficacy or sense of political competence. This has been described as the feeling that ‘individual political action does have, or can have, an impact upon the political process, i.e. that it is worthwhile to perform one’s civic duties’ [Campbell *et al* 1954, 187]. People who have a sense of political efficacy are more likely to participate in politics than those in whom this feeling is lacking and it has also been found that underlying the sense of political efficacy is a sense of general, personal effectiveness, which involves self-confidence in one’s dealing with the world (Pateman 1970, 45/6).

The distinction drawn by Maeve Cooke between ‘educative’ and ‘community-generating’ powers is a fair one. The former has to do with the development of latent individual-level *powers*; the latter has to do with the activation of *a sense of identity and belonging*. These have a common root however in a recognition of mutual dependence and obligation. Cooke does however claim on the basis of two main objections that these arguments are insufficient for deliberative democracy, and I would like to make some remarks on her objections. First, Cooke says that we need an explanation of why *deliberation* (or rather *discussion*) specifically, as opposed to other forms of participation, should have these effects. What makes us think that discussion’s effects would be distinct from and superior to those that would result from other forms of participation – such as helping to set up a residents’ association group?

The first response to make here is that participatory and deliberative ideals are certainly not mutually exclusive, and they need not even be independent. It is not clear that anyone would want to insist on defending a purely non-deliberative participatory account. For one thing, deliberation is a form of participation. For another, Mill specifically envisaged *deliberative* participation – though at least part of what he meant was internal reflection rather than discussion. Think of his claim that participation requires citizens to “weigh” other’s interests and to be guided by “principles and maxims”. The connection between these is also brought out by Plamenatz, when he

says: "If people do not take part in reaching a decision that affects them, and also in the discussion leading up to that decision, they may not understand the need for the decision nor the interests and points of view reconciled by it. The decision is therefore likely to appear to them external and arbitrary. They may get used to acquiescing in such decisions; they may even learn to think of themselves as unfit to take part in making them" (Plamenatz 1963, 400). A purely non-deliberative participatory account would have to confine its advocacy to forms of participation that do not involve deliberation. As a request that we make *discussion's* contribution *intelligible* however, Cooke's point is well made, and I need to address this.

Second, the connection between discussion and these effects (certainly other-regarding concern, if not also shared identity and common fate) is conceptually most direct. If we must try to persuade others, and our engagement is not purely strategic, then we necessarily consider what they would find acceptable. At least in theory, in the process of discussion we have an opportunity to hear and understand the claims of others, while attempting to identify mutually justifiable solutions.

Third, we do however need an account of the process by which discussion might work reactively on participants. For instance, to skip ahead to Chapter 4, discussion certainly obliges participants to *appear* to be concerned about the common good (Elster 1997, Fearon 1998, Cohen 1997a). What reason is there to think that discussion might lead them to

acquire a more authentic concern? Possible mechanisms include cognitive dissonance (Elster 1997); the shaping by participation in the process itself of a commitment to the deliberative resolution of questions (Cohen 1997a); the arousal of perspective taking or empathy in the course of presenting and hearing reasons (Benhabib 1996, Cohen 1997a; see Oswald 1996, 2002); the increase in tolerance hypothesized to result from exposure to alternative perspectives (Mutz 2002); or simply the power of reason to break down selfishness and prejudice (Elster 1997). Only when we test these empirical claims and mechanisms however, can we make a judgment on discussion's effects, and only then therefore, can we evaluate this particular aspect of the normative justification for deliberative democracy.

We should acknowledge the difficulty in establishing very strong conclusions about long-term effects on character in this area. The work that is done usually operates over too short a time frame for such conclusions to be drawn, while effects and character and outlook would only be expected in conditions of a considerably above-average level of ongoing political activity and engagement. More prosaically, we are all familiar with fruitless discussions – where people are unwilling to have their prejudices challenged, or scorn the views of others, or where things get so heated that only accusations and insults are traded. However, a modest but potentially fruitful kind of empirical inquiry would explore observable effects of discussion in the short-run, such as those addressed in Chapter 4 and 6 – increased

information, attitude integration, feelings of efficacy, perspective taking and empathy, tolerance of opposing perspectives and so on.

To turn to Cooke's second objection, it is one first made by Elster (1997). This is the claim that the educative and community-generating benefits of deliberation are by-products of political activity. Any attempt to openly defend them as the primary argument for deliberation would be self-defeating. Elster's argument rests on the idea that if we really thought that democracy was no better than alternative forms of government, in terms of justice or efficiency, we would lose the motivation to adopt a democratic system. We would only adopt democracy if it has some advantage in this respect, and *only then* could we come to experience its educative effects as a consequence. The effects of democracy spoken of here then, are *essentially* by-products. This is correct, but what it shows – indeed what it is explicitly intended to demonstrate – is that the argument about deliberation's supposed personal effects is not *sufficient* to justify a deliberative conception of democracy. If, however, deliberative democracy is *at least as good* as the alternatives according to our criteria for a good decision-making procedure (and I have been indicating that it is likely to be better), and if it does have these effects, then this gives us a reason to favour a deliberative conception.

On Elster's line of argument however, there is a danger that what is placed in the category of educative effects might be seen to be dispensable. Against this, if, as I have suggested above, democracy involves an ideal of

moral autonomy, then the scope afforded by our institutions for the achievement and implementation of considered preferences is not a secondary issue.

The congruence of deliberative democracy with “whom we are”

The final argument that is part of the normative case for deliberative democracy identified by Cooke has two elements: (a) the claim that there are certain conceptions of knowledge, the self and the good life that are so fundamental to Western history and traditions that we cannot conceivably reject them, and (b) the claim that a deliberative model of democracy is most consistent with these. This kind of argument does not involve claiming that what we posit as a basic value can be stated as “true”, but that it is such a deep-lying and fundamental part of our tradition that it is unavoidable for us; it is constitutive of our self-understandings. It is a conditional argument in which, if the values or conceptions believed to be basic are granted (and the challenge is to conceive of rejecting them), then substantial conclusions can be seen to follow. I have been already been arguing in this way in saying that deliberative democracy best fits with the value we attach to moral autonomy.

In Cooke’s argument the intuitions captured by deliberative democracy are broad in scope:

(1) The view that there are no authoritative standards independently of history and cultural context that could adjudicate claims to truth, particularly in the areas of science, law, politics and morality, and that knowledge in these areas should be understood fallibilistically.

(2) The view that autonomous reasoning is a valuable part of human agency.

(3) The view that publicity is important, especially in the realms of law and politics.

(4) The view that everyone is in principle deserving of equal respect as an autonomous agent with a distinct point of view.

I might briefly put point (1) in context. It is a familiar view in contemporary epistemology that there are serious difficulties involved in demonstrating the superiority of any one of the variety of moral schemes we have inherited from our tradition, by appeal to a single, correct account of human nature and purposes, the natural order, or the ultimate ground of knowledge. We live in a postmetaphysical age. To take one aspect of these developments, for centuries natural law provided an accepted scheme in which human purposes could be understood in terms of a natural teleology that rested on the divine will. Natural teleology is however incompatible with the modern scientific

worldview, while religious beliefs and precepts can no longer provide an unquestioned basis for social order. In contrast Kant attempted to derive morality within a transcendental framework that declared traditional metaphysics no longer viable. He believed however, both that morality presupposes autonomy, and that autonomy presupposes independence from causal determination in the phenomenal world. This forced him to rest the possibility of morality on the awkward and no longer credited idea of the freedom of the noumenal self. Hegel's idealism fared no better. Against foundational schemes like these, the tendency of contemporary thought (to some degree prefigured by Hegel) has been to argue that evaluative frameworks are internal to concrete, contingent, historically specific forms of life – societies whose shared activities, purposes and traditions define a horizon from which moral vocabularies take their intelligibility. The problem here is that contemporary societies, even as concrete forms of life, no longer possess any moral unity, at least beyond agreement on the democratic order. They are instead characterised by deep moral disagreements on issues such as abortion and genetic technology, libertarianism and state interventionism, secularism and freedom of religious expression, and liberal rights and non-Western cultural practices.

Cooke develops the argument for deliberative democracy by saying that if there are no authoritative standards independent of history and cultural context, and if knowledge is seen as possible but fallibilistic, then

unconstrained rational argumentation is the most appropriate way to adjudicate claims. This helps to explain the value attached to autonomous reasoning and to publicity in both a weak (outcomes should be capable of being made public) and a strong sense (justifications themselves should be public). Publicity is more adequately accounted for by a principle of equal respect for citizens as autonomous agents with a distinct point of view; here everyone is deemed worthy of making contributions worthy of consideration. Citizens are politically autonomous insofar as they are both authors and subjects of the law. Given the desacralization of knowledge, in order to see themselves as authors, they should be able to view laws and policies as the outcome of processes of public deliberation aimed at justification. Thus the four elements can be combined to suggest an argument for deliberative democracy, in which all would have an equal opportunity and would be encouraged to contribute to public deliberation on matters of common concern. In addition, there should be no restriction on permissible reasons that could not be rationally discussed within the procedure, and in a given case no outcome should be determined in advance.

In my view this general strategy of arguing for deliberative democracy is worthwhile. I have, as I have said, been implicitly engaged in it above. Two points are worth making however. First, although this line of argument does give someone who shares these conceptions an account of why they should accept a deliberative conception of democracy, it can be

complemented with Habermas's more systematic account in which conceptions such as these are integrated with one another, and with deliberation. Second, Habermas does not present the justification of his theory as conditional on our unavoidable cultural inheritance, but as redeeming (in discourse ethics) a conception of moral universalism that is defended by reference to the presuppositions of argumentation and the idea of a performative contradiction.

1.3 Conclusion

In this chapter I have first tried to define our object, deliberation, and I have distinguished this from discussion and communication. My aim has been to explore what form a normative justification of deliberative democracy should take, and to discuss several positive arguments in favour of it. I have suggested that it must be shown how the concept of deliberative democracy relates to what we understand by democracy more generally, and that the attractiveness of deliberative democracy can be brought out by showing how it captures intuitions about democracy better than the aggregative conception, which includes minimal liberalism, social choice and pluralism.

The normative arguments in favour of deliberative democracy relate to its procedural fairness, the quality of resulting decisions, its psychological effects, and its congruence with our self-understandings. I claimed that the

argument for ideal deliberative procedure is not that it is necessarily fairer than vote-aggregation, but that it would be likely to lead to more just outcomes. I also argued here that deliberative democracy best captures the ideal of moral autonomy, given the importance it attaches to the exercise of judgement on collective issues, and to the conditions in which preferences are formed. I discussed the claim that deliberative democracy improves the epistemic quality of decisions, and said that for Habermas, this rests on two things: a philosophical-theoretical account of discourses and their institutionalisation, and a defence of the critical role of the public sphere under the conditions of contemporary societies. The first element of this will be discussed in Chapter 2, while the second will be explored in Chapter 3 as part of a discussion of the relevance of the deliberative ideal. Epistemic benefits are also tied to individual-level expectations, such as more informed and integrated attitudes, and these will be explored in Chapters 4 and 6. On the psychological effects of discussion, I also referred the issue to the empirical material of Chapters 4 and 6. Finally, on the congruence of the democratic ideal with our self-understandings, I suggested that this argument gives anyone who shares those understandings a reason to favour deliberative democracy, but also said that a more systematic though universalistic treatment is given to these issues by Habermas, and this will be followed up in Chapter 2.

Varieties of Deliberative Democracy

Deliberative democracy is not a singular theory but a convergence of perspectives. Those who defend one perspective might reject claims advanced by those who defend another. In this chapter I aim to do two things. First, I outline these perspectives, in order that it might be clear just what deliberative theorists are claiming. I outline the views of republicans, John Rawls, and Jürgen Habermas. These are relatively discrete alternatives, and they have been the most influential. I spend a good deal of time on this in part because I think it has value as an interpretive task in its own terms. Deliberative democracy is rooted in large-scale theory, most notably in the case of Habermas and Rawls. We get a sense of the full significance of deliberation from seeing each perspective holistically. Rather like the constructs of natural science, though without the same sharpness, the import of 'deliberation' changes as we move from one perspective to another. A second Kuhnian parallel with natural science is also relevant here (Kuhn 1962). Whether we find deliberative democracy attractive or not is in part a matter of specific arguments considered in isolation. However it is also, and perhaps mainly, a matter of our total reaction to a theoretical perspective. On

this score I find Habermas's perspective attractive, given the questions that it deals with and the possibilities it opens for inquiry. On the other hand republicanism is somewhat disadvantaged by my presentation because it is not presented in the same depth. I compensate for this however by defending the relevance of republican theses for Habermas in the discussion that follows the exposition.

This discussion is my second aim. Having set out the main varieties of deliberative democracy, I then want to try to exploit the contrasts. Some important issues can be highlighted if we attend to these. In exploring issues of dispute, I make some critical claims about what an adequate deliberative theory should contain. I focus in particular on James Bessette's insulation of deliberation from society, on John Rawls's monological account of deliberation, and on the implications for Habermas of Charles Taylor's account of republican patriotism. My background motivation is to try to head off criticisms that deliberative democracy is in tension with the interests of structurally disadvantaged groups (Young 1989, 1996, 2000) or that it is somehow in conflict with social justice activism (Young 2001). The three parts of the discussion provide an opportunity to defend an account of deliberative democracy that is *participatory*, *dialogical* and *adversarial*.

2.1 Republicanism and deliberative democracy

A good deal of historical and legal scholarship has lately reinvigorated the republican tradition. One strand of this is a retrieval of its place in American constitutional thought. Notable advocates here include James Bessette (1980, 1997), Bruce Ackerman (1984, 1991), Cass Sunstein (1982, 1984, 1985, 1988, 1993, 1995) and Frank Michelman (1986, 1988, 1989). For the purpose of exploring the relationship between deliberative democracy and republicanism, I focus here on Bessette and Michelman.

Ackerman and Sunstein are certainly worth attention. Ackerman defends a conception of dialogue viewed as conversational restraint, and he has identified and categorised as deliberative the popular movements that have stimulated periodic paradigm shifts in U.S. higher law (1980, 1989, 1991). Sunstein has much to contribute, including the critique of exogenous preferences.¹ In addition, Sunstein develops an account of the U.S. constitutional framing that differs from Bessette's insofar as he presents a hybrid of republicanism and pluralism that aimed not only to foster

¹ "Private-regarding reasons are an insufficient basis for legislation. Political actors must justify their choices by appealing to a broader public good. This requirement has a disciplining effect on the sorts of measures that can be proposed and enacted...The central idea here is that politics has a deliberative or transformative dimension. Its function is to select values, to implement 'preferences about preferences', or to provide opportunities for preference formation rather than simply to implement existing desires (Sunstein 1988, 1545). Compare Elster: "rather than aggregating ...preferences, the political system should be set up with a view to changing them by public debate and confrontation. The input to the social choice mechanism would then not be the raw, quite possibly selfish or irrational, preferences that operate in the market, but informed and other-regarding preferences" (Elster 1997, 12).

deliberation but also to check and counter self-interest. As I noted earlier, he argues that much judge-made public law can be understood in terms of canons for the invalidation of statutes that rest on 'naked preferences': the distribution of resources or opportunities to one group rather than another solely on the ground that the group has exercised the raw political power to obtain them. These include the equal protection, due process, commerce, privileges and immunities, contract, takings, and eminent domain clauses (Sunstein 1982, 1983, 1984, 1985, 1988, 1989, 1993). Courts implement 'heightened scrutiny', 'impermissible ends' and 'hard look' doctrines in striking down regulations not supported on public interest grounds. A republican conception of public law, further, has as yet incompletely developed implications for statutory construction (1988). For Sunstein, republicans that are committed to deliberation would attempt to design political institutions that promote discussion and debate; they would be hostile to "deals" or bargains among self-interested private groups; they would attempt to insulate political actors from private pressure (including favouring campaign finance regulation); and they would favour strong judicial review.

Bessette and Michelman however provide a contrast that highlights a range of possibilities within republican thought. Bessette develops a relatively pure account of deliberative democracy centred in the legislative and executive. He holds that at the time of the U.S. constitutional framing the

deliberative aspiration was in large part to *insulate* representatives from popular pressures. Michelman sees political and legal dialogue in dynamic and pluralistic terms, and highlights the fruitful role of popular movements.

James Bessette

In *The Mild Voice of Reason* Bessette accounts for the concerns of U.S. constitutional framers in part through a historical review of the political crisis that occurred after the Revolutionary War in 1781 and before the Constitution of 1787. The Articles of Confederation were deficient in many respects, leaving central government impotent and poorly served by the states. State legislatures arrogated executive authority and assumed judicial powers. Unchecked, they passed foolish and shortsighted measures. Most alarming was the rate at which paper money was being printed to respond to complaints about economic hardship, debts and taxes. The result, Bessette claims, was a rapid depreciation that was economically ruinous. This experience taught the framers that their new plan of government would have to solve four problems if their objective, deliberative democracy, was to be achieved: (1) it had to defuse the problem of majority faction, (2) it had to restrict the legislative authority to properly legislative matters, (3) it had to promote the election of more responsible and knowledgeable political

leaders, and (4) it had to fashion an institutional environment that would foster genuine deliberation (Bessette 1997, 13).

In Federalist no. 10 Madison wrote of the evils of factions “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community” (cf. Bessette 1997, 13/4). This, Bessette says, was no mere theoretical possibility: it was demonstrated during the paper money episode by the way in which state legislatures pushed through policies that violated the rights of creditors and merchants and impaired commerce, industry and enterprise. Madison maintained, contrary to Montesquieu, that republics should not be restricted to small territories and populations but should be large enough to encompass a multiplicity of interests, none too large to form a majority. So, major prohibitions were placed on state authority – such as coining money or emitting bills of credit – while Congress was vested with new powers. Second, legislative supremacy under the Articles was replaced with the familiar separation of powers: a bicameral legislature with indirect election to the Senate; and a separate, indirectly elected executive, with a four-year term and indefinite re-eligibility, an insulated salary and a qualified veto over legislation. Third, large electoral districts would ensure the selection of representatives with a reputation for accomplishment instead of demagogic rhetoric. It would also ensure the selection of those more knowledgeable about statewide and national issues and less tied to narrow

local concerns. Indirect election, moreover, would be place wiser, more temperate and more publicly spirited representatives in office. Finally, institutions had to be designed to foster deliberation. Large assemblies were filled with “the confusion and intemperance of a multitude” (Federalist no. 55; cf. Bessette 1997, 20), so the House was originally to have sixty-five members and the Senate twenty-six. The need for the legislator to acquire knowledge, especially through actual service, was met by lengthy terms: two year term for the House (twice the norm for state legislatures) and six for the Senate. Longer tenure, moreover, would promote the longer-term view.

By means of these devices, “tumult, disorder and passion” within state legislatures in the grip of local and partial concerns was to give way to “calm and regular deliberation” (Bessette 1997, 21) within institutions designed to promote what was variously described as ‘the public good’, ‘the good of the whole’, ‘the public weal’, ‘great and national objects’, ‘the great and aggregate interests’, ‘the national prosperity and happiness’, ‘the common interest’, ‘the common good of society’ and ‘the comprehensive interests of [the] country’. Deliberation, defined by Bessette as “reasoning on the merits of public policy” (Bessette 1997, 46), was eclipsed at a later stage however. No theory was more responsible for this than group theory, while no one presented this more forthrightly than Arthur Bentley (Bessette 1997, 56; Bentley 1908). If all interests are partial and conflicting, then all that politics can achieve is mutually disinterested accommodation. Bargaining

(especially logrolling) now comes into its own as the business of legislators.

The appearance of deliberation is deceptive:

Thus, the reality of the legislative process lies not in the presentation of information and arguments in public hearings, in a committee's reasoned defence of its proposals in a formal report to the full body, or in debate and persuasion on the floor of the House and Senate, but rather in the orchestration of deals, the trading of votes, and the hard-headed compromises that are arranged off-stage or through subtle manipulation of the formal process itself (Bessette 1997, 56/7).

Within scholarly inquiry, Bessette says, bargaining has been accepted as the characteristic mode of collective decision-making within Congress. In addition, rational choice theories, such as those of David Mayhew (1974) and Morris Fiorina (1989) suggest that "members of Congress are disinclined to expend much effort in the reasoned consideration of public policy because such activity carries few if any political rewards." The public has little interest in broad national issues, while re-election is achieved not through "serious lawmaking" but rather through "the various forms of constituency service: answering mail, meeting with delegations from the home district or state, and intervening for constituents with the departments and agencies of the federal government (from tracking down a social security check to trying to influence the location of a federal project" (Bessette 1997, 63). Pork barrelling and casework (Fiorina) or advertising, credit claiming and position

taking (Mayhew) have a greater payoff than policymaking, and the legislative process suffers.

Using the case study literature, Bessette argues that bargaining and re-election motive interpretations give us significantly incomplete explanations of US congressional behaviour. The value of this analysis is that it shows that the call to deliberate within formal institutions is not an empty one. The aspirations of the framers, as he sees them, are no less relevant and no less active in our own time. First addressing bargaining accounts, Bessette identifies twenty-nine case studies of domestic legislation for the period 1945-70² in which “bargaining interpretations gained ascendancy” (Bessette 1997, 67). Only four of these attribute any particular importance to bargaining as a mechanism by which decisions were reached: Roger Davidson’s (1966, 1972) studies of the Area Development Act of 1961 and the Emergency Employment Act of 1971, Randall Ripley’s (1969) study of the Food Stamp Act of 1964, and Theodore Marmor’s (1970) history of the Medicare Act of 1965. These accounts excavate a series of logrolls, *quid pro quos* and split-the-difference compromises. Even so, Bessette claims, bargaining explains only a fraction of the votes, while deliberative interpretations provide a better fit than bargaining ones.

Bessette’s most detailed review is of the 1964 Food Stamp Act. Here votes were traded between supporters of food stamp and wheat-cotton bills.

² Listed in his Appendix, pp. 247-249.

A coalition of Republicans and southern Democrats on the House Agriculture Committee defeated the bill. Liberal Democrats responded by using their influence in the Rules Committee to obstruct the granting of a rule on a Tobacco research bill previously reported by the Agriculture Committee, and of special interest to its chairman, Harold Cooley – who was blamed for the committee's failure on the food stamp bill. When the Agriculture Committee reversed its vote and reported an amendment, the Rules Committee reported the tobacco research bill.

Bessette sorts the votes and attempts to account for them. The concluding logroll by which members of the Rules Committee supported the tobacco bill in exchange for support on the food stamp bill explains three of the Agriculture Committee's thirty-four votes, having a limited though decisive effect. With respect to the previous trade, Bessette estimates the number of southern Democrats on the Agriculture Committee who supported food stamps in exchange for wheat-cotton by identifying switchers from previous votes. He imputes this proportion for those voting for the first time in the decisive vote. As some previous voters had ambiguous positions, having switched on earlier occasions, Bessette makes the rough interval estimate that a maximum of 10-20 southern democrats traded votes. This was not decisive for food stamps (which won on the House Floor by 229 to 189) but it was for wheat-cotton (winning by 211 to 203).

Here then, while bargaining was decisive, it accounted for only a fraction of votes. Votes not accounted for by bargaining require an alternative explanation – in particular one that would explain why Republicans remained near unanimously opposed to food stamps throughout, and why most Democrats favoured food stamps even without the added inducement of wheat-cotton. Based on an analysis of House hearings, floor debates and Committee reports, Bessette's explanation is the following:

...what explains the passage of the Food Stamp Act by the House of Representatives in 1964...is the reasoned judgment by the vast majority of Democrats in the House that the administration's program constituted good public policy. By improving the nutrition of the poor and by removing the indignities that attended direct distribution, it was the just and humane thing to do. The vast majority of Republicans, on the other hand, remained unconvinced of the merits of food stamps. They opposed such a substantial expansion of the federal welfare function, were much less bothered by the indignities of direct distribution, and were principally concerned with disposing of surplus agricultural commodities. If butter, cheese, and milk were in oversupply, then the best policy would be simply to continue the program of distributing the surplus directly to the poor (Bessette 1997, 98).

Bessette follows this with a discussion of the implications of the re-election motive. Although this motive is an "an established fact" we should not assume that it squeezes out deliberative activities, either by leaving insufficient time for lawmaking or by necessarily distorting it. Bessette's account is drawn from a brief review of Richard Fenno's (1973) study, but

mostly from pen-portraits of legislators “whose goals, activities, and character cannot be accounted for in terms of narrow self-interest” (Bessette 1997, 110). Bessette concludes his account of Congress by citing institutional features and informal norms that protect and promote responsible deliberation, such as the norm of specialisation which directs legislators to one or a few policy subjects; the practice of reserving membership on the tax-writing Ways and Means Committee to those from safe seats; and the custom of arranging subcommittees of the House Appropriations Committee so that members do not handle programs they have a direct interest in financing.

Frank Michelman

I now briefly turn to Frank Michelman. Michelman has contributed to deliberative democracy by exploring the distinction between “deliberative” and “strategic” interaction in the context of Constitutional argument (Michelman 1989) and by developing an account of the civic republican tradition (Michelman 1986), but I focus here on the pluralistic account of law developed in ‘Law’s republic’ (Michelman 1988). Here Michelman says that American constitutionalism rests on two premises. First, Americans are politically free in virtue of collective self-rule. Second, they are free in virtue of being ruled by the laws. These two ideas are reciprocal: self-rule is law-

rule. Michelman calls “jurisgenerative” the process by which private-regarding “men” become public-regarding citizens “and thus members of a people.” It is by virtue of this people-making quality “that the process would confer upon its law-like issue the character of law binding on all as self-given” (Michelman 1988, 1502). Michelman’s critique of pluralism rests in part on the fact that it sits poorly with the narrative of a continuing American community, bound together since the enactment of the Constitution.

Michelman outlines a dynamic and pluralistic conception of the republican community in the context of legal indeterminacy. This is clearest in his account of the US Constitution and its continuing reinterpretation. Much of this consists in the explication required to extend the formal rights of the Constitution substantively to all sections of the community. This is tied to the argumentative revision of history, as the entry of previously excluded groups into political and legal discourse forces us to retell it. In general, our identity as a people or community rests on the narratives we tell ourselves, and on the contestation through which previously excluded groups find their way into these narratives. While this no doubt in part involves oral testimony, written history, artistic and cultural representations and so on – for Michelman it is to a significant degree conducted in politics, in law, and at the interface of these. Ronald Dworkin’s account of law embodies it. Here law represents:

...the medium of the community's constitutive commitment to 'consistency in principle' in its treatment of its members...and...the 'personification' of the community itself...It is the institutionalized form of self-consciousness on the part of community members about their situatedness in a common past, required by a conception of personal and political freedom that involves our continuing to be ourselves even as we reconsider what we are and ought to be about (Michelman 1988, 1514; citing Dworkin 1986).

This continuing narrative contestation involves "bringing to legal-doctrinal presence the hitherto absent voices of emergently self-conscious groups" (Michelman 1988, 1529). An example of this is the legal history of separate-but-equal public facilities. In 1896 the Supreme Court ruled in *Plessy v. Ferguson* that a Louisiana statute requiring segregated streetcars did not violate the right to equal citizenship, since separate-but-equal facilities implied not race discrimination but race distinction. In the quarter century after the ruling, separate and second-class facilities grew in public education, health care, restaurants, entrances to public buildings, parks and rest rooms. Separate-but-equal facilities were finally overturned in the 1954 judgments known as *Brown v. Board of Education*. Since the late 1940s the National Association for the Advancement of Coloured People (NAACP) and their legal counsel, Thurgood Marshall, had argued that these denied African Americans equal protection of the laws as guaranteed by the fourteenth

amendment.³ Michelman says that the ending of these facilities involved on the one hand the mobilisation of black Americans, and on the other, the indeterminacy and continual reinterpretation to which received legal material is susceptible. Here the effect of the mobilisation was to create new possibilities for the interpretation of existing law.⁴ Indeed, legal indeterminacy and the susceptibility of legal material to continual reinterpretation make it possible to link three terms in an unbroken circle: (1) jurisgenesis, or the laws we give ourselves, (2) the revisions in our narratives, and (3) the political, legal and societal inclusion of previously excluded groups.⁵

³ See Williams (1987), Weisbrot (1990), Sitkoff (1981) and McAdam (1982) for accounts of the civil rights movement.

⁴ Michelman writes: "Does anyone doubt that their impact on the rest of us has reflected their own oppositional understandings of their situation and its relation to our (and increasingly their) Constitution...in a process that both challenged and utilized such partial citizenship as the constitution granted and allowed them (and left its clear imprint on constitutional law both within and beyond the topical area of race)" (1988, 1530).

⁵ Michelman does not of course assume that everything is just as it should be. He defends his interpretation of the judicial role in opposition that to implicit in the Court judgment (*Bowers vs. Hardwick*) with which he begins the paper. Here the Supreme Court upheld a Georgia law criminalising sexual relations between homosexuals. What concerns Michelman about the Court's decision is the implication that it should defer to popular-majoritarian preference, whether a present or historically inherited one. Justice White's opinion in the case exemplifies this: it is not for the Court to "impose" its members' "own choice of values" by announcing a right to engage in homosexual relations contrary to the formally legislated will of the Georgia majority, and "the Nation's history and tradition" as manifested in state legislation in force when the Ninth and Fourteenth Amendments were ratified (Michelman 1988, 1497; Justice White within quotation marks). Michelman understands the outcome as a public or state expression endorsing majoritarian denigration and suppression of homosexual identities, now understood as distinctive ways of being rather than as a certain sort of inclination. The public character of the denigration constitutes, for him, a denial of equal citizenship. Since the object of revisionary legal interpretation is the achievement of equal citizenship where it had previously been lacking in some respect, Michelman's jurisprudence would produce a different decision.

2.2 John Rawls and deliberative democracy

The work of John Rawls has long been familiar, though he identified himself as a contributor to deliberative democracy relatively recently.⁶ In his later work Rawls seeks a “public” basis of justification for a liberal constitutional regime. By this he understands a moral basis that can be accepted and espoused by all citizens, despite the variety of conflicting evaluative traditions that they endorse. Here as elsewhere Rawls stands in the Kantian tradition. For Kant a communication is “private” when it is addressed to a restricted audience; to be “public” it must be capable of being addressed to and hence convincing to all. One aspect of this is the fact that publicity is the opposite of secrecy, and any maxim affecting the rights of others that cannot be made publicly known is wrong (see ‘Perpetual peace’ in Reiss ed. 1970, 126). Another is the authority to which the communication appeals; a public use of reason presupposes no authority other than reason itself: “A communication that presupposes some authority other than that of reason may fail to communicate with those who are not subject to that authority; they can interpret it, if at all, only on the hypothesis of some claim they reject” (O’Neill 1989, 34). In Rawls’s use, it is in virtue of a distinction between those reasons that all can accept, and those that presuppose a

⁶ “Here I am concerned only with a well-ordered constitutional democracy – a term I used at the outset – understood also as a deliberative democracy” (Rawls 2005, 448).

particular contested moral tradition, that a publicly declarable basis of justification can be found.

Samuel Freeman (1990, 1991, 1992) has brought out the significance of the idea of a public basis of justification in the social contract tradition, and in what he calls constitutional interpretation (the meaning of a constitution) and constitutional adjudication (who is to have final authority to interpret the Constitution, and how this authority should be exercised). Central to this is the idea of reasonable agreement (or of what could not be reasonably rejected) in Rawls and Scanlon (1999). Freeman distinguishes Hobbesian (or interest-based) and rights-based contract views. He explains the difference between Hobbesian views and contemporary rights-based views by reference to the Humean claim that the force of moral reasons is contingent upon prior motivation. For Hobbesians, other-regarding sentiments and a sense of duty are explained in *agent-centred* terms. These motivations are secondary to basic motivations for which they are instrumental, such as self-preservation and the means for “commodious living” in Hobbes, and utility maximisation in Gauthier (1986). In contrast, contemporary rights-based views (Rawls and Scanlon) ask us to approach reasons not from the point of view of single individuals, but “from the standpoint of our membership in a social group”. This allows us to see that norms “serve a social role in providing a public basis for justification”. Members of the group assess one another’s activities and pursuits by means

of its system of norms. When someone's conduct departs from standard practices, he is *subject to criticism* according to these standards, and is *expected to justify* his actions by reference to them (Freeman 1990, 127). The shift that results is quite significant. The task facing the Hobbesian-Humean contract theorist, such as Gauthier and Buchanan, is to show that there is a set of social rules that *all would prefer to* any other, or to none at all, given that each person is self-interested. On the alternative rights-based view, the task becomes one of specifying a system of norms to provide *a public basis of justification and criticism that all can freely accept and adhere to*. For Rawls, this task is ultimately motivated by the liberal principle of legitimacy; institutions and laws require the consent of free and equal persons.

Surely however, the rights-based conception must presuppose the agent has a prior desire to act on terms that could be justified to others? In that case, what advance has been made on the Humean account? The answer to this has two parts. First, the desire "to act only in ways that can be justified to others according to principles they cannot reasonably reject" is a *principle-dependent desire* (Freeman 1991, 292). For one thing, it is something that is wanted for its own sake, and not as a means to some other end. For another, it is a *higher-order desire*; a desire to regulate our pursuit of our first-order desires (such as pleasure, wealth, reputation and so on). As Freeman put it, moral reasoning exercises 'appellate review' over agent-centred deliberations (Freeman 1991, 296). Second, the stringency of the reasons provided is not

determined by the strength or intensity of moral motives as opposed to others, but by the content of moral desire (Freeman 1991, 293/4). Freeman says that this kind of reasoning is arguably instrumental, since it concerns the means to the realisation of the desire for reasonable agreement, but this is trivial. Moral deliberation is not about deciding what is most expedient for the achievement of given ends, but about the appraisal of ends themselves. Moreover, as described here moral motivation subordinates all other higher-order desires; it is the highest-order desire. In that case, moral considerations provide overriding reasons of a non-instrumental kind to act according to what "others could reasonably accept as a public basis of justification" (Freeman 1991, 296).

Political liberalism

It is important here however to distinguish how Scanlon and Rawls use this idea of a public basis of justification. Scanlon is trying to account for moral motivation *as such*. In his account of 'political liberalism' Rawls claims to remain neutral about general theories of morality. He says that we find in contemporary societies a diversity of conflicting 'general' and 'comprehensive' moral doctrines. A general moral doctrine is one applying to a wide range of subjects, from the proper conduct of individuals, to the organisation of society as a whole, to international relations. Examples

include perfectionism and utilitarianism. A comprehensive moral doctrine is one that deals with both political and non-political values. Non-political values include conceptions of the good – conceptions of flourishing and what a valuable or worthy human life would consist of; of how to spend one's life; in what pursuits; one's views on friendship and family, and so on. Examples include religious traditions and the liberalisms of Kant and Mill.

If we want to find a shared moral basis for what Rawls calls 'the basic structure' (see below), we cannot derive this from any one general or comprehensive doctrine, since these are in dispute. They cannot provide a public basis of justification. Here the fact of reasonable pluralism must be distinguished from the fact of pluralism as such. The variety of available traditions is a consequence of the free use of reason by conscientious people, and it is not something likely to pass away. The 'burdens of judgement' make it difficult to achieve consensus on these issues. These burdens include: conflicting and complex evidence; disagreements about the relevance and weight to be given to various factors; the vagueness of our concepts; the fact that our judgments are shaped by our entire life history and experiences; and conflicting and incompatible values. Rawls says the issue is not simply the existence of a diversity of views, but the fact that their existence is reasonable; given the burdens of judgment, a society united in its adherence to one such view could only be achieved through the oppressive use of state power.

Rawls's strategy is to say there is a shared fund of moral intuitions latent in the public political cultures of democratic societies. The public culture includes "the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge". He says that "Society's main institutions, and their accepted forms of interpretation, are seen as a fund of implicitly shared ideas and principles". These intuitions are "at least familiar and intelligible to the educated common sense of citizens generally" (Rawls 2005, 13/14). Rawls aims to bracket the truth or falsity of general and comprehensive views, and instead to work-up these intuitions into a 'freestanding' political conception. Rawls claims that the freestanding conception is developed independently of and neither affirms nor denies general and comprehensive views.

In particular, justice as fairness assumes that the following ideas are implicit in the public political culture: (1) society should be seen as a fair system of cooperation over time. Fair terms of cooperation are terms that each may reasonably accept provided that others likewise accept them; (2) citizens should be regarded as free and equal in virtue of their capacity for a sense of justice and for a conception of the good. In addition, while espousing differing conceptions of the good, they have a higher-order interest in freely framing and revising such conceptions; (3) a well-ordered society

would be one regulated by a publicly known conception of justice with which citizens normally comply.

The basic structure refers to 'constitutional essentials' and 'matters of basic justice' (Rawls 2005, 227, 442). The object of the basic structure is to fairly distribute 'primary social goods' which are 'things that every rational man is presumed to want' (1999, 54) in order to pursue a rational plan of life, whatever his conception of the good. The intuitive idea is that since basic political and social-economic institutions affect life chances in a fundamental way, the system should be a fair one. These include liberty, opportunity, income and wealth, and the bases of social respect.

Rawls imagines principles of justice as being the object of a hypothetical agreement arrived at through the use of a procedural device ('the original position'). The original position is presented as a device of representation for pure procedural justice. This is a fair procedure for which there is no independent standard. Parties choose behind a 'veil of ignorance' about how nature will determine their class and social status, and their endowments in abilities and talents. For Rawls, the situations into which people are born are arbitrary and cannot be justified by appeal to desert or need. Insofar as fundamental terms of association should be capable of being unanimously consented to in a symmetric choice situation, the result will be that social inequalities are only justified if they are to the benefit of the worst off. Parties also choose in ignorance of their particular conception of the

good, which models the freedom to determine one's own conception. This would be violated unless the resulting principles were indifferent to these. Besides the abstraction modelled by the veil of ignorance, there are formal constraints (including generality, the need for the resulting conception to order conflicting claims, and so on) and psychological assumptions (in particular that choosers are rational, mutually disinterested but not moved by rancour or envy, and that under the veil of ignorance they choose the *maximin* solution: they examine the worst case scenarios in which each alternative would leave them, and from these choose that alternative that would leave them best off). The resulting principles specify that (1) everyone is to have an equal right to the most extensive scheme of equal basic liberties, compatible with others having the same; and (2a) social and economic opportunities are to be arranged so that they are expected to be to everyone's advantage, (2b) but consistent with equality of opportunity. The principles are in serial order, where no infringement of (1) could be compensated for by an increase in (2), and no infringement of (2b) could be compensated for by an increase in (2a).

In addition, part of the working up of the principles is the idea that we must imagine that the outcome would match our considered judgments in 'reflective equilibrium'. As with Scanlon (1999), moral principles are seen as the outcome of a procedure of construction rather than reflecting an independent order of moral facts. We might test the resulting principles by

how they conform to the moral judgments we have most confidence in, such as religious toleration and the rejection of slavery. We should not however expect a perfect match right away. The resulting principles should systematise our politically relevant judgements through a process in which we first develop an intuitively appealing conception of justice, and then engage in a process of mutual comparison and adjustment in which both the conception and our considered judgments may undergo some modification. The freestanding conception generated by Rawls from the public political culture begins from shared abstract conceptions implicit in the public culture, and is intended to be seen as having in the end achieved reflective equilibrium with the judgments that we would make within it. Here the resulting conception is more than an enumeration of our considered judgements. It explicates and systematizes these, while at the same time, it avoids and appeal to rational intuitionism.

The problem of stability is whether, once in place, the institutions defined as just would be likely to generate a corresponding sense of justice on the part of those subject to them. For Rawls, the identification of principles is the first stage in the exposition, while the question of stability is faced at a second stage. It is a condition of stability that the political conception of justice would be consistent with the diverse general and comprehensive views likely to thrive in a liberal society. It is hoped that citizens could endorse the political conception *both* as a freestanding view

and because it can be seen to follow from the premises of their own general or comprehensive doctrine. Rawls's model example (Rawls 2005, 145ff) points to three traditions for which this could be achieved: (1) a Lockean commitment to the impermissibility of interference with religious expression and freedom of conscience, leading to toleration and constitutional liberties; (2) a Kantian or Millian comprehensive view of the importance of autonomy to a valuable human life; and (3) a view in which a respect for the political is juxtaposed with non-political values of whatever sort, without these being integrated in a comprehensive view.

Deliberative democracy

Rawls writes: "When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or non-political interests" (Rawls 2005, 448). For Rawls, deliberative democracy comprises (1) public reason, (2) constitutionally grounded formal deliberative institutions in which its limits are respected, and (3) the knowledge and desire of citizens to also respect its limits (Rawls 2005, 448):

Public reason...is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis (Rawls 2005, 213).

We reason publicly when we appeal only to those reasons that others can accept, though this may require that we forswear the whole truth as we see it: "*political values alone* are to settle such *fundamental questions* as: who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity, or to hold property. These and similar subjects are the special subject of public reason" (Rawls 2005, 214; my italics). Thus we must respect the limits of public reason when it comes to matters of basic justice of the sort that justice as fairness deals with: matters involving "'constitutional essentials' and questions of basic justice" (Rawls 2005, 214). This would include both the constitution itself and particular statutes and laws concerning these matters (Rawls 2005, 447). Citizens have a "duty of civility" that obliges them "to be able to explain to one another on...fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason" (Rawls 2005, 217).

The distinction between fundamental and less fundamental matters is fuzzy however. Rawls says that many if not most political questions do not concern fundamental matters: "for example, much tax legislation and many

laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts” (Rawls 2005, 214). He is somewhat uncertain here; sometimes these issues do involve fundamental matters, and a fuller account would be needed to address questions such as how they differ from constitutional essentials, and why the limits of public reason do not apply (or do not apply in the same way). “I grant that it is usually highly desirable to settle political questions by invoking the values of public reason. Yet this may not always be so” (Rawls 2005, 215). Despite the restriction there would appear to be plenty of scope for deliberation, at least if we assume that public reason would be invoked in considering the proposals that Rawls wants us to consider. In the U.S. these include slowing the growth of benefit levels, increasing retirement age, imposing limits on expensive terminal medical care, and raising taxes. They also include support for the United Nations, foreign aid, and human rights at home and abroad (Rawls 2005, 449).

What adds to any confusion there might be here is the fact that public reason does not apply to *all* discussions of fundamental matters, “but only those...in what I refer as the public political forum” (Rawls 2005, 442/3). The public political forum has three parts: the discourse of judges, especially Supreme Court judges; the discourse of government officials, especially chief executives and legislators; and the discourse of candidates for public

office and their campaign managers. The limits of public reason “do not apply to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities, all of which is part of the background culture” (Rawls 2005, 215). Nor, apparently, do they apply to “media of any kind” (Rawls 2005, 444) such as “newspapers, magazines, television and radio, which mediate between the public political culture and the background culture” (Rawls 2005, 443 n13). Further, citizens and legislators “may properly vote their more comprehensive views when constitutional essentials and basic justice are not at stake” (Rawls 2005, 235). The limits of public reason *do* however apply when we “engage in political advocacy in the public forum” and when we “vote in elections when constitutional essentials and matters of basic justice are at stake” (Rawls 2005, 215). Citizens should view themselves “as if they were legislators” and “repudiate government officials and candidates for public office who violate public reason” (Rawls 2005, 444/5).

The rationale for this loosening of restrictions in our personal deliberations and the background culture is not clear. Rawls does say that political liberalism fully agrees with “the need for full and open discussion in the background culture” (Rawls 2005, 444). What is not immediately apparent is what purpose such non-political discussion is to serve, if political values alone are to settle the issue. What Rawls says later in relation to the ‘wide view’ of political culture (Rawls 2005, 462ff) differs from our ordinary

commonplace understanding of discussion. He says that we may support our proposals in the public forum by appeal to our comprehensive doctrines if in due course “political” reasons sufficient for these are also introduced. Here the explanation is that our political views can only be strengthened if we learn that they are independently supported by our comprehensive views. In addition, we may discuss our comprehensive doctrines when it mistakenly appears to others that our disagreement on political questions is motivated by a rejection of political values, in order to point out the mistake and reaffirm our commitment to these.

Rawls allows that there may be more than one reasonable political conception; his own view is simply one among others. There are “many liberalisms and related views” (Rawls 2005, 450), and discourse ethics and Catholic social teaching are also permissible. As he says, “Political liberalism, then, does not try to fix public reason once and for all in the form of one favored political conception of justice” (Rawls 2005, 451). Still, whatever conception we appeal to, it must “be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime” (Rawls 2005, 453). Moreover, it must be complete: “each conception should express principles, standards and ideal, along with guidelines of inquiry, such that the values specified by it can be suitably ordered or otherwise united so that those values alone give a reasonable answer to all, or nearly all, questions involving constitutional essentials and matters of basic

justice...Political values are not to be ordered by viewing them separately and detached from one another” (Rawls 2005, 454).

What Rawls is saying then, is that a number of conceptions of justice might be worked up from the intuitions implicit in the public political culture, and each of these would provide answers to the full range, or thereabouts, of questions about the basic structure. The central thesis of deliberative democracy is that we have an obligation as citizens to respect the limits of public reason. Respecting the limits of public reason means arguing and voting by reference one of these conceptions, without reference to our general and comprehensive views (unless what we favour is independently supported by a political conception; Rawls 2005, 247ff; 462ff).

2.3 Jürgen Habermas and deliberative democracy

Thomas McCarthy remarks that Habermas has been called “the last great rationalist” (Habermas 1986, viii, translator’s introduction).⁷ Habermas aims to rescue the promise of ‘the project of modernity’ for the establishment of non-coercive human relations. This project refers to a historical and largely Western process of rationalisation in moral and religious outlooks, science, technology and administration, and political and economic organisation. A

⁷ My reading of Habermas owes much to Thomas McCarthy’s expositions. See McCarthy (1984), McCarthy in Habermas (1990, 1991, 1986) and McCarthy in Critchley and Schroeder (eds) (1999).

variety of critiques have challenged the Enlightenment identification of reason with social progress and individual emancipation, from Nietzsche to Marx and Freud, and from critical theory through to poststructuralism, feminism and post-colonialism.

Habermas's key move in response to these developments, as McCarthy points out (in Habermas 1986), is to shift the focus from subjectivity to intersubjectivity. In the atomistic perspective of modern thought, the subject stands against a world of objects to which it has the relations of representation and action. The rationality associated with this is that of a subject capable of gaining knowledge about an environment and putting it to intelligent use. Habermas points out that our purposive actions have a broader context. They occur in linguistic, social interaction; indeed it is by means of this and the coordination it makes possible that social life is reproduced. He distinguishes three ways in which goal-directed action can be socially coordinated: "as the interlacing of egocentric calculations of utility, as a socially integrating consensus about norms and values instilled through cultural tradition and socialization, or as reaching understanding in the sense of a cooperative process of interpretation" (Habermas 1986, 101). Habermas grounds his perspective on this idea of understanding. From an analysis of its presuppositions he derives very strong claims about truth, moral universalism, and the possibility of individual autonomy. These claims are rooted in reconstructive, empirical research programmes in several areas, in

which Habermas theorises both the structural and dynamic aspects of the development of individual competences, and the structural and dynamic aspects of socio-historical evolution, considered as rationalisation. He aims not to rest these fundamental concepts of the western philosophical tradition on an ultimate metaphysical ground, but to base them on the unavoidable presuppositions of socially acquired competences that can be specified in empirically testable reconstructive models. He also argues that the pathologies of modernity rest on its failure to protect processes of uncoerced interpretive accomplishment from being enfeebled by the functional logic of administrative and economic sub-systems, and from the failure to ultimately subordinate these systems to the control of societal processes of reaching understanding. Insofar as this potential is inherent in communicative action, and insofar as communicative action is necessary to cultural reproduction, social integration and socialisation, then this potential continues to remain available to us.

Habermas's account of deliberative democracy connects with this quite directly. Granting the systemic differentiation of administration, economy and society, enacted laws derive their legitimacy from being tied to societal deliberation, and in this way the administration and the economy are to be prevented from programming themselves without reference to communicative rationalisation. Only in this way could we rescue the principle at the core of the bourgeois public sphere identified in *The*

Structural Transformation of the Public Sphere (1962), in which state actions were subjected to critical public opinion.

2.3.1 The foundations of Habermas's deliberative politics

Communicative competence

For Habermas, strategic action is the coordination of action achieved through influencing others with the threat of sanctions or the prospect of gratifications. In communicative action, coordination rests on a consensus on legitimate mutual expectations. Communicative action implies a shared understanding with respect to validity claims that we implicitly and unavoidably raise in speech. These are of three types: claims about states of affairs in the external world; about subjective states and intentions; and about norms implicit in prescriptions, prohibitions, commands, orders and so on. With respect to norms, agents possess a shared normative background that underpins shared expectations about what is required or prohibited. Against such a background, much of what is expected in everyday life will be undisputed. If however a dispute arises about what the situation requires – about what one actor may legitimately ask of another – then a background consensus can only be restored by communication. This will aim either at restoring acceptance of the norm in question, or at achieving consensus on

alternative norm by which a shared definition of the requirements of the situation can be re-established.

Critically reappropriating the work of Chomsky and Austin, Habermas articulates the idea of communicative action within an empirically oriented theory of the universal competences and rules mastered by speakers of any language whatsoever. The methodological aim of Habermas's empirically oriented enterprises is to attempt to reconstruct the implicitly mastered pre-theoretic knowledge of competent actors; knowledge of "how to" as opposed to knowledge "that". In this case the relevant knowledge is the mastery of validity claims and rules for the use of the expressions by which they are raised and redeemed. For Habermas, the ability to communicate has a universal core; it consists of a mastery of universal competences and rules situated at the pragmatic level of speech rather than at the level of syntax or semantics. In speaking, we implicitly raise claims to validity in the three respects mentioned above. Our communicative competence includes a mastery of validity claims and the rules for the generation of, and receipt of uptake in, the corresponding expressions.

Illocutionary acts performed *in* speaking (such as stating, promising, commanding) can either come off or fail to come off. Looked at retrospectively, either the acts were carried out or they were not. Certain conditions must be satisfied if they are to have been carried out. This includes the sincerity of the speaker, and the corresponding assumption on

the part of the hearer that the speaker is in fact sincere. For instance, no promise has been made if, in purporting to make one, I have no intention of holding myself to my pledge. Nor is one made if my hearer has no faith that I will keep my pledge. In order for our speech to have given rise to an obligation, we must both suppose that a sincere commitment has been entered into. How is this possible? What allows hearers to accept speakers' sincerity? Habermas says that it is only possible insofar as there is a supposition of *accountability*. We assume that the speaker could produce a reason to convince us of the truth of her claim or the rightness of the norm she invokes, or that speaker could demonstrate her sincerity in subsequent behaviour. The truth, truthfulness and rightness of illocutionary expressions can be checked. In any particular case we may not ask speakers to account for their expressions; the presumption of accountability may be counterfactual. The thought however is that the practice of communication could not get off the ground without the supposition of accountability that we implicitly make.

In distinguishing these three sorts of claim, Habermas substitutes 'validity' for 'truth'. Validity can be interpreted in terms of ideal consensus. This is the pragmatist idea of the agreement that would be reached between unlimited participants if only argument were unrestricted and allowed to continue long enough. Prior to his more complex differentiation of *discourses*, Habermas distinguished the reflexive level of *discourse* (second-

order argumentation or inquiry with respect to validity claims) from *communicative action* (in which a consensus on norms is either presupposed or is re-established in the immediate context). When communicative action cannot restore a consensus, we must either resort to strategic action, or ascend to the level of discourse. While in communicative action we make the supposition of *accountability*, in discourse we impute an *ideal speech situation*. Here the notion of ideal consensus is given a formal, procedural characterisation. Consensus would be unconstrained and achieved solely through 'the unforced force of the better argument' if and only if participants in discourse possessed a symmetric distribution of chances to employ speech acts. Each speaker must have an equal opportunity to initiate and continue communication, to make assertions, and to recommend and dispute norms. As it stands this formulation would not however preclude the possibility that participants are not fully self-aware and free of ideological illusions or self-deception. Nor does it preclude strategic uses of communication. Habermas therefore adds that the ideal speech situation must only admit participants who have satisfied symmetry requirements "as actors". There must be a mutual openness in relation to true intentions, motives and needs, and a symmetrical distribution of opportunities to expose one-sidedly binding norms and interpretations of needs. This concept of ideal speech is later translated by Habermas into an account of the presuppositions of argumentation, which he uses to ground discourse ethics.

Discourse ethics

Habermas develops Apel's discourse ethics with the aim of rescuing the notion of a universal moral point of view. The targets here are non-cognitivism and relativism. The justification takes the form of an attempt to meet the objections of a die-hard sceptic. It contains a series of rounds, and in order to keep the exposition somewhat bounded, I will concentrate here on the justification of the principle of universalisation (U). U is offered as a bridging principle, analogous to the principle of induction in science, that can be used to adjudicate conflicts arising from moral pluralism. The justification of the U is meant to show that it is not simply the unwarranted generalisation of historically particular, Western moral intuitions – but rather a feature of morality as such. The justification rests on an account of the presuppositions of argumentation and the idea of the “performative contradiction” in which the sceptic is ensnared once she wishes to dispute U. Again, Habermas claims to reconstruct the implicitly known everyday intuitions that underlie the impartial judgement of moral conflicts. With the idea of performative contradiction he attempts to replace ultimate grounding of the kind that has become implausible with the explication of “unavoidable” transcendental-pragmatic presuppositions.

Habermas begins from a monological interpretation of U, finds it unsatisfactory, and then reformulates it in dialogical terms. Kant's

monological interpretation of U is the classic one. The categorical imperative tests maxims by asking us to imagine whether we could consistently will our maxim to become a universal law. A maxim is a general policy or rule. The test is whether the universal adoption of that policy would be consistent with the agent's own ends. Those maxims that pass the test are morally permissible, and those that fail are impermissible. For instance, if I propose to myself the maxim "borrow money by falsely promising to repay", it fails because if everyone were to follow it, then no one would believe my lies. As Körner (1987) notes, Kant's examples lead us in different directions, and they are not all as clear as the case of fake promises. The important point however, is that the application of the categorical imperative is something that *I* can do for myself, in isolation, as a rational being.

For Habermas however, only through what G.H. Mead (1934) called 'the universal exchange of roles' could we all give equal weight to the interests of all others, and thereby identify a truly impartial point of view: "it is not sufficient...for *one person* to test whether he can will the adoption of a contested norm after considering the consequences and side effects that would occur if all persons followed that norm or whether every other person in an identical position could will the adoption of such a norm" (Habermas 1990, 65). Instead, we need a form of assessment in which, through 'ideal role taking', each of us would occupy the perspective of every other person in order to determine how their needs would be affected, from their point of

view: "the impartiality of judgment is expressed in a principle that constrains *all* affected to adopt the perspectives of *all others* in the balancing of interests" (Habermas 1990, 65). This is what speaking roles in discourse achieve. Thus every valid norm has to fulfil the following condition:

(U) *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation (Habermas 1990, 65).

Habermas can then reformulate the categorical imperative in this way:

Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm (1995, 72).

The defence of U against the sceptic rests on the idea of a performative contradiction. Formally, this occurs "when a constative speech act $k(p)$ rests on noncontingent presuppositions whose prepositional content contradicts the asserted proposition p " (Habermas 1990, 80). The logic of the argument is that: (1) any effort by the sceptic to deny U must (2) presuppose ineluctable rules of argumentation as such, from which (3) U can be derived. Hence the sceptic must either presuppose and implicitly accept U, or refuse to enter discourse at all.

An important point at the outset is to be clear both about the level at which the argument operates, and about what it is designed to establish. Firstly, the general aim is to identify the presuppositions of discourses; entire modes of thought that have no substitute. The inquiry is meant to be “transcendental” in some sense. As Peters writes, “it is always possible to produce *ad hominem* arguments pointing out what any individual must actually presuppose in saying what they actually say. But these are bound to be very contingent, depending on private idiosyncrasies, and would obviously be of little use in developing a general ethical theory” (Peters 1970; cf. Habermas 1990, 84). We need then to define the precise object domain to which presuppositional analysis is to be applied. The danger here is that we would argue in a circle if the delineation of the object domain prejudices the normative content of its presuppositions. Peters starts from the object domain of substantive practical discourses concerned with the question ‘What ought I do?’ He goes on to derive substantive norms from the presuppositions of practical discourses (including equality of treatment, and freedom of thought and expression). Habermas claims that Peters does indeed commit a *petitio principii* – he finds only the normative substance he had previously put into his implicit definition of practical discourse. By contrast, Apel (1987) tries to meet this danger by extending the analysis to the preconditions of argumentation *as such* rather than restricting the account to moral argumentation.

Secondly, Habermas claims that Apel, like Peters, goes astray in trying to derive substantive norms. Suppose that Apel is correct in thinking that the sceptic cannot engage in an argumentation game without being committed to presuppositions from which substantive norms, such as freedom of opinion, can be derived. This would only show that *as a participant in argumentation* the sceptic has implicitly recognised certain norms. This does not however establish that he must be committed to it *as an actor*: “It is by no means self-evident that rules that are unavoidable *within* discourses can also claim to be valid for regulating actions *outside* of discourses” (Habermas 1990, 85/86). Further premises are needed here. What Habermas aims to show here is that presuppositional analysis is not meant to identify substantive norms. These must be justified in practical discourses. Analysis can however derive normative *rules of argumentation* such as the principle of universalisation, and these *can then be used in practical discourses*. Indeed Habermas argues later that practical discourses are not a means of generating justified norms but a procedure for testing the validity of those that are hypothetically proposed for adoption. They depend “on content brought to them from outside” (Habermas 1990, 103). Here “outside” refers to the already existing lifeworld of concrete communities, against the backdrop of which the need to restore a disturbed normative consensus arises. Indeed further, the discourse model is intended as an abstract procedural standard for highlighting restrictions on society-wide

communication that may ideologically distort societies' normative consensus, inasmuch as the restrictions rest on social-structural and material conditions. A key element of Habermas's view is this focus on society-wide normative consensus (with respect to laws rather than a single worldview) and the conditions under which it is generated (see 2.4.2 below).

In bringing the charge of performative contradiction against the sceptic, Habermas specifies a number of presuppositions of argumentation (Habermas 1990, 87ff) by reference to Alexy's account of these (1995). This includes logical-semantic rules,⁸ rules necessary for the search for truth organised in the form of a competition,⁹ and finally rules that immunise the argumentative situation against repression¹⁰ – essentially those that characterised the ideal speech situation. It is supposed that the sceptic would contest the claim that these presuppositions of argumentation are unavoidable. The following is an example of the kind of demonstration that

⁸ (1.1) No speaker may contradict himself.

(1.2) Every speaker who applies predicate *F* to object *A* must be prepared to apply *F* to all other objects resembling *A* in all relevant respects.

(1.3) Different speakers may not use the same expression with different meanings.

⁹ (2.1) Every speaker may assert only what he really believes.

(2.2) A person who disputes a proposition or norm not under discussion must provide a reason for doing so.

¹⁰ (3.1) Every subject with the competence to speak and act is allowed to take part in a discourse.

(3.2) a. Everyone is allowed to question any assertion whatever.

b. Everyone is allowed to introduce any assertion whatever into the discourse.

c. Everyone is allowed to express his attitudes, desires and needs.

(3.3) No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in

(3.1) and (3.2).

would be used to show that in doing so, she would be caught in a performative contradiction:

Compare the following:

- (1) "Using good reasons, I finally convinced *H* that *p*".
- (2) "Using lies, I finally convinced *H* that *p*".

Statement (2) is nonsensical, and could be revised as (3):

- (3) "Using lies, I finally talked *H* into believing that *p*".

As Habermas puts it, the problem in (2) is that it implies that *H* has formed her conviction under conditions that simply do not permit the formation of convictions. Specifically, it contradicts the presupposition that every speaker may assert only what she really believes (rule 2.1, n17 above). If the sceptic were to attempt to provide a reason in support of (2), she would enter a process of argumentation and thereby accept the presupposition that she can never *convince* an opponent of something by resorting to lies.

Carried through for each presupposition, this much would establish that the sceptic could not deny the set of presuppositions without performative contradiction. The next stage in the argument is to show that U

can be derived from these. Habermas's argument is a little unclear here. What must be shown, he says, is this:

Every person who accepts the universal and necessary communicative presuppositions of argumentative speech and who knows what it means to justify a norm of action implicitly presupposes as valid the principle of universalization, whether in the form I gave it above or in equivalent form (Habermas 1990, 86).

What makes the argument a little unclear is the fact that "knowing what it means to justify a norm of action" is not clarified, as far as I can see. The reason why this is important is that there is again danger of circularity, just as above. This expression must not build in what is to be proved, as it would, obviously enough, if it meant "showing that the norm would be rationally acceptable to all affected". Habermas recognises this: "If after these cursory remarks we accept the rules tentatively set down by Alexy (pending a more detailed analysis), we have at our disposal, in conjunction with a weak idea of normative justification (i.e., one that does not prejudge the matter), premises that are strong enough for the derivation of the universalization principle (U)" (Habermas 1990, 92). We might assume then, as a form of interpretive charity, that whatever this expression means the danger of circularity has been avoided.

Habermas does however remark that "everyone who seriously tries to *discursively* redeem normative claims to validity intuitively accepts

procedural conditions that amount to implicitly acknowledging (U)” (Habermas 1990, 92/3). We might try to identify these. The critical ones are 3.1 to 3.3 (n18). First, no discourse can exclude those with the competence to speak and act. Second, all participants are permitted to freely accept or dispute proposals, and no one should be prevented from doing so. Third, by implication, a consensus would only be acceptable where these conditions were met. To attempt to constrain or force a particular outcome would be incompatible with the search for truth. Therefore, it cannot be denied within an argumentation-game, without performative contradiction, that valid norms are those that would be the subject of a freely entered consensus, in a discourse open to all with the competence to speak and act. It cannot be denied without performative contradiction that a discourse concerning universal norms should meet these conditions, that is, U.

Self, society, and modernity

Habermas develops his intersubjective model of self and society using the insights of G.H. Mead. As McCarthy notes (Habermas 1986, ed McCarthy, xxiii/xxiv), he then uses Emile Durkheim’s distinction between mechanical and organic solidarity as a point of departure in accounting for the genesis of the generalized other. This allows him to explore how social functions originally fulfilled by ritual and symbolism are transferred to communicative

action. In the course of history, what has transpired is a 'linguistification of the sacred', in which the terrifying and spellbinding power of the sacred is sublimated into the rationally binding/bonding force of criticisable claims to validity. Because of this, action oriented to reaching understanding becomes more and more important in social reproduction. The authority of tradition becomes increasingly open to question, and the conditions of communicative rationality – of rationally motivated intersubjective recognition of norms – takes on greater significance. Thus the linguistification of the sacred means a rationalisation of 'the lifeworld', understood by Habermas as the culturally transmitted and linguistically organized stock of interpretive patterns. Habermas develops a differentiated conception of the lifeworld having three dimensions: culture (to which corresponds cultural reproduction), society (to which corresponds social integration), and personality (to which corresponds socialisation). Communicative action is the medium for the symbolic reproduction of the lifeworld, and reproduction increasingly comes to depend on its operation. When its functions are interfered with, the results are individual-level and societal-level crisis manifestations such a loss of meaning, anomie, psychopathologies, breakdowns of tradition, withdrawal of legitimation, and destabilisation of collective identities.

Habermas appeals to the competence-development approaches of Piaget, Kohlberg and Selman to reconstruct the process by which the 'inner nature' of the growing individual is integrated into the 'outer nature' of the

lifeworld, and in addition he maps the developmental model onto socio-historical change. On both the *ontogenetic* and *phylogenetic* levels, we can distinguish both *developmental logic* and *developmental dynamics*. Ontogenesis refers to individual development, phylogenesis to species (or socio-historical) development. Developmental logic refers to a hierarchical ordering of successive and increasingly complex structural levels. Developmental dynamics refers to the mechanisms that bring transitions about.

On the ontogenetic level, human beings become individuated in and through social relations, in the process acquiring the communicative competences by which they reproduce social life. Habermas adopts Kohlberg's hierarchical schema for the ability to make moral judgments, and places it within an action-theory framework by coordinating its stages with Selman's account of the development of interactive competence. Kohlberg's notion of a 'postconventional' moral consciousness – at the higher stage of which agents engage in abstract reasoning using universal ethical principles – is mapped to a corresponding level of communicative competence. In this account, motivations, desires and behaviour repertoires are symbolically structured and tied to cultural interpretations.

Adorno's utopian projection of undeformed individual autonomy is then understood to be immanent to communicative structures. Non-coercion is interpreted in terms of the rationally binding force granted to illocutionary

acts by virtue of reasons, and corresponding to this, the possibility of intersubjective recognition based on shared insight rather than force. Freedom can be interpreted in terms of discourse; the opportunity to give or withhold assent in an open process of argumentation in which others' corresponding entitlement is recognised. If individuals were socialised as members of an ideal communication community, therefore, they would acquire on the one hand the capacity to realize themselves in their own uniqueness, and on the other, the capacity to act from a universal moral perspective.

On the phylogenetic level, the linguistification of the sacred can be reconstructed as a learning process in which the prejudgmental power of the lifeworld over the communicative practice progressively diminishes. It is in this context that *discourses* become progressively differentiated and available as resources for the argumentative resolution of claims – on the one hand the specialised discourses of science, aesthetic criticism, law and so on; on the other the important differentiations that occur within practical reasoning (pragmatic, ethical-existential, ethical-political and moral discourses; see 1.2 above). Habermas aims however to reconstruct a Marxist approach that traces pathological forms of symbolic reproduction not to the rationalisation of the lifeworld itself but to constraints arising from processes of material reproduction. He pursues this by distinguishing and integrating the paradigms of lifeworld and system. The former conceptualises society as

being integrated and coordinated linguistically and interpretively. The latter sees it as a self-regulating system in which actions are coordinated through functional interconnections. For Habermas, each perspective is alone inadequate; only the combination of the internalist, hermeneutic and symbolic perspective with the externalist, systems-theoretic and functionalist perspective can do the phenomena justice. Systems-theoretic analysis should not be blind to symbolic reproduction, while the lifeworld perspective must not remain blind to causes issuing from material reproduction.

Habermas views social evolution as a process of progressive differentiation in which there is a decoupling of lifeworld and system; functional integration becomes detached from lifeworld structures, and instead occurs in quasi-autonomous economic and administrative subsystems. Material reproduction brings pressure in the direction of a cooperative division of labour, functional specialisation, and the establishment of organisation and exchange relations. These increasingly operate according to their own logics; the 'delinguistified' steering media of power and money neutralize lifeworld requirements for consensus by encoding forms of purposive-rational activity, generalizing certain categories of symbolic rewards and punishments, and enabling strategic influence on action by non-linguistic means. These media can link up in more and more complex functional networks without anyone being able to command a clear

view of the whole – most clearly in the case of money. Habermas's response to the rationalisation critique is then the following:

From the mere fact that system integration and social integration become largely decoupled, we cannot yet infer linear dependencies in one or the other direction. Both are conceivable: the institutions that anchor steering mechanisms like money and power in the lifeworld might channel either the influence of the lifeworld on formally organized domains of action or, conversely, the influence of the system on communicatively structured contexts of action. In one case they would function as the institutional framework that subordinated system maintenance to the normative restrictions of the lifeworld, in the other case as the basis that subordinated the lifeworld to the systemic constraints of material reproduction (Habermas 1989, 275/6).

The pathologies of modernity are for Habermas caused by the predominance of system over lifeworld. More specifically, the problem is the fact that mechanisms of system integration are driving out mechanisms of social integration from the domain of symbolic reproduction that cannot be replaced. The lifeworld is subordinated to system imperatives and everyday life is increasingly 'monetarized' and 'bureaucratized'. Consumerism, possessive individualism, and motives of performance and competition shape private conduct. Citizens become clients whose loyalty must be mobilized by periodic acclamation – under increasingly restrictive conditions due to dilemmas internal to capitalist growth – rather than citizens who subject political administration to processes of rational opinion and will formation.

The problem is not however rationalisation per se but its selectivity. As McCarthy puts it:

The discontents of modernity are not rooted in rationalization as such, but in the failure to develop and institutionalise all the different dimensions of reason in a balanced way. Owing to the absence of institutions that could protect the private and public spheres from the reifying dynamics of the economic and administrative subsystems, communicatively structured interaction has been increasingly pushed to the margin...There is a type of rationalization proper to the lifeworld, namely an expansion of the areas in which action is coordinated by way of communicatively *achieved* agreement. A communicatively rationalized lifeworld would have to set limits to the inner dynamic of media-steered subsystems and to subordinate them to decisions arrived at in unconstrained communication. Central among these institutions are those that secure an effectively functioning public sphere, in which practical questions can be submitted to public discussion and decided on the basis of discursively achieved agreement (McCarthy in Habermas 1986, xxxix).

2.3.2 Habermas's deliberative politics

We can distinguish the validity of norms from their de facto acceptance or social currency. Archaic and traditional societies minimised dissension by having background certainties entirely removed from criticism. In this way the validity and facticity of norms could be fused. Another alternative has become possible in modernity: communicative action has become fully reflexive, so illocutionary accomplishments can replace substantive

certainities as a conflict-resolving mechanism. This, however, is a precarious basis for the achievement of social integration, since validity claims are exposed to the risk of being invalidated. The risk is all the greater given the pluralisation of moral frameworks that has occurred in modernity. Enforceable law is however a third alternative. Law “functions as a kind of ‘transmission belt’ that picks up structures of mutual recognition that are familiar from face-to-face interactions and transmits these, in an abstract but binding form, to the anonymous, systemically mediated interactions among strangers” (Habermas 1997, 448). Law therefore displaces normative expectations from morally unburdened individuals onto the laws themselves. It unburdens legal subjects from the unprecedented cognitive, motivational and organisational demands of a social integration dependent on the communicative accomplishments of illocutionary acts (Habermas 1997, 114).

While Habermas acknowledges that formal political institutions and administrative offices are needed for political rule, he says that the legitimacy of statutes and binding programmes depends on their being tied to the ‘weak public’ (Fraser 1992) of citizens, in which rational consensus can be produced through extensive debate. This account of legitimacy is grounded in a reconstruction of the principles of the constitutional state within the framework of discourse theory. Here Habermas presents legally granted subjective rights and collective self-determination as co-original,

having their basis in a form of mutual recognition.¹¹ Basic rights do not exist in a determinate form in a prior state of nature; they are conferred by free and equal consociates under law.¹²

The importance of this for Habermas lies in his desire to defend a postmetaphysical, procedural account of both morality and legal legitimacy. The principle of democracy¹³ is independent of the principle of morality (U), and the discourse principle (D) expresses the more general requirement that in the absence of an ultimate ground for moral judgment, such as natural law, norms can only be redeemed discursively:

D: Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses (1997, 107).

He writes: "Without the backing of religious or metaphysical worldviews that are immune to criticism, practical orientations can in the final analysis be

¹¹ "At a conceptual level rights do not immediately refer to atomistic and estranged individuals who are possessively set against one another. On the contrary, as elements of the legal order they presuppose collaboration among subjects who recognize one another, in their reciprocally related rights and duties, as free and equal citizens. This mutual recognition is constitutive for a legal order from which actionable rights are derived. In this sense "subjective" rights emerge co-originally with "objective" law, to use the terminology of German jurisprudence" (Habermas 1997, 88/9).

¹² More precisely, as Baynes describes (1999, 209), a two-stage process is required for their generation. Firstly, the legal form already implies that insofar as individuals undertake to regulate their common life by means of it, they are committed to granting each other a right to subjective liberty. Secondly, the legal form cannot however, alone, ground any specific right. A system of rights can only be developed when it is made use of by the political sovereign in an exercise of the public autonomy.

¹³ "...only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted" (Habermas 1997, 110).

gained only from rational discourse, that is, from the reflexive forms of communicative action itself. The rationalization of a lifeworld is measured by the extent to which the rationality potentials built into communicative action and released in discourse penetrate life world structures and set them aflow” (Habermas 1997, 98). At the postmetaphysical level of justification, legal and moral rules are simultaneously differentiated from traditional ethical life and appear “side by side” as two different but mutually complementary action norms. No longer can legal norms be derived from prior moral norms: “the law receives its full normative sense neither through the legal *form per se*, nor through an *a priori* moral content, but through a *procedure* of lawmaking that begets legitimacy” (Habermas 1997, 135). The combination of the parsimonious ‘quasi-transcendental’ discourse principle (D) and the legal form permits the derivation or ‘logical genesis’ of the system of rights.¹⁴ The discourse principle does not carry any coercive

¹⁴ The derivation yields five general categories or ‘unsaturated place-holders’ to which positive rights must correspond:

1. Basic rights that result from the politically autonomous elaboration of the *right to the greatest possible measure of equal individual liberties*.
2. Basic rights that result from the politically autonomous elaboration of the *status of a member* in a voluntary association of consociates under law.
3. Basic rights that result immediately from the *actionability* of rights and from the politically autonomous elaboration of individual *legal protection*.
4. Basic rights to equal opportunities to participate in processes of opinion-and will-formation in which citizens exercise their *political autonomy* and through which they generate legitimate law.
5. Basic rights to the provision of living conditions that are socially, technologically, and ecologically safeguarded, insofar as the current circumstances make this necessary if citizens are to have equal opportunities to utilize the civil rights listed in (1) through (4) (Habermas 1997, 122/3).

authorisation until, as the principle of democracy, it is realized in the legal medium with a system of rights.¹⁵

I said in Section 1.3, in response to Maeve Cooke's claim that the epistemic basis of Habermas's deliberative account is unclear, that the point of democratic institutions is to institutionalise practical discourses. This, we might also note, connects with Seyla Benhabib's defence of deliberative democracy in 1.2 as better accounting for the logic of these institutions. Habermas writes "the sought-for internal relation between popular sovereignty and human rights consists in the fact that the system of rights states precisely the conditions under which the forms of communication necessary for the genesis of legitimate law can be legally institutionalised" (Habermas 1997, 104). Discourse theory "conceives the principles of the constitutional state as a consistent answer to the question of how the demanding forms of democratic will-formation can be institutionalised" (Habermas 1996, 27). The institutionalisation of discourses occurs by means of parliamentary decision-making, political parties, general elections,

¹⁵ "The discourse principle is intended to assume the shape of a principle of democracy only by way of legal institutionalization. The principle of democracy is what then confers legitimating force on the legislative process. The key idea is that the principle of democracy derives from the interpenetration of the discourse principle and the legal form. I understand this interpenetration as a *logical genesis of rights*, which one can reconstruct in a stepwise fashion. One begins by applying the discourse principle to the general right to liberties – a right constitutive for the legal form as such – and ends by legally institutionalizing the conditions for a discursive exercise of political autonomy. By means of this political autonomy, the private autonomy that was at first abstractly posited can retroactively assume an elaborated legal shape. Hence the principle of democracy can only appear as the heart of a *system* of rights. The logical genesis of these rights comprises a circular process in which the legal code, or legal form, and the mechanism for producing legitimate law-hence the democratic principle-are *co-originally* constituted" (Habermas 1997, 121/2).

informal public opinion and so on. Within this system, informal public opinion formation produces 'influence', this is transformed into 'communicative power', and this is again transformed into 'administrative power' through legislation. The notion of communicative power is taken from Hannah Arendt, and it lies behind the distinction between the generation of legitimacy and the exercise of power:

...both law and communicative power have their co-original source in the 'opinion upon which many publicly were in agreement'...Arendt conceives political power neither as a potential for asserting one's own interests or for realizing collective goals, nor as the administrative power to implement collectively binding decisions, but rather as an *authorizing* force expressed in 'jurisgenesis' – the creation of legitimate law – and in the founding of institutions (Habermas 1997, 147/8).

The emergence of communicatively achieved agreement has two distinct implications; it "instantiates the discourse principle in a double respect." First, it has "the *cognitive* sense of filtering reasons and information, topics and contributions in such a way that the outcome of a discourse enjoys a presumption of rational acceptability." Second, it also "has the *practical* sense of establishing relations of mutual understanding that are "violence-free"" (Habermas 1997, 151). (See 1.3 above). The principles of the constitutional state thus fit together into an architectonic that rests on a single idea:

...the organization of the constitutional state is ultimately supposed to serve the politically autonomous self-organization of a community that has constituted itself within the system of rights as an association of free and equal consociates under law. The institutions of the constitutional state are supposed to secure an effective exercise of the political autonomy of socially autonomous citizens. Specifically, such institutions must accomplish two things. On the one hand, they must enable the communicative power of a rationally formed will to emerge and find binding expression in political and legal programs. On the other hand, they must allow this communicative power to circulate throughout society via the reasonable application and administrative implementation of legal programs, so that it can foster social integration through the stabilization of expectations and the realization of collective goals (Habermas 1997, 176).

More precisely, the principles of the constitutional state that institutionalise procedures and conditions of discursive participation and fair bargaining include: (a) the principle of popular sovereignty, (b) the principle of comprehensive legal protection for individuals, guaranteed by an independent judiciary, (c) the subjection of administration to judicial review, and (d) the separation of state and society. The principle of popular sovereignty in turn includes democratic procedure, the parliamentary principle, majority rule, political pluralism and party competition, and the guaranteed autonomy of public spheres. Here we must distinguish between discourses and the legal procedures in which they are institutionalised. It is worth first recalling Habermas's kinds of discourse. *Pragmatic* questions

concern purposive behaviour and the choice of suitable means for the achievement of ends. *Ethical* questions concern authentic self-realisation on the one hand (ethical-existential questions), and on the other, the nature and selective continuation of intersubjectively shared traditions and collective identities (ethical-political questions). Finally, *moral* questions arise when we consider matters from the impartial perspective of equal respect and the equal consideration of interests. Whether an ethical or moral question is at issue depends on the addressees to whom the answer must be acceptable: "With moral questions, humanity or a presupposed republic of world citizens constitutes the reference system for justifying regulations that lie in the equal interests of all. In principle, the decisive reasons must be acceptable to everyone. With ethical-political questions, the form of life of the political community that is 'in each case our own' constitutes the reference system for justifying decisions that are supposed to express an authentic, collective self-understanding. In principle, the decisive reasons must be acceptable to all members sharing 'our' traditions and strong evaluations" (Habermas 1997, 108). The canons of ethical-political discourses are hermeneutic ones, while moral questions must be addressed by attempting to discern whether they could satisfy the principle of universalisation (U). *Bargaining*, finally, is necessary when "the proposed regulations touch on the diverse interests in respectively different ways without any generalizable interest or clear priority of some one value being able to vindicate itself" (Habermas 1997,

165). Bargaining aims at compromises that success-oriented participants find acceptable, as they may be more advantageous than no cooperative arrangement at all. Bargaining rests on threats and promises, but it should at least be disciplined by an equal distribution of bargaining power, and equal opportunities for pressure within formal procedures – and no generalisable interests must be involved.

The legal institutionalisation of democratic procedure and its conditions is supposed to enable a rational treatment of issues by facilitating entry to discourses. It provides for “interlinked forms of communication that, ideally speaking, ensure that all relevant questions, issues, and contributions are brought up and processed on the basis of the best available information and arguments” (Habermas 1997, 170). Institutionalisation means three things. First, it *enables* participation in practical discourses, and second, it “*enjoins*” the pragmatic, ethical, and moral use of practical reason, or the fair balancing of interests” (Habermas 1997, 170). Third, while institutionalisation leaves the inner logic of discourses intact, these are *structured* within formal institutions. They are subjected to specific temporal, social, and substantive constraints (Habermas 1997, 178). Procedural norms regulate participation and the distribution of roles; they limit the spectrum of admissible topics, questions and arguments; they demand timely, unambiguous and binding decisions.

We can account for the role of institutions within the discourse model. For instance, *members of parliament* have a mandate to negotiate *compromises*, and this calls for the equal representation of all affected, which requires that representatives be chosen in elections that are free, equal and secret. On the other hand, *ethical-political discourses* would “ideally require that the conditions of systematically undistorted communication be satisfied” (Habermas 1997, 182). Although “for technical reasons [these] must be conducted by representatives, [this] must not be construed in terms of the deputy, or proxy, model; they simply form the organized midpoint or focus of the society-wide circulation of information. Discourses conducted by representatives can meet the condition of equal participation on the part of all affected only if they remain porous, sensitive, and receptive to the suggestions, issues and contributions, information and arguments that flow in from a discursively structured public sphere, that is, one that is pluralistic, close to the grass roots, and relatively undisturbed from the effects of power” (Habermas 1997, 182). Whoever takes part in *moral discourses* “must be able to assume that certain pragmatic presuppositions are sufficiently fulfilled, that is, that the practice of reaching understanding is public, is universally accessible, is free of external and internal violence, and permits only the rationally motivating force of the better argument” (Habermas 1997, 182). Given the improbability of this, “moral discourses of justification are, as a rule, carried out in an advocacy fashion...Here representation can only

mean that the selection of members of parliament should provide for the broadest possible spectrum of interpretive perspectives, including the views and voices of marginal groups” (Habermas 1997, 182/3). *Majority rule* “retains an internal relation to the search for truth inasmuch as the decision reached by the majority only represents a caesura in an ongoing discussion; the decision records, so to speak, the interim result of a discursive opinion-forming process” (Habermas 1997, 179). This is however premised on a competent discussion of the issues – one that meets communicative presuppositions. *The separation of powers* can be accounted for in terms of a differentiation of access rights to discourses and the corresponding kinds of reasons.¹⁶

We must distinguish formal political arenas from the informal public sphere. The latter is a social space with porous boundaries constituted by networks of communication. It includes face-to-face encounters, but, as

¹⁶ “...the division of powers and responsibilities among authorities that respectively make, apply, and implement laws follows from the *distribution of the possibilities for access to different sorts of reasons* and to the corresponding forms of communication that determine how those reasons are dealt with. Political legislators alone enjoy unlimited access to normative, pragmatic, and empirical reasons, including those constituted through the results of fair compromises, though they have access only within the framework of democratic procedure designed for the justification of norms. The judiciary cannot make whatever use it likes of the reasons packaged in, and linked to, statutes; these same reasons play a different role when the courts, with an eye to the coherence of the legal system as a whole, employ them in a discourse of application aimed at decisions over time. In contrast to the legislature and judiciary, finally, the administration is not permitted to deal with normative reasons in either a constructive or a reconstructive capacity. The norms fed into the administration bind the pursuit of collective goals to pre-given premises and keep administrative activity within the horizon of purposive rationality...The talk of ‘legislature,’ ‘judiciary,’ and ‘administration,’ suggests an overly concrete understanding led astray by inherited forms of institutionalization. Such a view misses the level of abstraction at which we have sketched the discourse-theoretic specifications of the *functions* of legislation, application and implementation” (1997 192/3).

Bohman notes, public communication has the capacity to abstract from the spatial and indexical features of face-to-face interaction and to create “a non-simultaneous public of readers and critics” (Bohman 1996, 43).¹⁷ A variety of sub-publics within the public sphere develop spontaneously, and taken together, they form a ‘wild’ complex that resists organisation as a whole (Habermas 1997, 307). While these are vulnerable to unequally distributed social power, here “new problem situations can be perceived more sensitively” (Habermas 1997, 308). The public expresses the private experiences of the externalities of functional systems and of the state apparatus itself. Parliamentary bodies are to a greater extent concerned 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

¹⁷ The public sphere is an intermediary structure between the political system, on the one hand, and the private sectors of the lifeworld and functional systems, on the other. It represents a highly complex network that branches out into a multitude of overlapping international, national, regional, local, and subcultural arenas. Functional specifications, thematic foci, policy fields, and so forth, provide the points of reference for a substantive differentiation of public spheres that are, however, still accessible to laypersons (for example popular science and literary publics, religious and artistic publics, feminist and “alternative” publics, publics concerned with health-care issues, social welfare or environmental policy. Moreover, the public sphere is differentiated into levels according to the density of communication, organizational complexity, and range – from the *episodic* publics found in taverns, coffee houses, or on the streets; through the *occasional* or “arranged” publics of particular presentations and events, such as theater performances, rock concerts, party assemblies, or church congresses; up to the *abstract* public sphere of isolated readers, listeners, and viewers scattered across large geographic areas, or even around the globe, and brought together only through the mass media. Despite these manifold differentiations, however, all the partial publics constituted by ordinary language remain porous to one another (Habermas 1997, 373/4).

that is borne by the general public of citizens” (Habermas 1997, 307). In this ‘twin-track’ model, popular sovereignty no longer resides in visible gathering of citizens, but pulls back into the ‘subjectless’ forms of communication that flow through parliamentary bodies and informal networks.

2.4 Discussion

2.4.1 The insulation of deliberation from the public

We have seen the important role assigned by Habermas to popular participation. Communicative power is generated when a common will is formed through the circuits of communication by which the public sphere is constituted. And communicative power authorizes law. The point is a conceptual one, but we can also look at the politics that is missed when the importance of popular participation is discounted, as it is by James Bessette. Although Bessette shows that deliberation can and does occur in Congress, and this may act as a corrective for those who think otherwise, he rests deliberative democracy too heavily on heroic legislators within formal, deliberation-promoting institutions. The problem is evident early on, in his attempt to rescue the democratic character of the framers’ intentions. He freely acknowledges that on his interpretation, the Senate, presidency and Supreme Court “were all designed to have the capacity to resist unsound

popular inclinations,” since deliberation “serves to check the excesses of democracy” (Besette 1997, 34). He attempts to blunt any criticism that this is undemocratic with the idea of “a deeper democratic, or republican principle: the rule of deliberative majorities” (Besette 1997, 34). There are two kinds of public voice in a democracy; “one more immediate or spontaneous, uninformed and unreflective; the other more deliberative, taking longer to develop and resting on a fuller consideration of information and arguments – and that only the latter is fit to rule” (Besette 1997, 34/5). If representatives share the basic interests and desires of their constituents then “their deliberations should result in policies that will approximate what the people themselves would have chosen had they engaged in a similar process of reasoning” (Besette 1997, 36). Yet at the same time, representatives must be induced to share the interests and desires of voters through the electoral connection. Later Besette says that severe time constraints, competing interests for leisure time, and the complexity of political issues undercut the possibility of informed public opinion. In consequence, again, hopes must rest on legislators who serve as “surrogate deliberators” (Besette 1997, 218) for their constituents. This has implications for how legislators ought to use their time (deliberative activities such as attending committee hearings and floor debates should not be crowded out); for how they use their staff (deliberative responsibilities should not be delegated excessively); for how they decide (they must keep an

open mind on the merits of issues); and for limiting the holding of debates and hearings in public (public glare encourages posturing and currying favour with interest groups).

Bessette's perspective affords too minimal a role for citizens, and passes over the considerable recent attention given to civil society and social movements.¹⁸ He assumes that legislators have little to learn from their constituents that could inform their deliberations. Citizens are pictured as simply unruly. Bessette fails to see how insight can be generated not from within, but from without. When speaking of the need to keep an open mind, he in fact says that legislators must be open "to what they can learn from their colleagues" (Bessette 1997, 221). His pen-portraits of three model legislators suggest self-driven men confident in their own judgment, reasoning in a social vacuum. Yet two of these were in office from the late fifties through the seventies, while the last took office in 1972. This was the period in which the civil rights, anti-war and women's movements reverberated throughout the United States. Many of the anti-discriminatory legislative improvements occurred in the context of high profile activism, pressuring Congress as well as working through the courts.

An example of this process in microcosm is the legislative activity that surrounded Kennedy's President's Committee on the Status of Women,

¹⁸ The literature here is wide but it would include: Cohen & Arato (1992), Keane (1988), Cohen & Rogers (1992), Habermas (1997), McCarthy & Zald (1977), Gamson (1975), McAdam, Tarrow & Tilly (2001), Tilly (2004), Touraine (1981, 1985).

recounted in Ruth Rosen's history *The World Split Open* (2000; pp. 65-70). Rosen claims that the commission was itself the result of lobbying by a coalition of women in liberal and labour organisations, with Esther Peterson of the Women's Bureau as a key figure. For Kennedy, as Rosen sees it, a commission was a politically less contentious option than supporting the Equal Rights Amendment (ERA),¹⁹ opposed by labour unions that were afraid of losing protective legislation on hours and conditions for working women. The commission collected vast amounts of data on women's lives, received a great deal of press coverage, produced a major report (*The Presidential Report on American Women*), and spawned a large number of state commissions. Rosen writes: "At about the time that the commission started its work, Congress began considering 432 pieces of legislation on women's rights that it would debate between 1960 and 1966 – none of which would have appeared on the political agenda without the behind-the-scenes work of hundreds of political women" (Rosen 2000, 68). Allowing for a degree of rhetorical flourish in Rosen's presentation, the particular timing and content of these legislative developments in response to specific demands suggest that activism was a significant factor in bringing them about. During the period feminists adopted a Bill of Rights for Women (framed by the National Organization for Women (NOW)), and lobbied on a

¹⁹ The amendment read "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." It had first been submitted to Congress by the National Woman's Party in 1923, and every year afterward, without success.

wide range of issues: a whole series of discriminatory employment practices,²⁰ in addition to domestic violence and rape, abortion liberalisation, federally funded childcare, and so on. Class action suits were filed against discriminatory practices in corporations, colleges and universities, while the Supreme Court was frequently involved, notably in *Griswold v. Connecticut* and *Roe v. Wade*.

Moreover, the focus on specific legislative and legal targets neglects the significance of the women's' movement in producing whole new ways of seeing within the larger culture. Women's' role and the public-private split were reconfigured in a critique of patriarchal social structures and gendered cultural representations. Identities and everyday relations between the sexes were challenged and redefined. Both concrete political gains and normative or cultural reconstruction were sought. Histories are again illuminating here. Elizabeth Pleck (2004) highlights these two dimensions in her account of the political history of domestic violence in the U.S. Having re-emerged within radical feminist consciousness-raising groups as a political issue in the 1960s, by 1976 states were passing laws providing funding for shelters, for improved reporting, for the repeal of intra-spousal immunity from torts, and for more effective criminal courts procedures – though not before women lawyers had filed class action suits against police in their respective cities,

²⁰ Giving rise to Title VII of the 1964 Civil Rights Act and the establishment of the Equal Employment Opportunity Commission, subsequently flooded with grievances; plus the 1972 Equal Rights Amendment and Equal Opportunity Employment Act, among others.

who had been hesitant to intervene in cases of abuse. At the same time, the most consistent barrier to reform was the complex of ideas about family privacy, conjugal rights and family stability. While the more radical critique of the family had to be moderated to defuse the opposition of conservatives, domestic abuse and rape were now redefined as public, law-and-order issues.

While popular demands are not always of a piece with feminist concerns about equality and discrimination, any sense of the fruitfulness of citizen initiative of this sort is absent in Bessette's account. Moreover, as Habermas argues, such activity is by no means limited to feminism – pointing to opposition to nuclear power, atomic energy, genetic engineering, ecological threats, and the impoverishment of the Third World: “Hardly any of these topics were *initially* brought up by exponents of the state apparatus, large organizations, or functional systems. Instead, they were broached by intellectuals, concerned citizens, radical professionals, self-proclaimed ‘advocates’, and the like” (Habermas 1997, 381). We should not therefore rest the hopes for deliberative democracy exclusively in formal institutions insulated from wider society, as Bessette does.²¹ It is worth observing here

²¹ Moreover, Bessette's own most detailed description of “the high art of lawmaking in contrast to the low arts of mere self-seeking” (1997, 135) includes a remarkable example of an attempted stroke (or an inspired move, depending on your perspective). Republicans who were *opposed* to the Food Stamp Act for reasons of their own, attempted to turn southern Democrats against it by raising its civil rights implications. During hearings Republicans suggested that restricting the programme to grocery stores operating a policy of non-segregation might act as an incentive in the promotion of civil rights, or that stamp funds might be withheld from states found in violation of these. This, Bessette says, was a piece of opportunism whose “clear intent was to heighten the concerns of southerners in the House” for whom this would be controversial, and to “split off southern Democrats from their colleagues” (1997, 94). This move by Republicans is an example of what in *The Art of*

however that this neglect is not an inherent feature of republicanism. Indeed, as I discuss below in the context of Charles Taylor's arguments, precisely the reverse is the case. We might note in this regard that Michelman relates the achievement of the inclusive potential of the Constitution and its legal indeterminacy to the political mobilisation of affected groups, most notably the civil rights movement (see n4 above). Through political action these seek to redefine the social understandings and legal interpretations that position them in ways they contest.

2.4.2 Monological and dialogical deliberation

I noted in 1.1 that Robert Goodin distinguishes 'external-collective' and 'internal-reflective' deliberation (Goodin 2005, 169). External-collective deliberation involves actual interpersonal engagement, while internal deliberation is a mental process: "Deliberation consists in the weighing of reasons for and against a course of action. In that sense, it can and ultimately must take place within the head of each individual" (Goodin 2005, 169).

Habermas's monological-dialogical distinction corresponds with this. He

Political Manipulation Riker calls heresthetic: how actors may "win politically" by constructing conditions for alliances. The aim of such actors is to induce others to "want to join them – or...feel forced by circumstances to join them – even without any persuasion at all" (1986, ix). If Bessette's description is accurate, then Republicans did not attempt to persuade democrats using the reasons they found cogent, but instead used an entirely independent set of reasons calculated to split the democratic vote. If Bessette is to be consistent, this should earn the same disapprobation that appears in his criticism of bargain politics, in which the legislative process is orchestrated "through subtle manipulation" (Bessette 1997, 56/7).

says that he has formulated U in a way “that precludes a monological application” and that the problems to be resolved in moral argumentation “cannot be handled monologically but require a cooperative effort” (Habermas 1990, 66/7). U “regulates only argumentation among a plurality of participants” and “it suggests the perspective of real-life argumentation” (Habermas 1990, 66). Habermas criticises Rawls for presenting a monological model. Here I want to explore the basis of this criticism.

We can begin to see why a dialogical account might be important by turning to the contribution of Iris Marion Young (1989, 1996, 2000). Young (1989) points out that a belief in the equal worth of all persons originally drove the bourgeois challenge to aristocratic privilege. Citizens were thought of as peers in public life, regardless of differences in wealth, status and power. Universal citizenship rested however on the notion of a general point of view transcending particularity and difference. The universal human perspective and the extolling of the common good, ironically, did not lead to the extension of the franchise. Citizenship was denied to categories of people thought incapable of identifying with supposedly universal interests, or whose particularistic demands would lead to social division and tumult. Oppositions between reason and passion, and between masculinity and femininity, justified the exclusion of women, wagedworkers, the poor, nonwhites and Jews.

Young's claim that the idea of a general interest must be harmful to disadvantaged social-structural groups rests on a particular view of objectivity, worked up from American pragmatism²² and feminist epistemology.²³ It begins from the claim that our understanding of the implications of policy issues and proposals are inevitably partial, resting as they do on only a fraction of the relevant experience. Social-structural groups have different needs, cultures, histories, experiences, and perceptions of social relations, and these inform their diverse perspectives.

Alcoff's (1995) treatment of Putnam's defence of pragmatism generalises this with reference to inquiry, objectivity and power. Knowledge, as understood by Dewey, is the product of co-operative human interaction within an environment. It involves active intervention and putting ideas under strain; it is a fallible method that at its best involves free criticism and challenge. Co-operation, to be effective, must "obey the principles of 'discourse ethics'" (Putnam 1995, 220). As Alcoff notes, the nature of the interaction – its inclusiveness, its democracy and reciprocity, the quality of its cooperation – will impact on the knowledge produced. Yet the production of knowledge is inseparable from processes of socialisation connected to existing hierarchies of power, and inequalities of power between individual participants. In order for this argument to be accepted, "we do not need to allege conscious discriminatory intent" since it often "happens quite

²² See Hilary Putnam (1995) and the rejoinder by Linda Alcoff (1995).

²³ Haraway (1991).

unconsciously that there is a presumption in favour of the views and arguments advanced by certain kinds of people over those of others” (Alcoff 1995, 226).

Such deference is not confined to any particular sphere of activity. Young (1996, 2002) and Sanders (1997) have written on the tendency for women, black people, poorer people and so on – to speak less in trial juries, to be less likely to be selected as chairperson, and to be less likely to have their views taken seriously. Alcoff (1995) notes that midwives with extensive experience are less likely to be believed than male obstetricians straight out of medical school. Experienced assembly line workers are routinely ignored in favour of recently graduated efficiency experts and so on. White voters are more likely to see white candidates as more capable of adopting the perspective of the whole community. Black writers are often thought by Whites to be writing about “Blackness”, while White writers speak about “life”.

If there is any doubt about our partiality, more examples are given by Hochschild (2001). Misperceptions of fact shape our political attitudes and preferences. Thus a 1995 U.S. survey of racial attitudes found that 40%-70% of Whites mistakenly thought that the average African American is as well off, or better off, than the average White American in terms of: income, jobs, housing, access to health care, education and the risk of losing a job. Whites who make these mistakes are more likely: to believe that Congress should

limit affirmative action; to believe that the government should not spend more to help low-income families; to favour major spending cuts in the food stamp program, legal aid for the poor, and federal aid for cities; and to oppose major cuts in Medicaid and federal aid for student loans.

The claims being made here are twofold. First, our political judgments about needs and legitimate claims rest on a fraction of the relevant experience, given the diversity of positions from which the world can be apprehended. In particular, advantaged groups have a tendency to universalise their own situation, or at least to neglect features of others' situations that are fundamentally different to theirs. Second, our social relations encode hierarchies of power, prestige and deference, and these are not always transparent. It is the combination of these that prompts Young to suggest that: "A common consequence of social privilege is the ability of a group to convert its perspective on some issues into authoritative knowledge without being challenged by those who have reason to think differently" (Young 2002, 108). Her concern in the context of universal citizenship and republican talk of the common good is that disadvantaged social-structural groups are required to set aside demands specific to their affiliations and experiences, resulting in policies that universalise the experiences and interests of dominant groups. On a concrete level Young argues for group representation and group-specific rights, but more abstractly, the result is a particular conception of objectivity. Objectivity is not conceptualised well by

abstraction from or transcendence of group-specific affiliations, experiences and needs. Instead objectivity requires the corrective of the availability of the plurality of perspectives.

The point is that if we accept the claims about partiality made here, as I think we should, we cannot always expect to be able to monologically determine what could be reasonably justified to others. For concrete examples of the kind of thing at issue, we might consider 'dilemmas of difference' (Minow 1985, cf. Young 1989). The dilemma is that on the one hand disadvantaged groups must deny that there are essential differences between men and women, blacks and whites, able-bodied and disabled people and so on, that justify denying opportunities to women, blacks or the disabled. On the other, they argue that there are group-based differences that make the application of a strict principle of equal treatment unfair (Young 1997, 266). A now familiar example would be conditions of workplace promotion that are blind to the fact that pregnancy, childbirth and child-rearing affect women's ability to compete on a level playing field with men, even men who are parents. The general point is that we cannot as a rule expect the bias of rules and institutions to become transparent unless affected groups have the opportunity to challenge the social understandings that these encode. This example may not be a good one if it appears obvious that the application of strict equality of treatment between men and women here would be gendered. Whatever about the specific example, we can recall what

was said about feminism in the discussion of Bessette. As a whole what feminism represents is the rendering transparent of oppressive yet entirely taken-for-granted social understandings by those directly affected. Much feminist philosophy has tried to excavate the gendered nature of the philosophical canon; the political issues hidden under the cover of liberalism's public-private split being a notable example.

Habermas's objection to Rawls's monologism begins from the "action-coordinating function" of normative validity claims (Habermas 1990, 66). Moral argumentation is something that occurs between real-life individuals when normative consensus breaks down in contexts of practical action. Unless agreement can be reached on a norm to regulate mutual expectations – either by supporting the contested norm in question with reasons, or identifying another that can be applied – then communicative action must break off and strategic action must take its place. Habermas says that "it is not enough for the individual to reflect on whether he can assent to a norm" because only a cooperative process of attempting to reach an understanding "can give the participants the knowledge that they have collectively become convinced of something" (Habermas 1990, 67). His major concern here is the aspiration that lies at the core of his critical theory – the idea of a social order resting on a normative consensus that is the outcome of society-wide, unrestricted, discourse. This is why he can object that: "Like Kant, Rawls operationalizes the standpoint of impartiality in such

a way that every individual can undertake to justify basic norms on his own. The same holds for the moral philosopher himself. It is only logical, therefore, that Rawls views the substantive parts of his study...not as the *contribution* of a participant in argumentation to a process of discursive will-formation regarding the basic institutions of late capitalist society, but as the outcome of a “theory of justice” which he, as an expert, is qualified to construct” (Habermas 1990, 66).²⁴

This however, is only part of the objection. Habermas gives two further reasons why we should not be satisfied for individuals to justify norms on their own. These invoke the same kinds of considerations that I have introduced above in the discussion of Young. Isolated individuals will not possess the imagination or self-transparency required to overcome their partiality and fully occupy the perspectives of differently situated others. He makes two points:

²⁴ The claim here, however, surely cannot be that internal reflection on substantive moral issues must necessarily be a waste of effort. We do not always (or even usually) consult with others when we face moral dilemmas, and nor do we postpone action until we have done so. That would be unthinkable. One of the implications of what *is* being argued is that internal reflection requires a background culture if perspectival distortion is to be reduced or eliminated. I think it is plain enough that our own understandings and reflections benefit hugely from exposure to diverse viewpoints and cultural shifts. We can place Rawls’s substantive moral theory in this context. Habermas says that it must be seen as an “advocatory” contribution, or a “contribution to a discourse among citizens” (Habermas 1990, 94). All forms of inquiry are contributions that assume a critical audience, and are usually understood as such. Habermas is making the additional observation that Rawls’s audience is wider than the community of professional philosophers. By the same token, the point being made here is that moral philosophy, understood as a monological activity of taking thought, should not be immunised from background culture.

- (1) "...nothing prevents the perspectively conditioned distortion of one's own interests by others better than his actual participation" (1990, 67).
- (2) "On the other hand, the descriptive terms in which each individual perceives his interests must be open to criticism by others" (1990, 67).

We might note here the particular background to the second point, because it is not apparent from what is said above. Habermas says that we are individuated in and through social relations. Needs and wants are therefore interpreted in the light of cultural values that are part of intersubjectively shared traditions. The adequacy of self-reflection is therefore related to the critical reappropriation of culture and tradition, which is itself an evolving, cooperative enterprise.

This line of argument should neutralise the concerns of Iris Marion Young. Deliberative democracy is not in conflict with her conception of objectivity. Before I restate the reasons for this, it is worth recalling how Frank Michelman's account, despite its republicanism, offers a dynamic, inclusory perspective. I included this in part to show that republicanism is not adequately represented by Besette's account alone, and partly to show that republicanism does not have to be the exclusive doctrine that Young describes (1989). That aside, first, the possibility of perspectival distortion is

a reason to want deliberation. Second, the kind of consensus envisaged is not a pre-existing and potentially socially conservative, substantive common good, but the outcome of unrestricted discourse. In principle within discourse nothing is necessarily immunised from critique, and nothing should be agreed that would not be agreed in the absence of inauthenticity and coercion. Habermas says that the link between the opinions that take shape inside and outside of formal institutions is not made possible by “the homogeneity of the people and the identity of a popular will, nor by the identity of a reason that is supposedly able simply to *discover* an underlying homogenous interest” (Habermas 1997, 185). In contrast, the “unity of a completely proceduralized reason...retreats into the discursive structure of deliberation. This reason refuses to concede that a consensus is free of coercion, and hence has legitimating force, unless the consensus has come about under the fallibilist proviso and on the basis of an anarchic, unfettered communicative freedom” (Habermas 1997, 186). Third, it is precisely by reference to an account of generalisable interests framed relative to an ideal procedural model having conditions of equality and symmetry that we can engage in a critique of the suppression of the perspectives of systematically disadvantaged groups. Seyla Benhabib puts this well:

Many consider this model [of ideal speech] hopelessly utopian and unreachable, but this is partly because the purpose is not to draw a blueprint for a well-ordered society. Rather, the purpose is to develop a model of public dialogue such as to demystify existing power

relations and the current public dialogue which sanctifies them. This involves: identifying those issues which are prevented from becoming public because of existing power constellations; identifying those groups that have not had access to means of public expression and advocating their inclusion in the discourse of legitimacy; distinguishing between agreement and pseudo-compromises based on the intractability of power relations; and saying what is in the public interest as opposed to the universalization of what is only the interest of a particular group (Benhabib 1989, 154).

2.4.3 Deliberative democracy and patriotism

Finally, any discussion of deliberative democracy in which republicanism and Habermas's abstract universalism are presented as alternatives, must address the relationship between patriotism on the one hand, and the viability of constitutional regimes on the other. This issue has in recent years been raised most notably by Charles Taylor (1989a). As I see it, Habermas has responded to Taylor in a way that both distinguishes his deliberative conception from the liberal procedural model that Taylor opposes, and that does so by accommodating elements of Taylor's republicanism (more specifically, what Taylor understands by civic humanism). To that extent he has avoided Taylor's criticisms. For that reason, this concluding discussion is merely an attempt to draw attention to the relevant arguments, and to clarify where things stand. It does however help us to see what Habermas owes to republicanism. This is worth clarifying because of what has just been said in

the attempt to respond to Iris Marion Young's concerns. The fact that Habermas presents a procedural account of generalisable interests rather than one based on a substantively integrated moral community, might lead us to conclude that our republican inheritance has been entirely rejected by Habermas, and that we must choose between these mutually exclusive alternatives. To my mind this is not the case.

Taylor's target is a procedural conception of liberalism that, he feels, has become dominant in the English-speaking world. Society is seen as an association of individuals who each have separate life plans. Society ought to facilitate these as much as possible and follow a principle of equality – whether of results, or resources, or of opportunities, or of capacities. The critical element is the idea of liberal neutrality; this principle of equality would be breached if society itself espoused a particular conception of the good life. So the ethic central to a liberal society is one of the right, not of the good. Its theory of the good is a thin one, involving maximal and equal facilitation of primary goods, just as in Rawls.

Civic humanism challenges the viability of such a regime. In this tradition 'free' is the antonym of 'despotic'. A condition of freedom in this sense is a willing identification of citizens with the polis – a sense among citizens that their political institutions are an expression of themselves. This idea that institutions are "the common bulwark of citizen dignity" (Taylor 1989a, 165) is the basis of a patriotism that is reducible neither to egoism or

universal altruism. The reason for this is that patriotism is based on identification with others in a particular common enterprise. It is based on a bond of solidarity within a particular, historical community. Taylor relates this to a distinction between atomistic and holistic understandings of social goods. We can distinguish matters that are for *me and you*, from matters that are for *us*. If my neighbour and I have a conversation over the garden fence about the fine weather we are having, this involves more than our attending to it separately, and more than aggregations of monological mind-states – more than *I* know that you are attending, and *you* know that I am attending, and *I* know that *you* know, and so on. Our attending to the weather together is something like the dance of a couple, or two men sawing a log. Thus we can distinguish *common* and *convergent* goods. This is not about how the goods are provided, but about what makes them goods. Security, national defence, fire departments and so on, are classical examples of convergent goods. Although national defence can only be provided collectively, it is a good for *A*, and for *B*, and for *C*, and so on. In contrast, there are goods that are constituted as the goods they are by the fact that they are shared. This is just how civic humanists understand the political community and the laws. They are not just laws for me, and you, and the next person. They are *our* laws. This enters into the nature of the good that they are.

The thesis of writers from Machiavelli to Montesquieu and Tocqueville is that it is an essential condition of a free (nondespotic) regime

that citizens have this kind of patriotic identification. Every political society requires sacrifices and demands disciplines – taxes, serving in the armed forces, observing social restraints. Patriotic citizens will be motivated to make these sacrifices, or conversely, in the absence of patriotism only coercion can ensure the requisite contributions. The initial objection to liberal proceduralism then, is that if it cannot conceive of common goods, but only convergent ones, then the possibility of meeting this condition is ruled out from the start. The liberal can however respond that though a societally endorsed common *good* is rejected, a common understanding of *the right* is not. Liberal societies are viable because citizens can be animated by an identification with principles of justice (that are universal in scope). Taylor claims that this won't do however. First, the capacity of citizens to respond with outrage (to episodes like Watergate and the Iran-Contra affair) continues to be an important bulwark of freedom in modern societies. Second, this capacity for outrage, Taylor says, is neither fuelled by self-interest or by a commitment to the principles of liberal democracy. The latter plays a role, but "by itself it would not lead to, say, an American reacting more vigorously to Nixon's violations than to Pinochet's or Enver Hodja's" (Taylor 1989a, 174). The point is that patriotism involves more than an allegiance to converging moral principles; it involves a common allegiance to a particular historical community. While the procedural liberal state can be neutral between believers and unbelievers in God, or heterosexuals and

homosexuals, it cannot afford to be neutral between patriots and antipatriots. The courts might ban school prayers, or sex education manuals that treat homosexuality as a perversion. It would be a different thing altogether to imagine them giving satisfaction to someone who “objected to the pious tone with which American history and its major figures are presented to the young” (Taylor 1989a, 176).

Third, liberal proceduralism marginalizes participatory self-rule, concerned as it is only with the rule of law, individual rights, and principles of fairness and equal treatment. For one thing, to identify participatory self-rule as a central element of the good life, as Hannah Arendt does, would violate liberal neutrality. However, while there have been patriotisms of unfree societies, founded on atavistic and authoritarian bases, the patriotism of a free society must celebrate its institutions as realising “a meaningful freedom, one which safeguards the dignity of citizens” (Taylor 1989a, 178). Taylor says that a patriotism of the right must accommodate this. Somehow political institutions must be seen to protect freedom *in virtue of* their being the expression of citizens’ dignity. Specifically, citizens’ allegiance hinges on citizens being able to view institutions as embodying their *capacity* to affect their own condition.

Here Taylor sketches two alternative models of citizen capacity that could be seen as bulwarks of freedom. The first is *participatory self-rule*, which has been marginalised by liberals. On this model, self-rule is itself part

of what must be secured. The second model is *adversarial retrieval*. It focuses on individual rights and equal treatment, together with government performance that takes account of citizens' preferences. This is what has to be secured. Citizen capacity consists mainly in the power to retrieve these rights and ensure equal treatment, and this retrieval may take place largely through the courts. Taylor's claim at this point is that the second model is so adversarial that "it would seem impossible to combine it with the sense that our institutions are a shared bulwark of dignity" (Taylor 1989a, 179). On this model institutions and participation are seen purely in instrumental terms. The ideal is not "ruling and being ruled in turn" but "having clout". This is compatible with not making credible threats rather than participating, or engaging in the system in an adversarial way "in which the actual governors are defined as "them" to our "us", and pressured through single-issue campaigns, or petitions or lobbies, to take us into account" (Taylor 1989a, 179). In contrast, full participation in self-rule involves being able, at least some of the time, to have some part in the formation of a ruling consensus. Here, at least some of the time "we" are the rulers.

In what is for me an important move, Taylor acknowledges that the United States (his particular focus) has been moving more and more towards the second model. Judicial retrieval has become increasingly important, and political action committees (PACs) have steadily grown in number. I have already characterised the women's and civil rights movements in the terms of

this model. I have done so at two stages of the presentation – in the context of Michelman's account of legal indeterminacy and the civil rights movement, and when criticising Bessette's omission of the politics of the women's movement. In both cases the politics in question has been highly adversarial, and has involved persistent lobbying and litigation. Taylor says that the adversarial nature of these developments is just what republicans deplore, but he admits that the continuing vigour of American political life may be evidence that an adversarial patriotism is viable. His point is in large part to highlight the need for liberals to recognise that an atomist ontology that has no place for common goods precludes discussion of these issues.

To draw together Taylor's main claims, he is arguing that (a) patriotism and the capacity of citizens to respond with outrage continues to be important; that (b) patriotism involves a common allegiance to a particular historical community; and that (c) it is arguable whether adversarial retrieval is a viable patriotism. On the last point, I think it is far from clear that an adversarial patriotism is ruinous. His comment that "there are also reasons to be sceptical of a too simple logic" (Taylor 1989a, 179), at which point he notes the recent adversarial trend in U.S. politics, indicates that he might be willing to concede this. The civil rights movement was certainly concerned with equal treatment and the removal of forms of discrimination. However, in part its goal, in both language and substance, was the recognition of African-Americans *as* Americans, under a Constitution common to Blacks

and Whites. The civil rights movement is an example of the active retrieval of citizenship and its corresponding dignity. Taylor marks too sharp a contrast between participatory self-rule and adversarial retrieval, at least initially. He writes: “if I win my way by manipulating the common institutions, how can I see them as reflecting a purpose common to me and those who participate in these institutions?” (Taylor 1989a). Clearly, civil rights campaigners were not attempting to “manipulate common institutions” if the expression is meant to be construed egoistically, since they were pursuing claims both of citizenship and justice. Taylor’s model of participatory self-rule seems to miss the fact that claims of justice (and indeed citizenship) are often pursued in the face of considerable resistance – though they have a “deliberative” quality in the sense that they are argued for by reference to a conception of justice.

I suggest then that we should focus on Taylor’s first two claims when considering where Habermas stands on all of this. The question arises because Habermas has rejected the idea that popular sovereignty is tied to a morally integrated community, replacing it with a procedural understanding of popular sovereignty.²⁵ In respect of Taylor’s claims, Habermas

²⁵ “But contemporary republicans tend to give this public communication a communitarian reading. It is precisely this move toward an *ethical constriction of political discourse* that I call into question. Politics may not be assimilated to a hermeneutical process of self-explication of a shared form of life or collective identity. Political questions may not be reduced to the type of questions where we, as members of a community, ask who we are and who we would like to be. In its communitarian interpretation the republican model is too idealistic even within the limits of a purely normative analysis... [For Rousseau] The unanimity of the political legislature was supposed to be secured in advance by a substantive

acknowledges something like claim (a) though he alters its terms. Claim (b) is more complicated. Habermas addresses these issues in the main body of *Between Facts and Norms* and in the paper 'Citizenship and national identity' that is included in the Appendix. In the latter he writes:

Legally guaranteed relations of recognition do not, however, reproduce themselves of their own accord. Rather, they require the cooperative effort of a civic practice that no one can be compelled to enter into by legal norms. It is for good reason that modern coercive law does not extend to the motives and basic attitudes of its addressees. A legal duty, say, to make active use of democratic rights has something totalitarian about it. Thus the legally constituted status of citizen depends on the *supportive spirit* of a consonant background of legally noncoercible motives and attitudes of a citizenry oriented toward the common good. The republican model of citizenship reminds us that constitutionally protected institutions of freedom are worth only what a population *accustomed* to political freedom and settled in the "we" perspective of active self-determination makes of them. The legally institutionalised role of citizen must be embedded in the context of a liberal political culture. This is why the communitarians insist that citizens must "patriotically" identify with their form of life" (Habermas 1997, 499; for similar contexts in the main body of the text see 1997, 184).

Habermas gives a particularly discursive form to the relationship between political participation and the survival of institutions when he introduces the

ethical consensus. In contrast, a discourse-theoretic interpretation insists on the fact that democratic will-formation draws its legitimating force not from a previous convergence of settled ethical convictions but both from the communicative presuppositions that allow the better arguments to come into play in various forms of deliberation and from the procedures that secure fair bargaining processes. Discourse theory breaks with a purely ethical conception of civic autonomy" (Habermas 1996, 23/4).

dual politics of social movements identified by Cohen and Arato (Habermas 1997, 370; Cohen & Arato 1992). On the one hand social movements pursue an “offensive” strategy in the attempt to highlight political issues, argue publicly for proposals, lobby and litigate, and mobilise public opinion. On the other, they pursue a “defensive” rearguard action to preserve and develop the communicative infrastructure of the lifeworld. This involves maintaining existing structures of association, media freedom and so on, and generating new counterpublics, counterinstitutions and collective identities. Cohen and Arato say that the “combination of associations, publics and rights, when supported by a political culture in which independent initiatives and movements represent an ever-renewable, legitimate, political opposition, represents, in our opinion, an effective set of bulwarks around civil society” (Cohen & Arato 1992, 474; cf. Habermas 1997, 370/1).

Habermas argues that the connection between republicanism and nationalism is not a conceptual but a historically contingent one (Habermas 1997, 492ff). In the classical usage ‘nations’ are communities of people of the same descent, integrated both geographically and culturally, and having a common language, customs and traditions. These are not yet *politically* integrated through the organisational form of the state. Thus for the ancient Romans, ‘natio’, like ‘gens’ and ‘populus’, was used for barbarian peoples or tribes. The Romans reserved ‘civitas’ for themselves. In the early modern period the idea of the nation as the bearer of sovereignty displaced this usage;

the estates came to represent the nation over and against the king. With the French revolution the two meanings of 'nation' – community of descent, and people of a state – became intertwined. Nations are now thought to be entitled to self-determination. Later still in the nineteenth century, with respect to Renan's rebuttal of Germany's claims to the Alsace, the conditional relation between national identity and acquired democratic citizenship could be reversed. The nation is a nation of citizens, not a community of descent: "The nation finds its identity not in ethnic and cultural commonalities but in the practice of citizens who actively exercise their rights to participation and communication. At this juncture, the republican strand of citizenship completely parts company with the idea of belonging to a prepolitical community integrated on the basis of descent, shared tradition, and common language" (Habermas 1997, 494/5).

With this analysis Habermas believes he has an adequate response to the claim that patriotism implies a common allegiance to a particular historical community. He says that Taylor "seems to contradict my thesis that there is only a historically contingent and not a conceptual connection between republicanism and nationalism" but in fact his claims "boil down to the statement that the universalist principles of constitutional democracy need to be somehow anchored in the political culture of each country" (Habermas 1997, 499). Moreover, the examples of multicultural societies like Switzerland and the United States demonstrate that this political culture

does not require that citizens share the same language or the same ethnic and cultural origins.

What should we make of this? First, a docile citizenry would clearly be just as deplorable for Habermas as it would for Taylor, and there need be no dispute on that point. Second, as I understand him, Habermas can concede that patriotism implies an allegiance to a particular community. He goes to some length to decouple his view of sovereignty from the idea of a people having a singular descent, language, and culture. But this, as he points out, is not the only kind of particularism. I doubt however that Taylor would deny this. The United States does not have these characteristics, but it is no less a particular community with a common heritage and tradition, just as Taylor maintains. It is a country, for instance, whose distinctive creed is that lowly origins are no bar to success and advancement. The recent election of Barack Obama shows the continued potency of this idea, while the resonance of Obama's use of the first person plural has been no less powerful. None of this takes away however, from the rootedness of liberal democratic principles and traditions in U.S. culture. Indeed, the U.S. is marked out by the particularity of its liberal democratic tradition. This shows, if there really is any need for it, that it is wrong to present particularist and universalist orientations as if they were mutually exclusive alternatives, rather than strands that can be enmeshed in one another. A particular community that lacks an overarching theory of the good is no less a particular community,

though its theory of the good cannot be so thin that the conditions of its own operation – including patriotic allegiance on some description – could be allowed to wither away. It seems to me, to rob the title of Taylor's paper, that Habermas and Taylor are to some extent at cross-purposes here. Taylor says that the allegiance of citizens to a particular community is critically important. Habermas agrees, but says that this is entirely congenial to defenders of constitutional liberalism, since the latter needs particularistic insertion, interpretation and renewal through the ongoing exercise of collective sovereignty. Habermas's claim that the system of rights is not primordial but only takes shape in the exercise of the public autonomy (see 2.3.2 above), and his own account of legal indeterminacy and continuing interpretation (Habermas 1997, 194ff) are elaborations on this theme.

2.5 Conclusion

In this chapter I have explored the three major theoretical perspectives within deliberative democracy – republicanism, Rawls, and Habermas. I have tried to show, in the case of Rawls and Habermas, how deliberative democracy emerges from their larger enterprises. My second aim was to exploit the contrasts in order to make a number of points about the content of an adequate deliberative theory. I focused on James Bessette's insulation of deliberation from society, on John Rawls's monological account of

deliberation, and on the implications for Habermas of Charles Taylor's account of republican patriotism. In the discussion of Bessette I defended a participatory conception in contrast to his elitist view, using the women's movement as a point of departure. In the discussion of monological and dialogical views of deliberation, I defended Habermas's dialogical account by incorporating within this Young's critique of perspectival distortion. By the same token, it is by reference to the critical dimension of the discourse model that we can illuminate the suppression of the perspectives of disadvantaged groups that is of concern to Young. Finally, in the discussion of patriotism, I pointed out that Habermas recognises that institutions require a supportive culture if they are to be effective and if they are to be reproduced intact. I did however defend the adversarial conception of citizen capacity and action sketched by Taylor. I argued therefore, that deliberative democracy should be seen in participatory, dialogical, and adversarial terms.

3

Deliberative Democracy in Complex Societies

An adequate theory of democracy must take account of the background social conditions in which institutions are rooted. The most familiar example of this is the way in which the direct democratic system of ancient Athens cannot be simply transferred to the circumstances of modern societies, in which democracy takes a representative form. If democracy is in some sense a singular ideal, then with the transition to representative democracy we need an account of how it can continue to be realised by means of representative institutions. The issues raised by social conditions are particularly acute for deliberative democracy because it is so demanding.

In this chapter I consider two background conditions that bear on the *relevance* of the deliberative ideal to contemporary societies. The first is the fact of moral pluralism, the presence in our societies of radically divergent normative frameworks. We have encountered this in Section 1.3 and in the discussions of Rawls and Habermas, each of whom aims in dialectical fashion to accept and respond to the problem. For Rawls, we must confine the *agreement* we seek to principles governing the basic institutions of democratic societies, whose derivation is neutral with respect to general and

comprehensive views – and confine our *disagreement* to a choice over moral positions that honour public reason. People will however espouse a diversity of incompatible frameworks in their ordinary lives. For Habermas, the theorist should not aim to identify substantive principles that could command widespread agreement, but to clarify the implicitly mastered presuppositions of argumentation that have normative content. These include the presupposition that a consensus is achievable in principle. This normative content specifies the conditions of a procedure to which moral disagreements can be submitted; answers to moral questions have no substantively correct solution independently of uncoerced consensus. In this chapter the problem of moral pluralism is radicalised in order to focus the question of whether, on the one hand, the idea of public reason can help us to resolve contemporary moral conflicts, and on the other, of whether the pragmatic presupposition of consensus has any practical relevance for resolving these conflicts.

The second background condition I consider in this chapter is the scale of modern societies and the mediated nature of political debate. For convenience I have called this ‘communication’ as distinct from ‘discussion’ which is considered in Chapter 4. Recall that the normative justification of deliberative democracy rested on the abstract notion of an ideal deliberative procedure in which mutual justification occurred in the context of equal deliberative opportunities. We have seen how Habermas has reinterpreted this idea in terms of the institutionalisation of procedures and conditions of

unrestricted communication. The question that needs attention here is whether real world conditions of communication – the professionalisation of roles and the media-dominated nature of communication – can resemble anything like ideal conditions. If they cannot, then while the deliberative ideal might be a highly appealing one, it may offer little practical guidance. It may distract us from more limited but practically achievable goals, or even mystify real world conditions that give the lie to our deliberative infrastructure's promise. I have said that the deliberative ideal is not a "blueprint" for an ideal society,²⁶ insofar as this implies a belief that it could be perfectly achieved. While the deliberative model does claim to explicate the logic of institutions and the constitutional state, its core is a basis for critique. This however gives us all the more reason for examining the actual circumstances of communication.

3.1 Deliberative democracy and moral disagreement

Thomas McCarthy (1992) has brought out the difficulty with Habermas's strong presumption of the possibility of consensus on moral issues. Recall first that his principle of universalisation (U) requires the universal exchange of roles: universally valid norms are all those regulating the satisfaction of needs that could be universally agreed to, as binding on all, where for the

²⁶ As Benhabib economically expresses this (Benhabib 1989).

purpose of the assessment all deliberators have occupied all roles and considered consequences and side-effects from all points of view. McCarthy (1992, pp. 53ff) makes a series of observations that progressively amplify the problem: (1) in talking about needs Habermas is not referring to anything that can be attributed to individuals prior to or independently of social relations. We only have access to our needs under interpretations that we derive from the social matrix. (2) This means that the ideal role taking in which participants must engage "will require each participant to put him- or herself in the place of every other participant in the very strong sense of coming to understand and appreciate the consequences from all of their interpretive and evaluative perspectives" (McCarthy 1992, 60). (3) Yet interpretations of needs are not the final word, since they may be inadequate or inauthentic. Reaching agreement would therefore require that all can agree on authentic interpretations of those needs, beginning from the very different starting points of their particular frameworks and situation. This process, moreover, will always be limited by our incapacity to bring unconscious factors to consciousness all at once. (4) Finally, in order to reach an agreement, we would need to synthesise the consequences, variously interpreted and variously assessed, into one unified judgment of rightness or wrongness.

The problem, as McCarthy puts it (McCarthy 1992, 65), is that the perspective of the *participant* in argumentation must be consistently

combined with that of the *observer*. On the one hand no disputant can deny the pragmatic presupposition of consensus without performative contradiction. On the other, observers of the public controversies of contemporary societies see an apparently irreducible plurality of evaluative and interpretive standpoints at the root of seemingly intractable disputes, such as the aforementioned issues of abortion and genetic technology, libertarianism and state interventionism, secularism and freedom of religious expression, liberal rights and non-Western cultural practices. It may comfort us to know that we cannot discuss these issues without the assumption that we might eventually come to an agreement, but public controversy shows no signs of abating.

In Section 2.2 I presented Rawls as arguing that a number of conceptions of justice might be worked up from the intuitions implicit in the public political culture, each of which would provide answers to the range of questions about what he calls 'the basic structure'. Respecting the limits of public reason means arguing and voting by reference to one of these conceptions, and without invoking our general and comprehensive views if these conflict with public reason. The family of reasonable conceptions consistent with public reason includes the many liberalisms and related views, discourse ethics, and Catholic social teaching. We can however bring the same question against Rawls that we did against Habermas: does this really give us any practical guidance for resolving contemporary moral

conflicts? The problem is that Rawls's position seems too weak in two different respects. First, we can distinguish the abstract claim that the basis of our collective institutions must be a public one, from the specific content that Rawls wants to give this. For Rawls this specific content must be based on the historically particular convictions of citizens of contemporary Western democracies. This fund of substantive convictions is what enables Rawls to develop a freestanding view *before* asking whether it could be the subject of an overlapping consensus. The consequence is that while on the one hand Rawls can rule out certain moral schemes as *unreasonable* in his sense of the term (including any form of fundamentalism), on the other hand the use of public reason has no context-transcending validity. If that is the case however, no convincing demonstration has been given to someone who disputes the validity of those historically specific commitments that they are mistaken. All that can be said, aside from the charge of unreasonableness, is that their values are inconsistent with ours. To put the point another way, what counts as reasonable and unreasonable here is relative to a historically particular set of values that are taken as the point of reference. This abstract line of reasoning becomes a live issue in the context of minority demands for group rights not available to the rest of the population. The argument is that indigenous native populations, minority ethnic or religious groups, and immigrants from former colonies have their own culture and traditions, that these deserve protection, and that this implies special rights or exemptions

from generally applicable laws (Kymlica 1997, Okin 1999). This poses no very serious problem when the issue is, say, the exemption of Jews and Muslims from Sunday closing legislation, or the exemption of Sikhs or orthodox Jews from standard headgear in the police or the military (Kymlica 1997). Things are very different when it comes to exemptions to permit clitoridectomy, polygamy, the marriage of children, or forced marriages in general (Okin 1999). While the first type can be justified on the liberal principles that are generally shared in democratic societies (as Kymlica argues), the second type conflicts with these because they involve practices and worldviews that limit women's capacity to live on terms of equal dignity with men, and to freely choose how to live their own lives (as Okin argues).

There is a second sense in which Rawls's position is too weak. Even if we were to confine our appeals to political values, considerable disagreement would remain. Rawls says: "Examples of political values include those mentioned in the preamble to the United States Constitution: a more perfect union, justice, domestic tranquillity, the common defense, the general welfare and the blessings of liberty for ourselves and our posterity. These include under them other values: so, for example, under justice we also have equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else" (Rawls 2005, 453). Surely this does not begin to touch the controversies, for instance, over what equality of opportunity requires, or what a fair system of taxation would be.

James Bohman (1996) and Amy Gutmann and Dennis Thompson (1996) have proposed deliberative solutions to the apparent intractability of moral disputes, and we might consider these here. Bohman's response is to say that unanimity and bargaining do not exhaust our alternatives, and to defend a notion of 'plural' public reason in preference to the 'singular' public reason of Habermas and Rawls. Plural reason involves a form of moral compromise in which parties construct a patchwork text from conjoining their respective frameworks:

In distinctly moral compromise, the parties do not modify the framework to achieve unanimity, although they may when conflicts are not so deep. Rather, they modify their conflicting interpretations of the framework so that each can recognize the other's moral values and standards as part of it. The framework is then common enough for each party to continue to cooperate and deliberate with the other. Nonetheless, it is still not already assumed to be the *same* framework, as would be true for an impartial agreement; in this way it remains plural (Bohman 1996, 91).

Bohman's example is Ronald Dworkin's treatment of abortion in *Life's Dominion* (1993). Here Dworkin proposes a moral framework in which "the intrinsic value of human life" is recognized in such a way as to be consistent with the "procreative autonomy" of women. Bohmann says that is a patchwork moral compromise. It is not a common position, as Dworkin seems to think. While on the one hand "each side can find its moral reasons

represented, interpreted, and assessed”, on the other, the framework “describes only the general terms for a weak plural agreement, to which each side could assent for *different* reasons” (1996, 92). A second example is the third party mediation by Jimmy Carter in the Camp David accords. The strategy involved a “single negotiation text” (SNT) (Raiffa 1982, 211). This was a package of proposals on the issues for the consideration of both sides. However, the premise on which it was introduced was that it could be iteratively criticized and modified by both sides, so that in the end they could recognise themselves as authors of the resulting patchwork.

The difficulty with Dworkin’s solution is that, as Gutmann and Thompson point out, it rests on the claims that: (a) the foetus does not have consciousness or sentience at least before five months, (b) the foetus does not therefore have interests before that point, and (c) the foetus cannot therefore be considered a person entitled to constitutional protection. The problem is that these reasons “can be rejected by pro-life advocates on the grounds that they presuppose the pro-choice conclusion” (Gutmann and Thompson 1996, 76). Pro-life advocates are not claiming that *any* living being without consciousness or sentience has constitutional rights. They are arguing that the foetus will naturally develop these, and the moral significance of this is lost in the pro-choice argument. One difficulty with Bohman’s second example is that it is not clear how the SNT process was any more than strategic bargaining, as modelled in Raiffa’s analysis of preference schedules and the

strategic withholding of announcements of satisfaction (Raiffa 1982 211ff; cf. Bohman 1996, 92, 265n40). I think the patchwork idea could be a fruitful one, but it appears best suited to problems where the solution can be a truly composite one. It is not clear for instance that the abortion issue can be reduced to an entirely composite or divisible issue. It might appear that it can, since it is not true that the only choice available to the state is to permit or forbid abortions. It might decide to permit abortions, but only in certain circumstances, the nature of which could be debated. It might permit terminations, though the nine months of pregnancy is a range within which some compromise solution might be defended, as it is by Dworkin. A separate question is how much state support might be given to those who might wish to have a termination. And these might be combined – terminations might be permitted up to a particular stage of pregnancy, while at the same time state support might be severely curtailed, and so on. Within this there are varying degrees and a number of possible proposals. The difficulty here is whether someone who conscientiously believed that abortion is always (or almost always) wrong, or someone who felt that the woman's right to choose conclusively defeated all other considerations, could be satisfied with anything less than their preferred outcome in a Court decision. That is to say, both parties would reject any compromise proposal as a great moral wrong. The point is that in situations like these it is not

obvious that there must be a patchwork solution morally acceptable to both sides – a “third way” distinct from their respective positions.

I noted in the introduction that Gutmann and Thompson (1996) defend the idea of ‘an economy of moral disagreement’. This is less about how to resolve problematic claims, than about trying to accommodate the views of those with whom you reasonably disagree, as much as possible, without compromising your own convictions. In their discussion of the abortion issue, they conclude that if governments decide to legalise and fund abortions, they should do so on grounds that acknowledge as far as possible the pro-life position. The Supreme Court in *Roe v. Wade*, they suggest, did just that. The Court did not accept that fetuses are persons, but it did accept that the state had an interest in protecting potential life. Third trimester abortions were deemed impermissible on the grounds that the state’s interest is compelling when the fetus is viable. On this logic, if medical advances were to make the fetus viable at an earlier stage, the ban would be extended to an earlier stage of pregnancy. Gutmann and Thompson say that this moved the *rationale* for the Court’s decision closer to the pro-life position. In a later decision in *Planned Parenthood v. Casey*, the state’s interest in protecting potential life was cited as a reason for upholding some restrictions on first and second trimester abortions (such as a twenty four hour waiting period), on condition that these did not pose an “undue burden” on women. The problem here is that we are given no explanation for why abortion is

permitted *at all*. An economy of moral disagreement tells us we should try to accommodate others' convictions when we disagree with them, without compromising our own, but it does not tell us how to decide what our own convictions should be. Nor does it promise any consensus, since we will not end up with identical views if we start from opposing positions the content of which we want to retain as far as possible.

Below I will defend voting as means of dealing with moral disputes, but before I do, I should caution that I am not suggesting that all contested issues should necessarily be put to a vote, whether by parliament or referendum. I include here in particular those illiberal demands for group rights and exemptions mentioned above. One way to respond to these would be to invoke Isaiah Berlin's negative argument in favour of equality (Berlin 1955-6, Mansbridge 1996). All norms and rules are such that those within the category to which they apply are treated equally. Unless a convincing reason can be given why some particular group should be excluded, the presumption would have to be that they should be included within the category covered by the rule. Those who would propose to exclude, owe us an explanation of why the difference they invoke to justify the exclusion is a relevant one. The problem that this raises for defenders of inequality is that reasons for exclusion have become increasingly implausible, as we have come to see characteristics such as gender, race, sexuality and so on, as irrelevant to the capacity to benefit or be harmed by the rule or the action. In the case of

issues like clitoridectomy, polygamy, the marriage of children, or forced marriages more generally; where these are proscribed by existing legal protections, any request for an exemption would be unconvincing because the harm that these may cause is substantial.

In more specifically Habermasian terms, no demand is legitimate if we could not expect that it would be consented to with full knowledge in the absence of coercion. Moreover, the very fact that there is a dispute implicates discourse. We cannot expect to convince others to accept our moral beliefs, when there is disagreement, by simply invoking the fact that they have been handed down to us by our tradition. Some justification or account must be provided, and this will have to be open to criticism. This, as Habermas points out, takes us beyond the assertion and counter-assertion of traditional values.

Putting voting in its place

The question I have been exploring is whether either the idea of public reason or the pragmatic presupposition of consensus can help us to resolve contemporary moral controversies. The drift of the argument has been that neither of these gives us a clear idea of how to do so. Habermas presents us with a split between participant and observer perspectives in which the original question persists. Rawls's injunction to appeal to 'political' values leaves far too much open, since the implications of these values for the

conflicts at issue is no less controversial. The defence of deliberative democracy need not however depend on the possibility of reaching general agreement on controversial issues. For all that might be said in favour of deliberation and against raw voting, voting has a legitimate role in cases of disagreement. Vote-aggregation supplemented by deliberation is more attractive, for reasons I introduce below, but voting certainly has its place. Of course Rawls and Habermas are not saying that deliberative democracy precludes voting, but it still remains to be explained here how voting contributes to the legitimacy of decisions reached in situations of disagreement – where neither public reason nor argumentative presuppositions have delivered a consensus.

I have sketched the relationship between voting and political equality in Section 1.3 above. The point of this was to bring out the underlying logic of the democratic character of voting, in the presence of disagreement. On the assumption that a decision must be made as a function of expressed preferences, there is something appealing about a procedure that not only ensures that the outcome is *a function* of voters' preferences (this is trivially true) but whose outcomes *satisfy* the preferences of as many voters as possible. This highlights that voting *is* a form of preference satisfaction that can be regulated by a principle of equality. Of course (the debate about PR aside) citizens do not vote in continuous referendums, but vote in elections. In that case their representatives will legislate on the controversial moral

questions that are at issue here. Deliberation can however improve the legitimacy of collective decision-making even when citizens disagree, and when their influence is indirect. It is important here, as both McCarthy (1992) and Bohman (1996) point out, that we are dealing with a democratic association as a going concern, and while there may be deep disagreement on some issues, this does not extend to all issues that are urgent for some constituency. Here voting supplemented by deliberation can give citizens a reason to continue to co-operate together despite disagreement, when – via the representative system – (a) discursive structures “launder” proposals and make it less likely that irrational and untenable arguments will decide outcomes, (b) the process affords the rehearing of defeated positions or the improvement of chances to be heard, (c) decision making is broadly inclusive, so that minorities may reasonably expect to affect future outcomes (Bohman 1996). In this context it is worth pointing out that the deliberative perspective rests on the premise that that citizens’ considered preferences may differ considerably from their existing preferences at any given time. To that extent, excepting the case of permanent minorities that may threaten territorial integrity, there is always the possibility of turning a present minority into a future majority. In the end, the reason why deliberative democracy can accommodate voting even as a means of addressing acute moral conflict, is that continued cooperation is both possible (since wide areas of agreement remain) and important (for its own sake), and minorities

are afforded the opportunity to convince others to change their minds (though universal agreement need not be expected). Although deliberation may filter out some alternatives, this does not ensure that democratic outcomes will satisfy everyone, considered as isolated decisions. In this context deliberation is important because it improves the legitimacy of decisions that must have losers, at least at the particular time they are made.

3.2 Public communication

Habermas describes the political public sphere as a “sounding board” for problems that must be processed by the political system because they cannot be solved elsewhere. The public sphere must not only detect and identify problems but also dramatise them and propose solutions. The capacity of the public sphere is constrained because actors can only acquire influence, not power, which is reserved to the formal system. Civil society by its very nature consists of self-limiting individuals, associations, organisations and movements. The division of labour between a formal political system in which authoritative decisions can be made, and a self-limiting civil society, however, is not the only issue. Habermas remarks that “the sociology of mass communication conveys a sceptical impression of the power-ridden, mass-media dominated public spheres of western democracies” (Habermas 1997, 373). For one thing, media messages have a political economy, in which the

concentration of corporate ownership and the needs of advertising sponsors can shape the news (Bagdikian 1990, Herman & Chomsky 1988); media styles can depoliticise issues (Habermas 1997, 377), and communications technology is deployed for purposes of public relations, propaganda, and market and opinion research (Habermas 1997, 367). For another, the communication process has time and decision costs; horizontal networks afford limited capacities for cognitive processing; attention, competences, knowledge, attitudes and motivations are unequally distributed (Habermas 1997, 325). What expectations should we have then, for extensive and exhaustive debate on important public issues?

Habermas notes that the public sphere rests on its constitution through basic political rights – freedom of speech, association and assembly – in addition to political and cultural pluralism, and a constitutionally guaranteed private sphere. Basic constitutional guarantees must be kept intact by an energetic civil society (Habermas 1997, 368/9). He then argues that under certain circumstances civil society can effectively dramatise issues in the public sphere, and reach into the agendas of formal institutions (Habermas 1997, 373ff). He conceptualises the process of communication and decision making in constitutional systems by drawing on Bernhard Peters (2008). First, processes of communication and decision-making in constitutional systems lie along a centre-periphery axis. The core area of the political system is formed by the institutional complex of the incumbent

government, parliament, judicial system, political parties and so on. At the edges of the administration an inner periphery develops from various institutions with rights of self-governance or with oversight and lawmaking functions delegated by the state. The core area as a whole has an outer periphery that branches into “customers” and “suppliers”. Customer or client networks exist between public agencies, private organisations, business associations, labour unions, interest groups, and so on. The supplier groups (of issues, opinions and so on) of civil society form the real periphery. Second, communication and decision making is structured by a system of “sluices”: “communication flows...start at the periphery and pass through the sluices of democratic and constitutional procedures situated at the entrance to the parliamentary complex or the courts” (Habermas 1997, 356). Third, two modes of problem solving can be distinguished. For the most part operations in the core area proceed according to settled routines. However, a second mode of operation occurs when public controversy ignites. Here constitutional channels are favoured, and parliaments and courts are required to act in a way that disrupts established routines.

Habermas’s defence of the effectiveness of civil society rests on the idea of escalation in critical situations. He cites the work of Roger Cobb, Jennie-Keith Ross, and Marc Howard Ross (Cobb, Ross & Ross 1976; Cobb & Elder 1971). These have modeled how new and compelling issues develop, from the first initiative up to formal proceedings. For the most part,

either the initiative comes from officeholders or political leaders, and the broader public is excluded, or the initiative starts inside the political system but its proponents must mobilize the public sphere to gain support of certain groups. In a third scenario the initiative lies with forces at the periphery. Here a group outside the government structure articulates a grievance, tries to expand interest, and creates sufficient pressure to force the issue onto the formal agenda. While this is not the normal pattern, in perceived crisis situations, civil society actors “*can* assume a surprisingly active and momentous role” despite structural disadvantages:

The great issues of the last decades give evidence for this. Consider, for example, the spiraling nuclear-arms race; consider the risks involved in the peaceful use of atomic energy or in other large-scale technological projects and scientific experimentation, such as genetic engineering; consider the ecological threats involved in an overstrained natural environment (acid rain, water pollution, species extinction, etc.); consider the dramatically progressing impoverishment of the Third World and problems of the world economic order; or consider such issues as feminism, increasing immigration, and the associated problems of multiculturalism. Hardly any of these topics were *initially* brought up by exponents of the state apparatus, large organizations, or functional systems. Instead, they were broached by intellectuals, concerned citizens, radical professionals, self-proclaimed “advocates,” and the like (Habermas 1997, 381).

Habermas focuses on the possibility that in some circumstances civil society can disrupt routine decision-making. The reason why this is important, first,

is that the ideal of unrestricted deliberation requires that any existing normative consensus or any systematic inequalities of political influence in a society are capable of discursive challenge; and second, it is from civil society that we should expect that challenge to come.

I want to address a different issue – whether the media can afford the kind of public debate and criticism that the deliberative perspective needs, and what kind of critical engagement citizens can have with the media. As an initial point of departure, we can note Paul Burstein's (1999) claim that groups (Burstein makes no distinction between 'interest groups' and 'social movements') are unlikely to affect public policy directly where a clear majority supports some proposal and representatives are concerned about re-election. However, such groups may affect policy indirectly either by (1) influencing public preferences, (2) influencing representatives' perceptions of public preferences, or (3) heightening the salience of the issue. Referring to some recent debates in the literature, Burstein finds some mixed but suggestive empirical support for these hypotheses (Lohmann 1994, 1995; Hansen 1991; Meyer & Marullo 1992; Page & Shapiro 1992; Burstein 1985, Burstein & Freudenburg 1978; Costain 1992; Piven & Cloward 1977; Goldfield 1989*a*, 1989*b*; Skocpol & Finegold 1990). Indeed he argues that the principal effect of the civil rights movement was not direct but indirect, and that the movement did not so much alter majority preferences as increase the salience of civil rights issues (Burstein 1985, 1999). This need not worry

those who are committed to deliberative democracy on normative grounds, since what is at stake is the capacity of agents of civil society to raise public awareness and oblige representatives to take account of important issues. In any case, Burstein's scheme suggests that insofar as representatives are sensitive to re-election and thus to majority preferences (and the evidence suggests they are when the majority is large and the issue important to the public; Page & Shapiro 1983; Stimson, MacKuen & Erikson 1995) then the liberal-constitutional institutional framework provides opportunities for individuals and groups to have an indirect influence on policy by each of these three routes.

In complex societies political communication has to be *mediated*. As Benjamin Page (1996) notes, given the size of populations in modern states and the sophistication of political issues, political communication requires a division of labour. Professional communicators assemble, explain, debate and disseminate political information to the broader public (Page 1996, 5). This is done largely through mass circulation newspapers and magazines, TV and radio, and increasingly through the Internet. In the non-simultaneous interaction of the public sphere, we find journalists, politicians, lobbyists, advocates, moral entrepreneurs and intellectuals all clamouring for attention (Habermas 2006, 416). What are the consequences of the division of labour in political communication? What are the consequences of the conditions of communication for those challenging groups who wish to influence political

leaders and the public? There are two areas to explore here. The first is the role of the media, through which groups must communicate. The second is the role of the corporations that organise in opposition.

Page (1996, 106ff) sums up his account of the media in drawing together the results of case studies of press coverage during the Iraq war, the Los Angeles riots, and the controversy surrounding the use of illegal aliens as domestic workers by US Attorney General nominee Zoe Baird. He concludes that: (a) media outlets, who take distinctive editorial stands, slant news using the following means: controlling the prominence of stories; soliciting, selecting and shaping quotations from sources; choosing which facts to report; framing (see below); and evaluative language. (b) The media actively shape political discourse – in the case of the New York Times and the Iraq War for instance, by soliciting op-ed discussions from a relatively narrow band of elite opinion. These op-ed columns tended to symmetrically flank the paper's own editorial stance, thus presenting it as a reasonable "middle-of-the-road" position. This was in spite of the fact that this editorial stance was much less open to negotiation and compromise on Iraq than most citizens were, as indicated by opinion polls. (c) The mainstream news media can sometimes be out of touch with the values of ordinary citizens (as it was in its initial continued support for Zoe Baird's nomination), but it can be shifted in the direction of broader public opinion through "uprisings" in other media, such as talk radio (as in the Zoe Baird case). These cases may be relatively

unusual however, occurring when the facts are simple and incontestable, and are widely communicated.

With respect to the role of corporations, Susan Stokes (1998) has drawn attention to pathologies in public communication. I noted above Paul Burstein's suggestion that groups can affect public policy indirectly either by changing public preferences, changing representatives' perceptions of those preferences, and heightening the salience of issues. Stokes focuses on pathologies in the first two scenarios: (1) Self-interested private actors can intervene publicly to convince the public of erroneous causal effects of policies; the public pressures representatives; and these act on the erroneous beliefs. An example here would be the financing by the automobile industry in the 1990s of a coalition of farmers, police and citizens' groups in opposition to tightened emissions standards. The industry persuaded the coalition that the effect of the policy would be to reduce the size of all vehicles in the United States to that of sub-compacts (Stokes 1998, 127/8). (2) In a more complex model, politicians can misperceive public preferences when these have been manufactured by special interests. Stokes mentions the creation by corporations of pseudo-grassroots or "astroturf" movements.

Sharon Beder (1997) gives a good account of how lobbying companies hired by corporations have used this tactic in the attempt to weaken the environmental movement, in addition to engaging in expensive advertising and PR campaigns, taking strategic lawsuits against public

participation, getting corporate slanted environmental material into schools, and funding conservative think-tanks. Of particular concern to Beder is the skill with which public relations firms use mailing lists produced by market research, field officers, and telephone banks, to generate hundreds and thousands of telephone calls or letters to targeted politicians, in order to create the impression of a groundswell of support or opposition. Agency staff telephone those who are likely to be amenable to the (potentially causally erroneous) perspective of the corporate sponsor, and these citizens are then "patched through" by phone directly to members of Congress. Public relations agencies use advertising segments on talk-radio or TV to advertise phone numbers that listeners or viewers can call for further information, and these can also be patched through to legislators. Alternatively, public relations companies request permission to send pre-prepared postcards to representatives, which arrive in their thousands within a period of a few days.

The media then, are actors in their own right, and they are subject to a greater or lesser degree to commercial pressures and corporate control. Corporations have considerable financial resources to invest in attempting to influence public preferences or representatives' perceptions of those preferences. These claims are familiar, though the point about influencing representative' perceptions is perhaps a new twist on an old theme.

Contests and construction in the media

We need not however conclude that the prospects for deliberation are entirely bleak. The work of William Gamson and his colleagues has been fruitful here. On the one hand media messages are a site of struggle where those in positions of power and advantage are often forced to compete and defend what they would prefer to take for granted (Gamson *et al* 1992). On the other media consumers actively construct the meaning of those messages by drawing on other sources of information (Gamson *et al* 1992, Gamson 2002). While it is true that our images of the world are media-generated and can evince the point of view of political and economic elites, media messages “provide a many-voiced, open text that can and often is read oppositionally” (Gamson *et al* 1992, 373). As they put it more colourfully, while the media may promote a degree of apathy, cynicism and quiescence, “It isn’t just Big Brother in our heads, but a whole bunch of unruly siblings, including a few black sheep with whom we may identify if we choose” (Gamson *et al* 1992, 375).

Two strands of research inform this position, both of which invoke a notion of the social construction of meaning. Gamson *et al* abandon the Gramscian idea of hegemonic meaning and substitute for it two realms of media discourse. The first realm is uncontested – those social constructions that rarely appear as such to the reader, and appear as transparent

descriptions of reality devoid of contestable evaluation. The second realm is contested. Here social actors, albeit unequally resourced, compete to have their preferred interpretations featured prominently in media discourse.

The first strand of research invoked here concerns the ideas of *media frames and frame transformation* (Tuchman 1978, Gitlin 1980, Lang & Lang 1983, Gamson & Modigliani 1989, Gamson *et al* 1992). In the media political events are typically presented in terms of a central organizing or condensing idea, involving a metaphor, catchphrase, visual image, moral appeal, or narrative, that gives coherence and meaning (Gamson & Modigliani 1989, Gamson *et al* 1992). Following Goffman (1974), analysts of media discourse have come to rely on the concept of *frame* to talk about this – paralleling the use of the concept of *schema* by cognitive psychologists. On the one hand particular frames can be present or absent in *units of media*, and this is a matter for observation by researchers. On the other, frames organize the world for the *individuals* who adopt or possess them (Gamson *et al* 1992). Gamson has traced shifts in media discourse in how, for instance, nuclear power has moved from a ‘progress’ frame before the Three Mile Island accident to a more recent ‘public accountability’ frame, in which the nuclear industry is characterised as untrustworthy and self-interested. The most frequently occurring media frame for affirmative action has shifted from ‘remedial action’ to ‘preferential treatment’ (and within this frame, ‘reverse discrimination’).

Gamson *et al* point out that the concept of frame maintains a useful tension between structure and agency. On the one hand, events and experiences are framed; reported events are pre-organized and never come to us in raw form. On the other, we frame events and experiences; we are active processors of meaning. The fact that framing is never absent from media reports makes it possible to contest the frames in question, while our own activity potentially allows us to decode what is presented to us in different ways. In the first case the media become “a site on which various social groups, institutions, and ideologies struggle over the definition and construction of social reality” (Gurevitch & Levy 1985). Participants in such contests view their success and failure in terms of the prominence in the media of their meanings and interpretations. The idea that social critics and movements can influence political leaders and the public is ultimately founded, in this context, on the underdetermined nature of media discourse, which is open in principle to their efforts. Gamson and Modigliani suggest that their success, as well as that of others who wish to propagate their ideas through the media, depends on a combination of cultural resonances, their own activities, and journalists’ practices (Gamson & Modigliani 1989). Of particular importance however are shocks of one sort or other, which require sponsors to reassert their preferred frame and accommodate the development within it – rather like the anomalies that ‘normal science’ seeks to account for (Kuhn 1962). The frame shifts in the career of nuclear power identified

by Gamson and Modigliani exemplify this. In doing so they demonstrate the instability of media discourse and its openness to challenge.

The second strand of research focuses on the *active construction of meaning* by consumers of media. First, texts are polysemic; they may be offered with a preferred meaning and point of view, but this may be resisted (Hall 1992, Eco 1979, Fiske 1987). Second, consumers have alternative sources of information – including experiential knowledge of their own or gleaned from others, and popular wisdom. Use of these sources may result in stances that amend or contradict the positions they are invited to accept. Gamson *et al* review research studies that explore this. Ethnographic studies have examined how viewers make sense of TV, including variations in how this is done (Hobson 1980, 1982; Palmer 1986; Liebes & Katz 1990; Livingstone 1990; Liebes 1991; cf. Gamson *et al* 1992, 389). Liebes (1991) compared the readings of Israeli television news in Jewish and Arab families, finding that while hardline nationalist Israelis accepted the news at face value, hardline Arabs read it oppositionally and inverted the point of view suggested by the text. Jewish and Arab moderates negotiated with the text, confronting it with their personal and collective experiences.

Gamson (2002) examined a series of what he called ‘peer group conversations’ among American working people on the issues of affirmative action, nuclear power, troubled industry and Arab-Israeli conflict. Some groups were able to construct shared frames that integrated media discourse,

popular wisdom and experiential knowledge. The particular combination of resources used and their ability to integrate them differed from issue to issue, with media discourse playing a primary role on the Arab-Israeli issue but a secondary role on affirmative action. In addition Gamson found components of 'collective action frames', or forms of political consciousness supportive of political action. Graber (1988) concluded from open-ended interviews with individuals who had identified their major source of news, that media impact depends on the salience of the issues for the individual, and that individuals evaluate news in light of past learning and actual or vicarious experience.

3.3 Conclusion

I began this chapter by saying that an adequate theory of democracy must take account of the background social conditions that affect whether and how democratic ideals can be realised. In a contemporary context two important issues for deliberative democracy are moral pluralism and the mediated nature of political communication. Both raise questions not about the theory's desirability *per se*, but about its relevance and fruitfulness. I have argued that Rawls's idea of public reason and Habermas's account of the presuppositions of argumentation do not in themselves give us a clear way of seeing how controversial moral issues might be resolved, but that voting

supplemented by deliberation can improve the legitimacy of decisions when disagreement persists. As Bohman (1996) has highlighted, continued cooperation despite disagreement is reasonable where a democratic association is an ongoing concern, disagreement does not extend to all issues that are urgent for some constituency, deliberation filters out the more unacceptable alternatives, and present minorities can reasonably expect that they might become future majorities by persuading others to join with them.

With respect to the mediated character of the public sphere, there is no doubt that factors like the division of labour and professionalisation of communication, the commercial nature of broadcasting, the active role of the media themselves, and the resources and activities of corporations, represent significant deviations from an ideal deliberative procedure. I have focused on the scope for civil society influence afforded by the media, and the how citizens engage with the media. There are three reasons to think that the deliberative ideal is relevant to contemporary conditions. First, Habermas points to the successes of those who heightened the salience of issues and disrupted normal public decision-making routines. Second, there is the unavoidability of framing and the opportunities for frame contestation that this enables. Third and finally, the active construction of meaning by media consumers.

The Effects of Public Discussion

As the previous chapter highlighted, much of the exchange that makes up deliberative democracy occurs through the media at a spatial and temporal remove. Members of the public, much of the time, are only virtually present to one another. We can recall here Benedict Anderson's description of nations: these are *imagined* communities. They are imagined because "the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion" (Anderson 1991, 61; see also Warner 1992). This shows up in the "extraordinary mass ceremony" by which the daily newspaper is read. A great deal of the current interest in deliberative democracy, however, rests on bringing people together in a single place or time to deliberate. The 'vote-centric' model of democracy is giving way to a 'talk-centric' model (Chambers 2003, 308 Delli Carpini). Where political legitimacy is conceived in terms of giving an account – articulating, explaining, justifying and so on – this in turn carries the expectation that real people do it together, for one another, and in each other's company and presence. As Goodin and Niemeyer (2003) remark, the deliberative turn

involves two turns at once: a turn away from the sheer adding up of votes in favour of the consideration of reasons, and a turn away from internal reflection to interpersonal engagement. This turn has given rise to a proliferation of initiatives and experiments designed to bring people together for deliberation, from National Issues Forums to Deliberative Polls, Citizens' Juries, Consensus Conferences, Planning Cells, *AmericaSpeaks* Town Meetings, Study Circles, online forums, and various forms of participatory governance (Gastil & Levine 2005). Bruce Ackerman and James Fishkin (2002) have gone so far as to propose a 'Deliberation Day' – a national public holiday in the U.S. held one week before national elections, where people would assemble together in local halls and debate the issues.

The normative case for deliberative democracy rests in part on empirical premises about the effects of face-to-face discussion in two distinct ways. Recall the normative arguments discussed in Chapter 1 – the procedural fairness of deliberative democracy, the quality of resulting decisions, psychological effects, and the congruence of the deliberative ideal with 'whom we are'. First, the defence of deliberative democracy based on its psychological effects is a conditional and hypothetical one. We need to know whether or not public discussion has these properties, and this is a matter for empirical inquiry. On this argument, the question is whether discussion has *desirable* effects on participants, which would give us a reason for supporting deliberative democracy as a normative ideal. The by-

product argument in Section 1.3 stated that the educative effects of democracy are essentially by-products and cannot alone be the point of democracy. Because of this, the argument made in 1.3 was that if a deliberative model is as good or better with respect to instrumental benefits for justice or efficiency, and if it *also* has these effects as by-products, then we have a reason to prefer the deliberative model.

Second, the model of ideal deliberation (see 1.2) stipulates that participants should reason together conscientiously in the attempt to identify proposals that could be justified to all under conditions of equal and symmetric deliberation. What, we might ask, makes us think that flesh-and-blood individuals will behave in this way in public discussion? Will they not simply disguise their self-interested preferences using the rhetoric of the common good? Within the literature a key move at this stage is to argue that public discussion works *reactively* on participants. If discussion has the effects that we have already referred to, then participants will be led or induced to behave like ideal deliberators. Also, we expect discussion to result in better decisions due to the pooling of information and the clash of arguments. But is this what actually happens, insofar as we have ways of measuring it? The argument in this second context relies on claims about the effects of deliberation, just as before, but the issue is now *the relevance of the ideal model to real-world decision-making*. Why should we expect *discussion* to be anything like *deliberation* as I have defined these?

Strictly speaking, deliberative democratic theory does not stand or fall depending on whether face-to-face discussion has effects of this kind. First, the argument from effects is not the only defence. Second, as I have argued, the ideal is an abstract critical perspective from which to evaluate the conditions of public discourse. Third, we have said that deliberative exchange is mediated. Mediated deliberation is less dependent than face-to-face discussion on informal norms of relative politeness, the acceptance of others' integrity and *bona fides*, and so on. If these norms are strained too far in public discussion, then it is reasonable to assume that it will come to a halt. This is not the case in the communications transmitted by newspapers, TV, public campaigns and the like. For this reason public communication can easily be incorporated within the repertoire of social movements and their "contentious politics" (McAdam, Tarrow & Tilly 2007; Tilly 2004) – which includes efforts to ensure the prominence of their preferred media frames. However, if public discussion *did not* have at least the short-run effects ascribed to it, I doubt that deliberative democracy could really survive as a perspective that theorists would want to defend. Perhaps it could, but we would lose one of the main sources of the enthusiasm for deliberative democracy. Furthermore, the real world initiatives and forums mentioned above would lose their point. These initiatives and forums, together with experimental and survey research, are therefore testing-grounds for empirical

deliberative theory with implications for deliberative democracy's overall justifiability.

In this chapter I explore personal effects attributed to public discussion, and group dynamics. I review how the claims have fared in empirical research. I concentrate for the most part on research involving ordinary citizens. Some work has been done on public discussion involving legislators and elites (Bessette 1997, Elster 1998*b*, Steiner *et al* 2004, Crocker 1998, Van den Daele 1994, Nanz & Steffek 2005), but so far this research is quite thin. There is a much richer literature on lay citizens. One reason for this is that efforts by practitioners to bring citizens together for this purpose predate the current interest in deliberative democracy. Another is that deliberative democracy has given an impetus to attempts to increase political participation seen as a goal in itself. A third reason is that the older group psychology tradition can be used to shed light on these issues.

Having described the state of the general literature on the effects of public discussion, I then introduce the variety of methods for bringing citizens together in settings with deliberative intent. There has been a near phenomenal growth in the use of these in recent years. I pay particular attention to deliberative polls and citizens' juries,²⁷ two of the standard-bearers among models of citizen deliberation, and review the findings from these. This provides a context for the two chapters, which follow, in which I

²⁷ These terms have been registered as trademarks by James Fishkin and Ned Crosby respectively.

describe and analyse an Irish event that combined elements of these two models.

4.1 The theory of face-to-face discussion

What effects should we expect public discussion between ordinary citizens to have? Broadly speaking, there are two sorts of these. The first are cognitive and epistemic, and the second are affective and moral, though the boundaries between these are not always sharp. In addition, hypotheses and findings about the dynamics of small groups are important in the literature. I begin with hypotheses (4.1.1 – 4.1.3) and then review empirical findings (4.2.1 – 4.2.3)

4.1.1 Cognitive and epistemic effects

Firstly, *participants should become more informed*, because of their own increased attention and reflection, and because of their exposure to others' statements and arguments (Luskin, Fishkin & Jowell 2002). For observers of contemporary public opinion, this would represent a major gain. A great deal of research shows that people are very poorly informed about politics. They are typically unable to identify their representatives or place parties on the ideological spectrum (Delli Carpini & Keeter 1991), and they express

opinions to pollsters on fictitious issues (“pseudo opinions”) (Bishop *et al* 1980). Public discussion should however permit the expression of a greater range of the relevant facts, opinions and arguments. No one person can possess all of the relevant information bearing on complex political issues and their consequences (Manin 1987, Benhabib 1996, Fearon 1998). This is particularly the case, as I have argued above, when people are differently situated and affected. Further, as John Stuart Mill famously argued, a lack of contact with oppositional viewpoints deprives people of the opportunity to exchange error for truth, or to strengthen their commitment to their true beliefs (Mill 1956; cf. Mutz 2002, 111). Truth emerges from the contest of perspectives, and it is badly served by the absence of vigorous debate.

Second, *individuals’ preferences may also become more complete and coherent, and their attitude structures more consistent*. This should occur as a consequence of greater information, and because discussion provides an opportunity to sift preferences and their implications and interconnections. There is no reason to suppose that transitive and complete preference orderings can be attributed to people prior to debate (Manin 1987, Benhabib 1996). People have incomplete information, particularly about the likely consequences of alternative choices, and they want conflicting things. In the standard example, most people would like a reduction in taxes and an increase in social services, but specific policy changes in either respect will

have budgetary implications and unintended effects that are difficult to discern at the outset.

The notion of attitude structure refers us to the characteristically fragile attitudes of poll respondents. 'Nonattitudes' are those attitudes of poll respondents that switch in a quasi-random manner over time (Converse 1964, Asher 1974, Iyengar 1973). Attitude structures have weak consistency, the less they are organised into hierarchically ordered ideological schema. Respondents with weak consistency find it more difficult to grasp abstract ideological terminology, and it is harder to predict their attitudes on one issue from their attitudes on another, even though these issues are routinely associated with each other (e.g. taxes, welfare supports, state control of industry). The typical organising schemas have been those of the partisan divide in the U.S. (liberal and conservative) in the literature that grew out of active use, 'levels of conceptualisation' measures (Campbell *et al* 1960, Luskin 1987) and consistency measures of 'attitudinal constraint' (Converse 1964, Luskin 1987). 'Political sophistication' captures the size, range and constraint of political cognitions (Luskin 1987). In the U.S. the early literature revealed an elite-mass divide in which all but a tiny minority scored poorly on these measures of political sophistication, with many being unable to accurately comprehend the basic terms of political debates (Campbell *et al* 1960, Converse 1964). It has been argued that the situation has improved since these measures were first used (Nie & Anderson 1974; Nie & Verba

1975; Nie, Verba & Petrocil 1979), but a steep gradient in sophistication remains.

Third, there are claims that connect discussion with autonomy. A reason for rejecting social choice in favour of deliberative democracy was provided by Sunstein (1995) and Elster (1997) on these lines. Governments should help to provide opportunities for critical reflection where preferences may be objectionable or adaptive to unjust background institutions and limitations in opportunities (see 1.2). The normative justification of deliberative democracy also included the claim that deliberation (or discussion) has educative effects (see 1.3). We have seen (1.3) that Pateman introduces measures of *political efficacy* as indicators of autonomy. Political efficacy is typically referred to as *external efficacy* (citizens' perception of the responsiveness of the system), with *personal efficacy* (citizens' feelings of personal competence to understand and participate effectively in politics) referred to as *internal efficacy*. Public discussion may lead to (at least short-run) increases in external and external efficacy because participants' self-confidence may grow as a result of increased understanding and interest.

In sum, in cognitive and epistemic terms the potential consequences of public discussion are more informed individuals, having more stable and more integrated attitudes, and having a greater sense of internal and external efficacy.

4.1.2 Affective and moral effects

Public discussion may also have the potential to temper self-interest and enlarge people's concern. Firstly, as Kant's account of publicity recognised, certain kinds of claims and arguments *will not be made publicly* before an audience (Elster 1997, Fearon 1998, Cohen 1997a). In a secret ballot people can vote as they wish, but in discussion, they have to argue for their preferred alternative. Proposals that are obviously self-interested or prejudiced will not be made for two reasons. On the one hand, it is pragmatically impossible to convince someone else to accept a proposal that is patently self-interested at the expense of others. Discussants are obliged, if they are to be persuasive, to justify proposals in terms that make them seem attractive from the point of view of all considered. On the other, it will often be shameful or embarrassing to argue in nakedly self-interested terms, in the same way that the bald expression of prejudice may be embarrassing. Nothing prevents deliberators from arguing in these terms, but social norms are likely to prevent it from happening.

Second, while publicity obliges deliberators to justify their demand in particular ways, it may do more than this. Both through having to reason to others on terms they can accept, and through being exposed to the variety of standpoints, deliberators may come to develop *a greater concern for the claims of others*. Constructs here would include *perspective taking* (Oswald

1996, 2002), *empathy* (Oswald 1996, 2002; Luskin & Fishkin, undated manuscript), and *sociotropism* (Luskin & Fishkin, undated manuscript). Mechanisms that might bring this about noted in 1.3 include cognitive dissonance (Elster 1997); the shaping by participation in the process of a commitment to the deliberative resolution of questions (Cohen 1997a); the arousal of perspective taking or empathy in the course of presenting and hearing reasons (Benhabib 1996, Cohen 1997a; see Oswald 1996, 2002); the increase in tolerance hypothesized to result from exposure to alternative perspectives (Mutz 2002); or simply the power of reason to break down selfishness and prejudice (Elster 1997).

Finally, deliberation may breed *tolerance of opposing viewpoints*, seen as valuable in itself (Gutmann & Thompson 1996, Mutz 2002). Mutz (2002, 112) remarks that in his classic study of tolerance, Samuel Stouffer (1955) suggested that exposure to conflicting views was the main reason why education and tolerance were so closely related. The reason is that such contacts enable individuals to conceive of alternative opinions, experiences and values, and it loosens their presumption that a single perspective is mandatory. A number of studies suggest a relationship between diversity of contacts and tolerance (Marcus *et al* 1995, Altemeyer 1997, Gibson 1999; cf. Mutz 2002).

In sum, public discussion “is expected to lead to empathy with the other and a broadened sense of people’s own interest through an egalitarian,

open-minded and reciprocal process of reasoned argumentation” (Mendelberg 2002, 154). Additional suggested consequences include *positive civic attitudes and diffuse effects for the political and social order*, including faith and trust in the democratic process (Fishkin 1997; cf. Mendelberg 2002, Bloomfield *et al* 2001), increased social capital (Fishkin 1997, Putnam 2000; cf. Mendelberg 2002), and the increased legitimacy of the constitutional order (Chambers 1996, Gutmann and Thompson 1996; cf. Mendelberg 2002).

4.1.3 Group dynamics

Two issues of concern in the literature are *inequalities within public discussion* and *conformity effects*. I noted in 1.1 that critics have insisted that deliberation should not be narrowly interpreted in terms of formal and adversarial argument. Young (1996, 2002) and Sanders (1997) develop this with the warning that the settings of public discussion may be highly unequal. Sanders warns that “taking deliberation as a signal of democratic practice paradoxically works undemocratically, discrediting on seemingly democratic grounds the views of those who are less likely to present their arguments in ways that we recognize as characteristically deliberative. In our political culture, these citizens are likely to be those who are already underrepresented in formal political institutions and who are systematically

materially disadvantaged, namely women; racial minorities, especially Blacks; and poorer people” (Sanders 1997, 349). There are two aspects to the problem that Sanders raises. The first is that the relevant capacities are likely to be unequally distributed; some are more likely to be articulate and persuasive. The second is that higher status people are more likely to have their contributions taken seriously. Both of these mechanisms may lie behind the finding in studies of legal juries that men routinely talk much more than women do (Hans & Vidmar 1986; Marder 1987; Hastie, Penrod & Pennington 1983; cf. Sanders 1997; see also Mendelberg 2002). This is problematic because those who speak the most are likely to be the most persuasive, and it is the quantity, not the quality of their remarks, that drives the perception (Marder 1987; cf. Sanders 1997). Classroom studies of interracial groups also confirm the finding that higher-status Whites are more active and influential in collective problem-solving discussions (Cohen 1982; cf. Sanders 1997).

A second issue is whether dissent will be minimised with jurors going along with the majority view. Sunstein (2000, 2002) has introduced this issue in the context of the literature on *group polarisation* (see also Mendelberg 2002; Delli Carpini, Cook & Jacobs 2004). This occurs where members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members’ predeliberation tendencies. Sunstein includes a number of illustrations. When affirmative action is under attack

and a number of professors who are inclined to be supportive of it come together to discuss it, they will end up being *even more* in favour of it. After a nationally publicized shooting at a high school, if a group tentatively in favour of gun control discuss it together, they will end up being *much more* strongly opposed, and so on (Sunstein 2002). The problem is related to the 'severity shift' (Schkade, Sunstein & Kahneman 2000). When it comes to punitive damage awards in mock-jury experiments, for *any* dollar award above zero, the general affect was to increase awards above those of the median voter. This is attributed to a 'rhetorical asymmetry' where, other things being equal, the person urging higher awards comes across as more convincing than the person urging lower awards (Sunstein 2002).

Polarisation is not in general attributed to this mechanism however. The first potential cause is *social comparison*, which is based on the intuition that people want be perceived favourably by others and to perceive themselves favourably. People may want to take a position of a socially preferred sort. No one knows what this will be until others reveal their views, but once people see what the rest think, they will generally not want to be an outlier (though conversely some may disagree simply in order to be an outlier). The second potential cause is *limited argument pools*. More arguments supporting one side will be expressed in situations where a majority of group members already favour that side. The counter-position will then suffer from the deficit of supporters and arguments. The more

attractive way of interpreting this is to say that the majority is able to offer more novel and valid arguments, and the group shifts for that reason (Burnstein *et al* 1973, Burnstein & Vinokur 1977, Vinokur & Burnstein 1978; cf. Mendelberg 2002). This is fine so far as it goes, but if the minority view is under-represented the outcome is much less appealing.

The more general formulation of the polarisation hypothesis is that normative pressure shifts individuals in the direction of the group mean, whatever that might be. The majority preference has more weight simply because it is more popular; all that is needed to change minds is to expose people to the group's central tendency (Noelle-Neumann 1984, Baron & Roper 1976, Blascovich *et al* 1975, Isenberg 1986, Myers 1978, Myers *et al* 1980; cf. Mendelberg 2002).

4.2 Evidence for micro effects

4.2.1 Cognitive and epistemic effects

One prior question worth attention is the extent to which public discussion occurs among citizens. While many current initiatives intentionally seek to convene citizen deliberation, we might hope for it to occur outside of this in a variety of settings – everyday conversations, homes, schools, churches, community centres, associations, on talk radio and in Internet forums, and so

on. In their study of three American and three matched British communities, Conover, Searing and Crewe (2002) concluded that public discussion is infrequent. The study involved interviews and focus groups with students, parents, teachers and community leaders, and involved random samples of approximately 125 adults in each community. The interviews and focus groups were used to identify political issues most frequently discussed with others. Survey questions were devised to determine the frequency with which survey respondents had discussed fourteen issues in the previous month. These were collapsed into three issue types with confirmatory factor analysis: national-domestic, local, and foreign affairs. The results showed variation across countries, community types and issues. Across almost all of the conditions however, with a few exceptions, some 50%-60% of respondents never or rarely discussed the issues. What discussion did take place tended to occur more often in private spaces between people who knew one another well (home, family gatherings and other social occasions), than in public spaces between those who did not know each other well (work, church, public meetings, bars, with neighbours). The explanation provided in the focus groups was possibly of even more concern. Respondents valued hearing others' testimony and personal narratives, but the authors concluded that most "do not want to hear reasons – either public-minded or selfish ones – for viewpoints that might seriously challenge their own preferences. Nor do they especially want to offer reasons for their own preferences to those with

different perspectives, perhaps because they are unclear about the reasons. But also because they believe...that preferences need no justification” (Conover, Searing & Crewe 2002, 58).

Delli Carpini, Cook and Jacobs (2004) review further research on this question. Eliasoph (1998; cf. Delli Carpini, Cook & Jacobs (2004)) reports a similar finding to the previous one: although 53% of American adults attend meetings of voluntary associations, they tend to assiduously avoid discussions of political issues. Hibbing and Theiss-Morse (2002; cf. Delli Carpini, Cook & Jacobs (2004)) draw much the same conclusion. Brady (1999; cf. Delli Carpini, Cook & Jacobs (2004)) finds that 16% of U.S. adults reported discussing politics with friends “often” and 37% “sometimes”. In addition, 28%-32% have tried to persuade someone how to vote “often” or “sometimes”, based on National Election Study (NES) and General Social Survey (GSS) data. A number of other studies show more favourable results however, including the authors’ own work (Keeter *et al* 2002, Wuthnow 1995; cf. Delli Carpini, Cook & Jacobs (2004))). In a national survey they found that 31% of respondents had tried to persuade someone how to vote, 47% had tried to persuade someone to alter their point of view, and 68% had talked about public issues either face-to-face or over the phone at least a few times a month. Large proportions of the mainly U.S. population surveyed here did not therefore report discussing politics very often, and many sought to avoid it.

Another prefatory issue here is the capacity and motivation of citizens to engage in deliberation of the desired kind. Shawn Rosenberg (2007) has challenged deliberative theory on these grounds, citing the psychological literature on cognition. Research on causal attribution suggests that people attend more to visible and distinctive factors and do not assimilate information in a particularly integrative fashion; they rely more often on cognitive heuristics than on logical reflection or rational calculation; and they have difficulties with the calculation of probabilities. People's judgments are often powerfully influenced by pre-existing prejudices, as shown by the effects that cognitive dissonance and prior cognitive schemas have on incoming information. We tend to favour our own judgments and devalue those of others who contradict us (Rosenberg 2007, 5). Mendelberg (2002) has also highlighted the literature on motivated reasoning which reveals the ways in which people strongly committed to a predetermined view search for evidence to support that view.

These factors are variable and context dependent however. Lerner and Tetlock conclude their review of the accountability literature by saying that "self-critical" and "effortful" thinking is most likely to be activated when decision makers know prior to a decision that they will be accountable to an audience (a) whose views are unknown, (b) that is interested in accuracy, (c) that is interested in processes rather than specific outcomes, (d) that is reasonably well informed, and (e) that has a legitimate reason for inquiring

into the reasons behind judgments. When audiences' views are known, conformity becomes the likely coping strategy for those who are answerable to that audience, while an early irrevocable commitment will lead to defensive self-bolstering (Lerner & Tetlock 1999).

Delli Carpini, Cook and Jacobs conclude from the literature that individuals who anticipate being in the majority are more likely to enter into a discussion situation prepared to ignore opposing views. Those who expect to be in the minority seek out prior information that supports their view, ignore prior information that contradicts it, yet generate more counterarguments in preparation for the discussion, and actively listen to opposing views during it (Delli Carpini, Cook & Jacobs 2004; citing Levine & Russo 1995; Zdaniuk & Levine 1996).

Finally, listening and learning (Boudreau & McCubbins, undated manuscript; citing Lupia & McCubbins 1998) have opportunity costs. People have limited energy and are able to attend to and retain only a fraction of the information available to them (Boudreau & McCubbins, undated manuscript; citing Lupia & McCubbins 1998).

There is however evidence to support a more positive picture. Delli Carpini, Keeter and Jacobs note Gamson's (2002) work on the prevalence of frames in focus group-like discussions, in which he concludes that ordinary citizens discuss affirmative action, nuclear power, international conflict and economic retrenchment in a sophisticated way. In particular (as mentioned in

the previous chapter), their conversations draw on a variety of sources that go beyond media discourse, including experiential knowledge and popular wisdom.

There is not likely then to be a simple relationship between participation in deliberation on the one hand, and open-minded and unbiased reasoning on the other. The evidence above does however count against the expectation that all relevant information and viewpoints will find unhindered expression during deliberation. What needs more investigation is the question of what conditions are most favourable to deliberation, given what is known about cognition. We need more studies of the effects of variations in mediating factors on dependent variables of interest. These studies are starting to find their way into the literature. Examples include: Mendelberg and Oleske's (2000) quasi-experimental comparison of an all-White and a mixed discussion of school desegregation; Gastil's (2003) study of the relationship between perceived discussion balance and issue knowledge, attitude integration and misperception of public attitudes; Boudreau and McCubbins (undated manuscript) study of whether penalties for lying and the threat of verification enhance the truth-telling of expert speakers and the correct judgments of deliberators; and finally the studies of Gastil *et al* (2007), Barabas (2004) and Morell (2005) below.

Barabas (2004) tested three individual-level hypotheses using panel survey data from a deliberative forum combined with a content analysis of

contributions. The hypotheses were that: (H₁) citizens who deliberate will significantly increase their correct responses on objective knowledge questions; (H₂) aggregate opinion will move significantly in the direction of consensual deliberation (defined as at least two-thirds of the directional statements on one side of the policy option); and (H₃) opinion strength will moderate opinion change (i.e. those who possess weak (strong) prior opinions will change the most (least)). In other words, we should see aggregate opinion change when open-minded participants encounter different perspectives and come to a consensus. The analysis of the panel data showed that deliberators learned significantly more from pre- to post-test compared to the matched control group (confirming H₁). Significant aggregate opinion change was observed on one of three policy issues, and this was the only one on which there had been verbal consensus, as defined (confirming H₂). Finally, H₃ was confirmed on all three options though statistical significance was found for only one, and the differences were smallest for the issue on which there had been verbal consensus.

Searing, Solt, Conover and Crewe (2007) used cross-sectional survey data to investigate the relationship between frequency of political discussion and political knowledge. The measure of discussion was a principal-components factor index of four measures of frequency ("the place where you work", "at church or synagogue functions", "at public meetings", and "with neighbours") plus a measure for discussion with "people with different

views from your own". The knowledge item was an index of seven 3-point responses to identification questions about political leaders and organisations. The authors used a survey of married or cohabiting parents of secondary school students to test a two-stage least squares model (2SLS). This allowed them to investigate the direction of causation by picking out instrumental variables that affect independent variables in the model without directly affecting the dependent variable. For instance, they argue, people whose spouses regularly vote tend to vote more often themselves. However, the frequency of one's spouse's voting should not be expected to increase the extent to which one discusses politics *publicly* except indirectly as a consequence of voting more often. Similarly, those whose spouses often discuss politics publicly, also do so often, though one's spouse's frequency of public discussion should not directly affect one's frequency of voting. In consequence, an estimate of a respondent's voting can be derived from their spouse's voting, and this can be used to determine the influence of their frequency of voting on their frequency of discussion. Similarly, an estimate of a respondent's frequency of discussion can be derived from spouse's discussion, and this can be used to determine the influence of their frequency of discussion on their frequency of voting. The 2SLS results therefore control for reciprocal effects. The results show that public discussion has a strong and statistically significant causal effect on political knowledge, while at the

same time, more knowledgeable individuals tend to publicly discuss politics more often.

I turn now to research that goes beyond information gain to look at increases in political sophistication and efficacy. Using data from National Issues Forums (NIF) Gastil and Dillard (1999a) tested a series of hypotheses about the effects of discussion on sophistication:

H1: Participants with more formal education will express preforum opinions that reflect:

H1a: greater internal coherence (inter-item correlations within attitude scales)

H1b: greater schematic integration (positive correlation of similar scales)

H1c: greater schematic differentiation (negative correlation of dissimilar scales)

H1d: lower attitudinal uncertainty (fewer “don’t know” responses on questionnaire items)

H2: In comparison with preforum opinions, postforum political views will show:

H2a: greater internal coherence (increase in correlations within attitude scales)

H2b: greater schematic integration (increase in magnitude of positive correlation of similar scales)

H2c: greater schematic differentiation (increase in magnitude of negative correlation of dissimilar scales)

H2d: lower attitudinal uncertainty (decrease in number of “don’t know” responses on questionnaire items) (Gastil & Dillard (1999a, 6/7).

Across seven issues and eighteen scales there were few significant differences between graduates and high school students on H1a, though non-significant differences tended to be in the right direction (for all but two). The same was true for H2a (significance for 3 of 18, a non-significant increase for the remaining 15). H1b (significance for 3 of 10, a non-significant increase for a further 4) and H2b (significance for 9 of 10, a non-significant increase for the other) were generally supported. H1c (significance for 6 of 12, a non-significant decrease for all but one of the remainders) and H2c (significance for 8 of 12, a non-significant decrease for all of the remainder) were supported. Finally, H1d (significance for 5 of 7, a non-significant decrease for the other 2) and H2d (significance for 7 of 7) were also supported.

Morell (2005) reviews previous studies on the effects of the independent variables of political participation and participatory workplaces on political efficacy as the dependent variable. He focuses on the relationship

between discussion and internal efficacy, suggesting that a mix of qualitative, anecdotal, and questionnaire evidence point to a link, though the evidence is mixed (citing Gastil & Dillard 1999b; Doble, Higgins, Begasse & Fisher 1996; Smith 1999; Gastil 2004; Walsh 2003). Morell measured students' *global internal political efficacy* using a four-item index, scaled on five points from strongly agree to strongly disagree ("I consider myself well-qualified to participate in politics", "I feel I have a pretty good understanding of the important political issues facing this country", "I feel I could do as good a job in public office as most people", "I think that I am as well-informed about politics and government as most people"). To examine *situationally specific internal political efficacy*, a post-test measure of efficacy relating to the discussion itself was used ("I considered myself well-qualified to participate in the group decision-making process", "I felt I had a pretty good understanding of the important issues discussed by my group", "I felt I did as good a job in the group decision-making process as most other people", "I think I was well-informed about the issues discussed by my group"). Subjects were assigned to one of three conditions: *parliamentary procedures* (Robert's Rules of Order), *generative procedures* (based on reciprocity and listening; opinions are first expressed, and every critic must restate their target's opinion), and a *control* condition in which there was no discussion. They discussed three issues (medical marijuana, class grading and school vouchers). On the third issue a voting-only condition was added.

Morell found no significant effect of discussion on post-test global internal efficacy scores in the three experiments, controlling for pre-test scores, and *using the control groups as the baseline constant* in the OLS regression. Using the *parliamentary procedures as the baseline*, there was no significant effect of discussion on post-test situation-specific internal efficacy scores (i.e. no significant coefficient on generative procedures) in two of the experiments. On the third, *in which voting was used as the baseline*, coefficients on both parliamentary procedures and generative procedures were significant. In short then, the only significant difference in post-test scores occurred for situation-specific efficacy when discussion is compared to voting, and regardless of the rules.

Searing, Solt, Conover and Crewe (2007) found more positively on a dependent measure of *internal political efficacy*, though not on a measure of *psychological autonomy*. The latter was a self-characterisation principal components index of three five-point items. These asked respondents to characterise their dispositions to make their own decisions and be their own persons. The former was a five-point agree/disagree American National Election Study (NES) survey item ("I consider myself well-qualified to participate in politics"). Public discussion of political issues had no significant effect on psychological autonomy in either their OLS or 2SLS models. It did have a large and significant effect on internal efficacy in the OLS and 2SLS models. Critically, in the 2SLS model discussion was a

significant predictor of internal efficacy, while internal efficacy was not related to discussion. The evidence in relation to *internal efficacy* from these studies, therefore, is mixed.

4.2.2 Affective and moral effects

The central claims regarding the affective and moral benefits of deliberation are that it filters out self-interested or prejudiced justifications, it leads deliberators to develop a greater concern for the claims of others, it breeds tolerance of opposing viewpoints, and it promotes positive civic attitudes. In relation to the first, James Fearon (1998) (noting the work on “cheap talk” (Austen-Smith 1990, Austen-Smith & Banks 1996)) points out that having to argue publicly only requires the speaker to *appear* to be concerned about others. This does not preclude arguments merely dressed in the language of the common good. Elster (1997, 1998*b*, 2000) makes the same point and explores its implications. If arguing replaces bargaining, firstly, claims of self-interest must be expressed in the language of impartial principle. The trouble is that these are subject to *imperfection* and *consistency* constraints. A proposal that conforms too obviously to self-interest will arouse suspicion. While remaining as close as they can to their ideal point, speakers need to find some impartial equivalent that is sufficiently diluted to make it attractive to others. If a speaker adopts an impartial argument to disguise interest or

prejudice, and subsequently deviates from it, her opportunism may become manifest.

Secondly, threats must find warning equivalents. The substitute for “If you do X, I shall punish you by doing Y” will be “If you do X, you will bring about Z.” These however are subject to *plausibility* constraints. Elster (2000) suggests that the consequences of substituting impartial arguments for self-interest may, on the whole, be beneficial (2000, 418). Yet as he demonstrates, the ingenuity with which imperfection constraints may be employed is troubling. One of his examples is a decision by Yale College in the 1920s to limit the admission of Jews. Not wanting to use an explicit quota, they consciously adopted a policy of geographical diversity. Since Jewish applicants predominantly came from New York City, this measure had the desired effect. A second example is the historical use of literacy requirements to keep Blacks or Catholics out of politics.

Mendelberg and Oleske (2000) found insincere uses of the language of principle (confirming peoples’ reluctance to publicly make baldly racist statements). Using videotape recordings, they compared an *all-White* town meeting deliberation on school desegregation to a *mixed* deliberation in which Whites argued against other Whites, Hispanics and African Americans. In the all-White meeting (Leonia), arguments against desegregation appeared to have nothing to do with race and to represent generalisable concerns: children should not be denied schooling in their own

neighbourhood, the quality of education should not be allowed to deteriorate, property values should not fall, outsiders had no business telling residents what to do, and so on. However, these claims ignored the facts (school desegregation would involve no significant movement of children to other schools, and it had been widely reported in local newspapers that property values in two other similar regions actually increased as a result of desegregation). These apparently generalisable concerns then, hid covert prejudice.

The mixed meeting (Englewood) began with accusations of coded racism against Leonian residents. Those from outside Englewood countered with similar arguments to those that had been used at the first meeting, and introduced others, all of which were met with hostile opposition from Englewood speakers. The outsiders' ostensibly non-racist arguments were decoded and challenged as racist, and the result was a bitter, conflictual exchange. In the first meeting then, subtly prejudiced language was used, while the second descended into a war of words. Mendelberg and Oleske suggest (following Mansbridge 1980) that the cause of the problem was the extent to which participants had entrenched positions on a highly divisive issue.

Mendelberg (2002) has also extensively reviewed the small group psychology literature for evidence bearing on respectful hearing and tolerance. *Social dilemma experiments* are collective choice problems where

individually rational behaviour is collectively irrational. No circumstance increases co-operation in social dilemma experiments more dramatically than face-to-face communication (Ostrom 1998, Bornstein 1992, Dawes *et al* 1990; cf. Mendelberg 2002). Talk allows participants to build trust and to embrace common interests as their own. The more “deliberative” the discussion, the more cooperation it produces. Clearly however, within the terms of the analysis, this is not selfless all the way down. In addition, when social dilemmas involve multiple groups, communication can enhance cooperation between individuals but worsen it between groups (Insko *et al* 1993, Bornstein 1992; cf. Mendelberg 2002).

Work on *minority influence* suggests that minorities can have influence in ways that majorities cannot (Moscovici 1976, 1980, 1985; cf. Mendelberg 2002). The group’s norms are the crucial factor. When the norm accents the need to reduce or control disagreement, communication pressures the minority to conform. When it highlights the value of originality, the innovative are the most influential. Some studies show that when minorities seek to convince majorities to change their minds, they may not succeed in changing the vote, but they can prompt reflection on new alternatives. This outcome does not occur when the roles are reversed (Nemeth 1986; Nemeth & Kwan 1985; Nemeth & Wachtler 1983; Turner 1991; cf. Mendelberg 2002). Minorities do enhance majority’s information searching and processing (Nemeth & Mayseless 1987; Nemeth & Rogers 1996; cf.

Mendelberg 2002). However, it may be the case that this only occurs when the minority offers a view that seems unusual for that minority (Wood *et al* 1994; cf. Mendelberg 2002) or when its view appears to be grounded in objective fact (Moscovici 1985, Wood *et al* 1994). The minority can prod the majority to ask themselves *why* the minority thinks as it does, prompting a “conflict of perceptions” that obliges majorities to try to reconcile their perception of reality with that of the minority (Moscovici 1980, 125; cf. Mendelberg 2002). This apparently positive finding is however complemented by findings which support the interpretation that this same effect is due to the ability of a unanimous minority to set the overall group norm about what is right (Turner 1991; cf. Mendelberg 2002). The influence of the minority is then more socially driven.

In situations of conflict, rather than establishing mutual respect, language can foster antagonism. For instance, the *linguistic intergroup bias* (LIB) involves two converse tendencies. First, to use *abstract* terms to describe an in-group’s positive actions and an out-group’s negative actions. Second, to use *concrete* terms to describe the in-group’s negative and out-group’s positive actions (Maass *et al* 1989, Maass & Arcuri 1996; cf. Mendelberg 2002). The LIB in Italian media coverage of the Iraq conflict was more pronounced during the Gulf War than afterward (Maass *et al* 1994). The LIB appears to elevate personal and group esteem, and undermines feelings of attraction and closeness, thereby undermining the

possibility of empathy. Language can however create solidarity, where the other's first name and the first person plural are used (Sornig 1989, Dawes *et al* 1990), though the feelings of affinity and closeness can result in ethnocentrism towards excluded out-groups. Overall Mendelberg concludes that deliberation is most likely to fail when strong social pressures or identities exist, conflict is deep, and the matter at hand does not centre on facts (Mendelberg 2002, 181).

Other social psychology research shows some promise. Harff (1987) shows that exposure to short written accounts of human rights atrocities can translate into empathy for victims and support for remedial action (Harff 1987). In mock-trial studies in which empathy for defendants is deliberately aroused, subjects are more lenient in their treatment of defendants (Archer, Foushee, Davis & Aderman 1979; Haegerich & Bottoms 2000).

These effects have been disaggregated. Oswald (1996) distinguishes *cognitive* and *affective perspective taking*, *empathic arousal* and *altruistic responding*. Arousal was measured using adjectives ('concerned', 'warm', 'empathic', 'compassionate', 'soft-hearted'). Subjects selected their response from a five-point scale running from *does not at all describe how I feel* to *describes how I feel really well*. Altruistic responding was operationalised as the number of hours a research subject volunteered to help counsel other adult students. Cognitive and affective perspectives were induced by instructing participants to attend to (a) the *thoughts* of the stimulus person,

(b) the *feelings* of the stimulus person, or (c) *distracting, irrelevant details*.

Oswald found that those in the affective condition reported greater empathic arousal than control participants, while those in the cognitive condition offered more help than those in either of the other conditions. Oswald (2002) followed this by manipulating the affective demeanour (*warm and appealing* or *resentful and anxious*) and cognitive processes (*clear and logical* or *confused*) displayed by the target person. She also manipulated the perspective taking focus (*affective* or *cognitive*) of participants. Results showed, contrary to the previous findings, that those in the affective perspective taking condition volunteered more time. There was an interaction effect between affective perspective taking and positive affective demeanour conditions, and between affective perspective taking and confused cognitive process conditions. Maner, Luce, Neuberg, Cialdini, Brown and Sagarin (2002) found however that the empathy-helping relationship disappeared when a feeling of “oneness” (perceived kinship or shared group identity) with the victim was controlled for.

These findings suggest there is a relationship between perspective taking and willingness to help, and between empathic arousal and willingness to help, though the evidence (on the relative effects of cognitive and affective perspective taking) is not consistent. What it does not show of course, is *the degree to which deliberation induces perspective taking*. We have seen above however that minorities can induce this, though this varies with factors such

as offering an unusual position and being perceived to have arguments based on objective fact rather than subjective assessments – and there is disagreement in the literature about the extent to which the effect is socially driven.

Diana Mutz (2002; see also 2001, 2006) has investigated the effects of exposure to heterogeneous political viewpoints using data from representative national telephone surveys in the U.S. The surveys included a battery of items on the frequency with which respondents talk about politics with up to three discussants, and whether they generally agreed or disagreed with the discussants' viewpoints. Mutz combined this with information on the respondents' partisanship and presidential preference to create measures of the frequency of discussion with politically consonant and dissonant partners. Open-ended questions were used to tap respondents' awareness of rationales for their own and others' views. Political tolerance was also measured by asking respondents to volunteer their "least liked" group, and then asking them about their feelings toward extending civil liberties to this group. Mutz followed up with a controlled experiment using a series of pre and post-test questions. She concludes that exposure to cross-cutting views does not appear to play a significant role in deepening peoples' knowledge of *their own* issue positions, but it does tend to familiarise them with *opposing viewpoints*, a difference with statistical significance. Significant positive

effects on political tolerance were also observed, but these were quite modest.

I have mentioned the work of Searing, Solt, Conover and Crewe (2007) above. They also used frequency of public discussion as a dependent variable in a model involving principal components index measures of *sense of citizen duty*, *government responsiveness*, *political participation*, *protest participation*, *civic engagement*, *community identity*, *neighbouring*, *political tolerance* and *public spiritedness*. The OLS results showed a significant effect for citizen duty but this was greatly reduced in the 2SLS model. Public discussion had a strong and significant effect in both models for government responsiveness, though the converse was not borne out. The same was true for political participation, while for protest participation, the strong and significant effect disappeared in the 2SLS model. Public discussion had strong and significant effects on civic engagement and community identity in both models, while the reciprocal relationships were also strong and significant. Results were similarly positive for neighbouring, but not for political tolerance. The small but significant effect in the first model faded in the second. A parallel result was found for public spiritedness, with neither discussion nor public spiritedness having an effect on the other.

4.2.3 Group dynamics

So far, findings on group dynamics processes are derived almost entirely from the social psychology literature, which is cited in support of the warnings made in theoretical reflections on deliberation (such as those of Sanders (1987) and Sunstein (2000, 2002) above). Two deliberative studies worth mentioning however are Gastil, Burkhalter and Black (2007) and Conover, Searing and Crewe (2002). Gastil and his colleagues measured 267 trial jurors' "deliberative" experiences in 55 juries by asking them to indicate their level of agreement on a 5-point Likert scale with the following statements: 'Jurors thoroughly discussed the relevant facts of the case', and 'The jury thoroughly discussed the instructions the judge provided'. The level of respectful listening was measured using three items: (1) 'All of the jurors listened respectfully to each other during deliberation', (2) 'How were you treated by fellow jurors' (less than satisfactory, satisfactory, good, very good, excellent), and (3) 'The other jurors gave me enough of a chance to express my opinions about the case'. Average scores were heavily skewed towards the top end of the scale (means of 4.51, 4.35, 4.41 and 4.5), falling between *agree* and *strongly agree*. The averages of the minimum scores in the 55 groups were 4.04, 3.73, 3.91 and 4.02 respectively. Conover, Searing and Crewe's (2002; see above) findings for public discussion were less encouraging however. They found that women, the old and the poor were

consistently under-represented among the high discussants and over-represented among the low discussants in their sample, for both private and public discussion. The problem was more severe for public than it was for private discussion.

4.3 Deliberative polls and citizens' juries

4.3.1 Public involvement and deliberative forums

Deliberative polls and citizens' juries are two of a variety of recent innovations in citizen deliberation. The growth of these in recent years has been substantial, driven by the efforts of independent research institutes and public interest organisations, though sometimes commissioned by state bodies. The objective of deliberative practitioners has been to recruit panels of citizens to what are often high-profile events, at great financial cost. Polling organisations have been commissioned to recruit participants, and in some cases the media have relayed the event back to the larger public. While these projects were initiated in the 1970s (by Ned Crosby in the U.S. and Peter Dienel in Germany), it was really only in the 1990s that the surge in these occurred.

This growth took place against the background of an older trend on the part of state agencies to engage in various forms of public consultation.

Langton (1978*a*) remarks that the 1970s in the U.S. were marked by a paradox in civic attitudes and behaviour. On the one hand there were increasing signs of citizen alienation and withdrawal. On the other there was an explosion in citizens' organisations and public interest groups, and a whole series of efforts whose declared intention was to make government more accessible, accountable and responsive to citizens. Commentators have continued to highlight trends towards citizen discouragement and apathy, or to complain that standard political institutions have grown remote and unresponsive. Involvement efforts are offered as part of the solution (Box 1996; Putnam 2000; Timney 1996; Thomas 1995; Simrell King, Feltey & O'Neill Susel 1998; Bloomfield, Collins, Fry & Munton 2001; Coote & Leneghan 1997; Crosby, Kelly & Schaefer 1986). Others have interpreted these developments as an attempt by state agencies to shore up public approval and legitimacy in the context of unpopular decisions and heightened citizen opposition (Harrison & Mort 1998; Langton 1978*a*, 1978*b*; Pratchett 1999*a*; Rosener 1978; Rowe & Frewer 2000; Webler & Renn 1995).

Langton (1978*a*, 1978*b*) distinguishes the 'citizen action' and 'citizen involvement' movements. The former refers to the spontaneously emerging citizens' organisations and public interest groups that have been on the increase since the 1970s, while the latter refers to intentional efforts by government to mandate public agencies to engage in consultation. Citizen action "is initiated and controlled by citizens for purposes that they

determine. This category includes such activities as lobbying, public advocacy, and protest". Citizen involvement "is initiated and controlled by government to improve and/or gain support for decisions, programs, or services. This category involves such activities as public hearings, consultation with advisory committees, and attitudinal surveys" (Langton 1978*b*).

Mandated public consultation has been part of successive waves of administrative reform (Langton 1978*a*, Webler & Renn 1995), most recently in managerial drives that have sought service efficiencies (Wistow & Barnes 1993). In the U.K. under the Labour government these have been tied to an ambitious programme of local government reform (Pratchett 1999*a*, Lowndes, Pratchett & Stoker 2001*a*, 2001*b*). Petts and Leach (2000) have identified a variety of sources from which involvement efforts have originated, the accumulation of which has given us the range of consultation processes attached to various state agencies that we now have. In particular they highlight land-use planning, regeneration programmes, sustainable development, risk communication, service delivery, democratic deficit concerns, and declining trust.

The range of involvement methods is very wide, and deliberative models have now been added to the menu of options available to public bodies that wish to consult with the public. I provide a glossary of involvement methods in Appendix 1. A recent survey of local authorities in

the U.K. (Lowndes, Pratchett & Stoker 2001a) placed involvement methods in five categories: consumerist methods (such as complaints schemes and satisfaction surveys), traditional methods (public meetings and consultation documents), forums (service user, area, issue, shared interest), consultative innovations (interactive websites, citizens' panels) and deliberative innovations (citizens' juries, community plans, focus groups). With the exception of consultative innovations, deliberative innovations were the least commonly used category. Within it, focus groups and community plans were used most often, with citizens' juries used rarely.

Specifically focusing on deliberative methods, Gastil and Levine (2005) distinguish *public judgment* models and *deliberative governance* models. On the one hand, those methods whose aim is to bring citizens together to learn more about the issues and refine their own views. On the other, those whose purpose is to create a temporary advisory panel to feed into government policy or decision-making. Fung (2003) provides a more differentiated schema, distinguishing *educative forums*, *participatory advisory panels*, *participatory problem-solving collaboration*, and *participatory democratic governance* (Fung & Wright 2003; Cohen & Sabel 1997). Collectively he calls these as 'minipublics', referring to Robert Dahl's (1989, 340) notion of the 'minipopulus'. Dahl proposed random samples of 1,000 citizens who would deliberate on each major public area of public policy via telecommunications media, at various levels of government.

What Fung calls *educative forums* aim to create nearly ideal conditions for citizens to form, articulate and revise opinions about public issues. These include deliberative polls and National Issues Forums. *Participatory advisory panels* aim not only to improve the quality of opinion but also to align public policies with considered preferences. These would include the one-off Oregon Health Decisions process that convened a series of town meetings, and citizens' juries, consensus conferences and planning cells. *Participatory problem-solving collaboration* envisions a continuous and symbiotic relationship between the state and the public sphere aimed at solving 'wicked' problems such as failing schools, unsafe streets and environmental degradation. Examples are community policing in Chicago (Fung 2003) and deliberative city planning on the Philadelphia Waterfront (Sokoloff, Steinberg & Pyser 2005). Finally, *participatory democratic governance* is more ambitious, seeking to incorporate citizens' voices directly into policy-making through binding processes. Examples are the Peoples' Campaign in Kerala, India (Thomas Isaac & Franke 2000; cf. Fung 2003) and participatory budgeting in Brazilian municipalities (Baiocchi 2001, Santos 1998; cf. Fung 2003; Wampler 2004).

Some of the principal deliberative forums in addition to deliberative polls and citizens' juries include: National Issues Forums, *AmericaSpeaks* Town Meetings, study circles, consensus conferences, planning cells, citizens' assemblies, and deliberative mapping. *National Issues Forums*

(NIF)²⁸ is a U.S. network of organisations and individuals that sponsors public forums and training institutes. Melville, Willingham and Dedrick (2005) write that in 2003 several thousand forums were held convened by clubs, universities, libraries, and membership groups, while a wide variety of associations conducted workshops and networking activities. Two of the NIF's most major events were the 1996 U.S. National Issues Convention held in collaboration with James Fishkin, and the 2003 National Issues Convention organized by MacNeil/Lehrer Productions. National Issues Conventions have also been held internationally. The number of participants in NIF forums varies, as does the setting. Moderators are however trained by the NIF according to standard protocols, and the NIF provides issue books.

*AmericaSpeaks Town Meetings/Citizens' Summits*²⁹ are generally sponsored by a public official or institution, such as a Mayor or regional planning agency, but are sometimes convened by networks of civic organisations. Hundreds or thousands of people are recruited by quota sampling to participate in a process that aims to provide input into a planning or public decision-making process. These are given background materials and hear opening comments from political leaders. They then engage in facilitated deliberation using networked computers, "theming" (in which each table's comments are fed back to the room, and polling keypads for voting at the end of the event.

²⁸ Melville, Willingham & Dedrick 2005.

²⁹ Lukensmeyer, Goldman & Brigham 2005.

*Study circles*³⁰ are convened in the U.S. with the advice of the Study Circles Resource Center, though they have also been used internationally, particularly in Britain and Sweden. A variety of groups are assisted with advice on planning, recruitment, supporting materials and facilitator training – including neighbourhood associations, religious congregations, cities and towns, states, school districts, schools and colleges (Scully & McCoy 2005). From seventy-five up to five hundred participants have been involved, split up into smaller groups. Each circle progresses through a series of three to five two-hour sessions, devoted to considering solutions and ordering priorities with respect to the issue. Often these conclude with a large-scale event involving public officials and other leaders. Issues have included racism and race relations, education, neighbourhood concerns, alcohol abuse, and criminal justice.

*Consensus conferences*³¹ were developed by the Danish Board of Technology (DBT) for consultation on technology regulation issues. The Danish conferences are public meetings in which some 10-25 citizens meet with experts and often a member of parliament. An advisory committee oversees the process, and the event is open to the public and the media. In the first stage the citizen panel meets to learn about the topic, formulates the questions to be taken up at the conference, and participates in the selection of experts and interest group representatives. During the event itself, questions

³⁰ Scully & McCoy 2005.

³¹ Andersen and Jaeger 1999; Guston 1999; Hendriks 2005.

are addressed to experts on the first day. The morning of the second is used for clarifying answers to questions and for discussion involving participants, experts and the audience, or non-public sessions. The rest of the second and the third day are used for producing a report. Danish topics have included irradiation of foods, genetic technology, motoring, infertility, limit values and risk assessment, chemicals in food and environment, and sustainable consumption. The use of consensus conferences has subsequently spread outside of Denmark.

Planning cells ('plannungszelle')³² are similar in some respects to consensus conference and citizens' juries. Peter Dienel has run them in Germany since the 1970s. Typically they involve six to ten replications, often in different towns or cities, each involving around twenty-five citizens (Hendriks 2005). Participants are recruited by random selection and receive briefing materials. They meet over a four-day period to hear from experts and political leaders, and to engage in deliberation. These are often employed for land-use, environmental or technological issues, and are commissioned by public officials and agencies for the purpose of public consultation.

*Citizens' assembly*³³ is the term given to processes in British Columbia and Ontario in which 100-150 citizens' met regularly to discuss electoral reform. Members of the assemblies were randomly selected from

³² Dienel & Renn 1995; Hendriks 2005.

³³ British Columbia Citizen's Assembly on Electoral Reform 2004; Ontario Citizens' Assembly on Electoral Reform 2007.

electoral lists, met for a series of weekend learning sessions with experts to inform themselves about electoral systems, held some 40-50 public meetings and solicited submissions, and finally met for deliberation over a period of several months before taking a vote on their preferred electoral formula. British Columbians voted against retaining their single member plurality system and recommended the single transferable vote (146 votes for, 7 against). Ontarians first voted on a mixed member proportional system versus the single transferable vote, and chose in favour of the mixed member system. They then voted on whether Ontario should keep its current single member plurality system or adopt the mixed member system (16 votes for retention, 86 for change), and later on whether it should recommend the mixed member system to the people of Ontario (94 yes, 8 no). Prior to referendums on the issue, reports were prepared in each assembly to explain the participants' reasons for their choice of electoral system. Another Ontarian process (the Citizens' Dialogue on the Ontario Budget Strategy 2004-2008³⁴) used town meetings with self-selected citizens (300 in total) in six cities to consider alternative budgetary strategies.

*Deliberative mapping*³⁵ is a form of technology appraisal that aims to combine scientific, expert-driven risk assessment with deliberative public engagement (Davies & Burgess 2004). Both experts and citizens follow a parallel multi-criteria decision making process in which options are defined,

³⁴ Nolte, Maxwell & MacKinnon 2004.

³⁵ Davies & Burgess 2004.

criteria are derived and option performance is evaluated. The aim is to capture the different framing rationalities. The pilot assessed options for addressing the shortfall of organs for transplantation. Seventeen specialists took part in addition to four citizen panels of 8-10 members, recruited by stratified sampling. The four panels met fortnightly for six one and a half hour meetings. Between the fourth and the fifth a one-day workshop was held in which citizens and specialists came together for deliberation. The authors report that citizens altered their prior evaluations depending on how they negotiated the credibility and legitimacy of different kinds of experts (doctors, technology developers, a specialist in complementary medicine, and so on), with varying patterns of trust.

4.3.2 Deliberative polls and citizens' juries

Deliberative polls

Deliberative polling³⁶ was initiated by James Fishkin as a response to the frequently poor quality of citizen's engagement with political issues, as revealed by public opinion research. Opinion polling might have been a boon, Fishkin says. When it was first developed, George Gallup claimed it would be comparable to having the public "in one great room" (Gallup 1939;

³⁶ Fishkin 1991, 1996, 1997; Fishkin, Luskin & Jowell 2000; Luskin, Fishkin & Jowell 2002; Fishkin & Luskin 2005.

cf. Luskin, Fishkin & Jowell 2002). The combination of media and polling would enable the public to virtually discuss issues together and communicate their resulting opinions to government. Yet decades of research have shown that respondents are very often severely uninformed, are markedly unstable in their opinions and have low levels of attitudinal constraint (Converse 1964, Bishop *et al* 1980, Delli Carpini & Keeter 1991, Luskin 1987; see Fishkin 1997; Luskin, Fishkin & Jowell 2002). "An ordinary poll" Luskin, Fishkin and Jowell write, "is designed to show what the public actually thinks about some set of issues, however little, irreflective, and changeable that may be, and generally is. A Deliberative Poll is designed to show what the public *would* think about the issues, if it thought more earnestly and had more information about them. It is a glimpse of a hypothetical public, one much more engaged with and better informed about politics than citizens in their natural surroundings actually are" (Luskin, Fishkin and Jowell 2002, 458).

The basic formula is to begin by selecting a national probability sample of the voting population and use a baseline questionnaire to survey them on a policy domain. Balanced briefing materials are then provided to the sample, allowing them to become more informed on the issue. Participants are brought to a single site where they spend several days discussing the issues in randomly assigned, moderated small groups. They put questions generated by these discussions to balanced panels of policy

experts and political leaders. At the end they are resurveyed, while the event as a whole is recorded for television. The Deliberative Poll is presented as a means of gauging considered preferences, a television programme with its own educative value (apart from any impact of the poll results), and a social scientific quasi-experiment (Luskin, Fishkin & Jowell 2002, 459).

This idea of using random selection recalls the ancient Athenian method of selecting for the *Boule* and for large popular juries, and it has lately been revived by Burnheim (1985) and Dahl (1989), in addition to Fishkin, Crosby and Dienel. Random selection serves a number of purposes. With a complete sampling frame, firstly, it gives all citizens an equal chance of being selected. Secondly (of great importance to the Greeks) it prevents manipulation of the composition of the citizen panel. Thirdly, with regard to representativeness, it ensures that social groups are represented in proportion to their size.³⁷ This in turn is important for two reasons. First, the sample must be representative for us to generalise to the hypothetical society of informed voters. Secondly, random and (in particular stratified) selection should in theory ensure coverage and involvement of social groups who are typically under-represented in standard institutions. To that extent deliberative forums can provide new avenues of civic participation for those

³⁷ Of course it also makes it possible to construct confidence intervals around aggregate attitudinal measures, although these are not reported in accounts of deliberative polls – while citizens' juries tend for the most part to rely on self-reports of attitudinal change.

on the margins of formal politics, and they have been advocated on these grounds (Coote & Leneghan 1997; Smith & Wales 2000; Brown 2006).

The treatment consists of everything that happens from the point of first contact to the post-deliberation questionnaire. It includes: the attention paid to the issues in anticipation of the event; briefing materials; the opportunity to hear and question panels of policy experts; informal conversations; and finally the small group deliberations themselves. A professional polling or market research company carries out recruitment. For control comparisons, several deliberative polls have been accompanied by telephone interviews with separate random samples, at the time of the post-deliberation questionnaire.

The Center for Deliberative Polling carries details of polls that have been held up till now, with reports and media on its website <http://cdd.stanford.edu/>. The site reports that over twenty-two polls have been conducted in the U.S. and abroad. In the U.S. there have been two events at the national level as well as ten local versions. The National Issues Convention – a collaboration of the University of Texas, PBS, MacNeil/Lehrer Productions and the National Opinion Research Center (NORC) – was broadcast from Austin in January 1996. In January 2003 an online Deliberative Poll followed a face-to-face Deliberative Poll in Philadelphia that deliberated with the same briefing materials and took the same questionnaire. Eight regulated public utilities have conducted

Deliberative Polls in their service territories in cooperation with the Public Utility Commission of the State of Texas. In November 1999, the Nike Foundation and Oregon Public Broadcasting conducted a deliberative polling process on education issues with students drawn from the Portland public school system. In March 2002, a local experiment was held at Yale with the fifteen towns in the New Haven metropolitan area on regional economic cooperation between the city and suburbs.

Five national Deliberative Polls have been held in Britain conducted by the television network Channel Four, held on crime (1994), Europe (1995), the monarchy (1996), election issues (1997) and the NHS (1998). In the 1997 poll on the British General Election, the share of Liberal Democrat vote increased substantially (11% to 33%), with drops in support for Labour (47% to 39%) and the Conservatives (26% to 19%). Two national Deliberative Polls have been conducted in Australia, the first before the November 1999 referendum on Australia's proposed change from a monarchy to a republic, and the second on Aboriginal reconciliation in February 2001. These were held in collaboration with Issues Deliberation Australia and were broadcast on national television. In August 2000, the centre collaborated with the Danish publication *Monday Morning* and the University of Southern Denmark to conduct a national deliberative poll before the Danish national referendum on the Euro. The weekend's proceedings were also televised. Internationally, polls have been held in

Bulgaria, China, Greece, Hungary, Italy and Northern Ireland, while in 2007 an EU-wide poll was conducted.

The Northern Irish poll was conducted in Omagh on 27 January 2007, and it was broadcast on BBC Northern Ireland's "Hearts and Minds". The aim was to gauge the opinions of parents of school-aged children in relation to education provision (Fishkin, Gallagher, Luskin, McGrady, O'Flynn & Russell, 2007). Participants were recruited by a market research organisation by means of door-to-door visits, with a random selection of households. Within the sample of 127 participants, 68% considered themselves Catholic and 27.8% Protestant, closely matching 2001 Census figures for Omagh according to the authors. 25.7% considered themselves to be nationalist in orientation, while 11.7% considered themselves to be unionist. 57.5% said they were 'neither'. The authors speculate that this is unlikely to be a true reflection of identity patterns, but instead reflects the sensitivity of the question or the relatively undifferentiated nature of the options. The suspicion here would have to be that those with strong communal identifications were under-represented here, but the authors do not pursue this.

On the issue of curriculum, participants were asked to consider their support for having both academic and technical/vocational schools, for having a system of specialist schools, and for having a system of all-ability schools. A large majority came out in support of the first option both at T₁

and T₂; a bare majority supported the second both at T₁ and T₂ though the percentage dropped between the two periods; and a large majority supported the third at both periods with a drop over time. A large majority of parents therefore supported maintaining the existing system of having both academic and technical schools but also (seemingly contradictorily) supported all-ability schools and a single curriculum. Participants were also asked to consider school collaboration, cross-community sharing, denominational collaboration, and age grouping. On cross-community sharing there was no significant change in opinions; a majority (63% T₁ and 63.8% T₂) favoured a balanced enrolment of Protestant and Catholic pupils. A majority at both periods agreed that schools till now unmixed should not be required to partner with a school from a different religion. There was however a significant rise on the suggestion that if schools needed a partner to deliver the curriculum they should partner with their closest neighbour, even if not of the same religion. Stable throughout was majority support for the idea that if partnerships were to happen, children from the two communities should at least sometimes be taught in the same classrooms. There were significant changes on denominational collaboration, including a shift in which a system of junior-high schools and senior-high schools was preferred to the retention of existing formally integrated schools. On community relations, participants shifted marginally on the question of whether better relations would be achieved by mixing rather than separation (61.3% T₁ and 63.9% T₂). The

percentage in the sample that believed that Protestants were 'open to reason' increased from 36.4% to 52.3%, with an increase from 39.8% to 55.5% in the other direction. Perceptions of the trustworthiness of 'most Catholics' and 'most Protestants' also increased (49.5% to 62.4% on the part of Protestants; 49.9% to 62.4% on the part of Catholics).

Citizens' Juries

Ned Crosby and colleagues at The Jefferson Center, Minneapolis, first ran citizens' juries³⁸ in 1974. Since then the centre has conducted thirty-two projects, detailed on its website at <http://www.jefferson-center.org>. Internationally, jury events have since been run in their hundreds, many of these in the U.K. Citizens' juries bring a group of citizens together to discuss a 'charge' framed by organisers, recruited either by random or purposeful sampling, or by a combination of these. Numbers are small (from 12-24) though juries are intended to be broadly representative of the relevant community. Market research organisations are typically employed for recruitment. Jurors are brought together for between two and four days. They are given balanced briefing materials and hear from expert witnesses to whom they put questions. They then discuss the issue in small group and plenary sessions led by a neutral moderator.

³⁸ Crosby, Kelly & Schaefer 1986; Coote & Leneghan 1997; Smith & Wales 2000.

Citizens' juries are to some extent modelled on trial juries. Ordinary people are randomly selected to perform a public service. Jurors hear argument, testimony and evidence before retiring to deliberate. Facilitated by the small sample size, juries are encouraged to reach a consensus, though the recording of minority views is permitted. Voting may be used but consensus remains the goal. In deliberative polls by contrast, participants are surveyed on their opinions before and after the event, but they are not instructed or expected to come to a collective decision. Citizens' juries produce a verdict or recommendations in the form of a citizens' report. Typically the public sponsoring body is required to respond, either by implementing the decision or by explaining why it disagrees (Smith and Wales 2000, Leneghan 1999).

Juries are typically defended on the grounds that citizens with "no axe to grind" are capable of reaching informed and sophisticated conclusions about public policy when given the opportunity (Coote & Leneghan 1997; Crosby, Kelly & Schaefer 1986; Leneghan 1999; Bennett & Smith 2007; Iredale *et al* 2006; Iredale & Longley 2007). Providing such opportunities facilitates the communication of information about lay priorities and values to decision makers. These priorities and values might otherwise be absent from expert and official perspectives (Davies & Burgess 2004, Fischer 1993, Pickard 1998, Pratchett 1999a, Rowe & Frewer 2000). It is also argued that such opportunities may help to address declining political participation and trust (Coote & Leneghan 1997, Bloomfield *et al* 2001).

A short history of the Jefferson Center is provided on its website. Its most recent jury in 2005, commissioned by the Department of Planning and Infrastructure of Western Australia, considered the issue of community engagement and deliberative democracy. Previous U.S. juries have considered global climate change, metro solid waste, citizens' initiative review, organ transplants, property tax reform, physician-assisted suicide, and a variety of other issues. Juries were held on the St. Paul mayoral race (1989), the Minnesota gubernatorial race (1990) and the 1992 senatorial race in Pennsylvania, in conjunction with the League of Women Voters. In May 1993 Internal Revenue informed the Jefferson Center that its tax-deductible status was to be revoked, retroactive to 1990, and it was to be fined for having run projects to evaluate political candidates on their issue-stands. The centre was in dispute with the IRS for three years before a settlement was reached. No action was taken on condition that the centre would no longer run projects in which candidates were evaluated on issue-stands. The centre followed up with two 1993 national level juries held in Washington D.C. on the federal budget and the Clinton health care plan. Since 2002 the Jefferson Center has closed its office. Through its website it seeks to encourage others and to make referrals.

In the U.K. the citizens' jury model was adopted in the 1990s by the Institute for Public Policy Research (IPPR) and the Local Government Management Board (LGMB). Both of these sponsored a series of pilot

projects in conjunction with health authorities and local government (Coote & Leneghan 1997, Hall & Stewart 1997, McIver 1997, Kuper 1997). The IPPR pilot series of juries considered health care rationing, mental health services, palliative care, and funding for the NHS. The LGMB series considered waste management, the effects on the community of drug taking, local facilities and services, the community in the computer age, and local area improvement. Since then citizens' juries have been held in the U.K. and internationally on a wide variety of issues, particularly in health, health technology, and land-use. These include: health priority setting (Abelson *et al* 2003); screening for breast cancer (Paul *et al* 2008); an older person's jury on food-policy development (Timotijevic & Raats 2007); separate juries on genetically modified food (PEALS 2003; Opinion Leader Research 2003), genetic testing for common disorders in health authorities (Dunkerly & Glasner 1998; Glasner & Dunkerly 1999; Iredale & Longley 1999), the use of predictive genetic testing in life insurance (Bennett & Smith 2007), a young people's jury on "designer babies" (Iredale *et al* 2006); nanotechnologies (Pidgeon & Rogers-Hayden 2007); xenotransplantation (Einsiedel 2002); water quality improvements (Robinson *et al* 2002); stormwater management (Ryan, Rudland & Phelps 2001); public participation in the EU Water Framework Directive (Kangur 2004); options for an unimproved road running through an Australian rainforest (Goodin & Niemeyer 2003); wetlands (Aldred & Jacobs); forest development (Kenyon

& Nevin 2001); Tinside pool on Plymouth Hoe, England (Woodward 2000); transport planning (Quirk 2006); and Scottish Executive communications (Scottish Executive 2007).

In May 2003 an Irish citizens' jury was held in Ballymun, Dublin, convened by Ballymun Regeneration Ltd on the issue of anti-social behaviour. The jury was part of a larger consultation process aimed at devising a community regeneration strategy for a heavily disadvantaged area. 14 randomly selected residents took part in four days of discussions and produced a report for the regeneration company. This was used in the development of its Community-Safety Strategy. The issues highlighted by the jury included the fact that local people were often unaware of social projects being carried out in the area; peer pressure on young people; the need for greater family support; poor relationships with Gardai; drug and alcohol issues; a lack of community ownership; a lack of meeting places for young people and for the whole community; truancy and early school leaving; and a lack of role models (McCann & Scanlon 2007).

4.3.3 Evidence from deliberative polls and citizens' juries

Deliberative polls

In deliberative polls the principal independent variable has been opinion-change from the pre- to the post-survey. As Luskin, Fishkin and Jowell (2002, 466) note, unless participants' opinions change most of the time, then deliberative polling would tell us no more than conventional polling. They distinguish net or aggregate change, and gross or individual change. With respect to aggregate change, Kohut (1996; cf. Merkle 1996) has been critical of the 1996 National Issues Convention, run in collaboration with Fishkin. While twenty opinion questions showed statistically significant changes, sixty-one did not. A change in majority opinion occurred for only seven of the eighty-one items. In response Fishkin would first point to the gross change that this hides – for sixty-six of the questions the average proportion of people who gave a different response at the post-test was 0.42, though this is likely to reflect some degree of random switching (Merkle 1996, 612). Second however, Luskin, Fishkin and Hahn (2007) review net change in policy attitudes and electoral preferences in nine polls and fifty-eight policy indices. 72.4% of the indices show statistically significant attitude change. The mean absolute net change on the 0 to 1 scale to which the indices were normed is 0.096. They argue that this is large given the fact that some sizable

fraction of participants will start near their “full information” position and therefore not shift much, while the maximum net change of 1.0 could only occur if everyone started at one extreme of the scale and ended on the other.

A second dependent variable of interest has been information gain. In their study of the 1994 deliberative poll on crime, Luskin, Fishkin and Jowell report that only three of eight true-false knowledge items showed statistically significant increases (‘Britain has a larger prison population than any other country in Western Europe’ (true); ‘Britain has more people serving life sentences than the rest of the European Community put together’ (true); ‘it is possible to be tried by a jury in a local magistrate’s court’ (false). On the other hand four of the remainder showed slight non-significant decreases (‘British courts are allowed to sentence a murderer to death’ (false); ‘the longest time allowed between general elections is four years’ (false); ‘the number of members of parliament is about 100’ (false); ‘no-one is allowed to be on the electoral register in two different places’ (false)). One showed no change (‘Britain’s electoral system is based on proportional representation’ (false)). An OLS regression accounting for opinion change did find information gain to have a significant effect on four of five multi-item policy clusters.

In addition, group mechanisms accounted for opinion change to some degree. First, for each multi-item cluster, the authors identify the percentage of small group means that polarised between the pre- and post-test. Of the

100 group-issue combinations (20 groups x 5 issue clusters) about half show movement away from the centre (46% when this is defined as the midpoint, 51% when it is defined as the T_1 mean). Second, on two of the five clusters, a respondent's T_1 group mean had a significant effect on their opinion change (from about 25% to 40% of the scale for those at the maximum distance from their group mean at T_1).

In their review of deliberative polls Fishkin and Luskin (2005) claim that: mean information gains of around 10% are common; by and large those who learn most change most; opinion change is usually unrelated to sociodemographics; half the groups polarise and half do not; and policy attitudes and vote intentions tend to be more predictable. Predictability is measured by reference to larger adjusted R^2 s in models in which policy attitudes are regressed on values and empirical premises that would be expected to affect them. In addition two studies (List *et al* 2000; Farrar *et al* undated manuscript, retrieved from <http://cdd.stanford.edu/>) have shown that single-peakedness increases. An individual's preference ordering is single-peaked where, with a set of alternatives on the horizontal axis, the preference ordering can be represented on the vertical axis as either: always upward-sloping, always downward sloping, always horizontal, or always upward-sloping to a particular point and downward-sloping after that point. A profile of preferences (the preferences of a group of individual) is single-peaked where it is possible, using a two-dimensional graph, to find an ordering of

alternatives on the horizontal axis that leaves all of the members curves single-peaked.³⁹ The fact that a profile is single-peaked, as Riker points out (1982, 126/7), means that voters have a common view of the situation though they may differ in their judgements.⁴⁰ Vote cycling cannot occur where a profile of preferences is single-peaked.

Sturgis, Roberts and Allum (2005) have investigated the effect of discussion on attitudinal constraint in five deliberative polls conducted in the U.K. in the 1990s. They defend the use of Cronbach's alpha for summated scale reliability, which they combine with a bootstrapping procedure, testing whether the bootstrapped 95 per cent confidence interval of the difference in alpha crosses zero. They conclude that there is no clear or consistent pattern across studies. While a majority showed an upward gradient in coefficients in the first wave when the respondents were partitioned by political knowledge, a significant minority did not, and several showed a gradient in the opposite direction. 4 out of 15 attitude scales showed a significant shift, while more than two-thirds (11) of the scales showed an upward shift in scale reliability.

³⁹ See Duncan Black 1958, pp. 4-8; Riker 1982, 123-128.

⁴⁰ "Person i may choose $D_i = x y z$, and person j may choose $D_j = z y x$; yet they agree that x is at one end of the scale, z at the other, and y in the middle, which means that they entirely agree on how the political spectrum is arranged. This kind of agreement is precisely what is lacking in a cycle, where voters disagree not only about the merits of alternatives but even about where alternatives are on the political dimension. If, by reason of discussion, debate, civic education, and political socialization, voters have a common view of the political dimension (as evidenced by single-peakedness), then a transitive outcome is guaranteed" (Riker 1982, 127/8).

A meta-analysis did however show that when pooled, the five deliberative polls showed a modest but statistically significant increase in constraint.

In their study of the relationship between deliberation and “better citizens” Luskin and Fishkin (undated manuscript, retrieved from <http://cdd.stanford.edu/>) look for significant differences between T_1 and T_2 (and T_3 in the case of two polls, ten months after the event) on several variables of relevance to the cognitive/epistemic and affective/moral claims made for deliberation: (1) political interest, (2) political participation, (3) internal political efficacy, (4) external political efficacy, (5) political trust, (6) political empathy, (7) ‘sociotropism’ (a greater concern for collectivities larger than oneself), and (8) attitudes towards the political system. Empathy was tapped using the following items: ‘poverty is the fault of the poor’ and ‘the government are too concerned with the unsuccessful’. Sociotropism was tapped using ‘when voting, people should always put the interests of the public as a whole before those of themselves and their family’.

(1) In two of three polls in which a question on interest was asked, a significant increase was found. (2) On six of six participation items, drawn from two polls, mean political participation or vote intention increased significantly. (3) On eight of fourteen items, drawn from five polls, mean internal efficacy increased significantly. (4) On two of five items, drawn from three polls, mean external efficacy increased significantly. (5) On the single item on trust there was no increase. (6) On one of two items, from one

poll, mean empathy significantly increased. (7) On the single item on sociotropism there was no increase. (8) Finally, on three of six items, from three polls, attitudes towards the political system improved significantly.

On the whole, findings from deliberative polls are generally positive with respect to opinion-change, information gain, single-peakedness, internal and external efficacy, and civic attitudes. The evidence is ambiguous with respect to polarisation, and negative on attitude constraint and sociotropism (one item), while a single item shows a significant increase in empathy.

Citizens' juries

The analysis of citizens' juries has been much less systematic than the analysis of deliberative polls. Jefferson Center reports detail jury recommendations and generally add information on jury composition and witness biographies. Conclusions about the process are largely drawn from juror evaluations and testimonials. In particular jurors are questioned about whether they were satisfied with the event and whether they felt the staff conducted the process in an unbiased way. Attitudinal scales are not used, although the most recent event involved a values review (The Jefferson Center 2005).

IPPR and LGMB pilot papers (Coote & Leneghan 1997, Hall & Stewart 1997) have also evaluated their juries using jurors' self-reports. In

the IPPR series, jurors were for example asked open-ended questions about whether they changed their mind in the course of the event, whether they had they gained anything from the experience, and whether they felt they had contributed anything to their community (Coote & Leneghan 1997). McIver (1997) produced charts of pre- and post-jury opinion distributions, but no significance tests accompany the data. LGMB jurors were asked a series of questions about their satisfaction with various aspects of the process. Raw numbers of jurors who experienced the various closed-end levels of satisfaction are reported (Hall & Stewart 1997). One of the jurors' general concerns that emerged from this data was a feeling that there was not enough time overall, while many were sceptical about whether their recommendations would have any impact on policy. The majority of participants found the experience rewarding and were willing to take part in another event. Some indicated that they could see themselves becoming more politically active. Some jurors expressed concerns about the balance of speakers' presentations and about domination of the floor by particular individuals, but no analysis attempts to relate this to opinion change.

Statistically significant opinion shifts are investigated in Goodin and Niemeyer (2003) and Abelson *et al* (2003). Goodin and Niemeyer surveyed jurors at three time periods – at the beginning of day 1, at the end of day 3 (after witness testimonies had been completed and before the deliberations), and again at the end of day 4. They calculate the mean shift of jurors on

forty-two items from the start to the end of the first phase, and from there to the end of the process. They find a significantly larger shift during the first phase, in support of their hypothesis that 'internal reflection' is at least as important as 'external deliberation'. Abelson *et al* (2003) asked their jurors (13) to rank a list of five health concerns, to rate the importance of a number of local strengths for improving community health, and to rank the top three factors believed to be the most important in determining the health of local residents. A telephone discussant panel (16) was used as a control group. These were interviewed and surveyed before and after a telephone discussion. On the first issue no significant change was observed for phone respondents. Significant differences in rankings for two of five options were observed for the jurors. On the second, significant within-group and between-group change was observed. None was observed on the third issue, with the exception of a single item.

Timotijevic and Raats (2007) used participant evaluations but scaled these and sought to observe differences between a day long 'citizens' workshop' (which they say is similar to a focus group) and a citizens' jury. No significant differences were found on all but one of the ten evaluation criteria (the jury scored better on trustworthiness of the organiser'). Participants in both models were largely satisfied with the degree of conflict and disagreement in the group and the extent to which people listened to one another.

For the most part citizens' jury researchers rest the claim that jurors have made good judgements on what they interpret as the sophistication of the recommendations they produce (Crosby 1995, Bennett & Smith 2007, Iredale *et al* 2006, Pidgeon & Rogers-Hayden 2007, Aldred & Jacobs 2000). In two studies reference is made to jurors' capacity to resist witnesses' claims (Iredale *et al* 2006, Aldred & Jacobs 2000). The recommendations and concerns of jurors are often described in great detail. Opinion change is accounted for qualitatively rather than quantitatively.

4.4 Conclusion

I have set out a number of hypotheses about the effects of political discussion and surveyed the empirical literature. I have also introduced public involvement and paid particular attention to deliberative polls and citizens' juries. These hypotheses included: more informed individuals, greater attitudinal constraint, greater political efficacy, constraints on the public expression of self-interested or prejudiced claims, enlarged concern (perspective taking, empathy and sociotropism), greater tolerance, and positive civic attitudes. More troubling predictions related to deliberative inequality and group polarisation. For the most part these have found some support in the literature, but evidence for the more desirable outcomes was modest since I draw on a very small number of studies. Promising results

were found however in Gamson (2002) on collective action frames (2002); Barabas (2004) on information gain; Gastil and Dillard (1999a) on political sophistication; Morell (2005) on situation-specific internal efficacy; Mutz (2002) on tolerance and knowledge of others' rationales; Searing, Solt, Conover and Crewe (2007) on the relationship between political discussion and knowledge, internal efficacy, citizen duty, perceived government responsiveness, political participation, civic engagement, community identity, and neighbouring; Fishkin and Luskin (Fishkin & Luskin 2005; Luskin & Fishkin, undated) on information gain (and its relationship to opinion-change), the predictability of attitudes, political interest, political participation, internal and external efficacy, and attitudes to the political system; and finally, List *et al* (2000) and Farrar *et al* (undated manuscript) on single-peakedness.

I would like to draw attention here to three sets of findings from the psychology literature. First, Rosenberg's (2007) summary of theories of cognition poses a real challenge to deliberative expectations. As a rule people rely on heuristics, while prejudices, together with cognitive dissonance, affect their judgments and information processing. It is common for people to search for evidence to bolster their prejudgments, rather than allow these be challenged. Second, Mendelberg (2002) has highlighted some suggestive but ambiguous findings relevant to deliberative theory. On divisive issues, discussion may involve insincere appeals to generalisable concerns, and

coded prejudice, or it may alternatively result in conflict. Social dilemma experiments show that communication can increase cooperation, but can worsen it when differences between groups are accented. Work on minority influence has produced some interesting results about the ways in which minorities can positively influence the cognition of majorities, without necessarily getting them to change their minds, but this is highly contingent. Language can foster antagonism in situations of conflict, as shown in the 'linguistic intergroup bias'. At the same time language can create solidarity when the other's first name and the first person plural are used, though the feelings of affinity and closeness can result in ethnocentrism towards out-groups. Third, Oswald (1996, 2002) has shown that there is a relationship between perspective taking and willingness to help, and between empathic arousal and willingness to help, but the evidence on the relative effects of cognitive and affective perspective taking is not consistent. In any case this research does not tell us whether and to what degree discussion induces perspective taking. Mendelberg's review suggests that minorities can induce this, though this varies with factors such as offering an unusual position and being perceived to have arguments based on objective fact rather than subjective assessments. Moreover, it is not clear to what extent this is socially driven. Maner, Luce, Neuberg, Cialdini, Brown and Sagarin (2002) argue that the empathy-helping relationship will disappear when a feeling of

“oneness” (perceived kinship or shared group identity) with the victim is controlled for.

What all of this suggests is that the cognitive and group processes that bear on deliberative theory are complex, variable, contingent, not fully understood, and highly cautionary, to say the least. I would suggest that there is a need for two things at this point. First, clearly we need to investigate these processes and their antecedents much more intensively in specifically deliberative contexts. While the psychology literature does bear on deliberative democracy, it does so indirectly. Second, we need more complex models and more wide-ranging measurement tools. What we need are strategies that would allow us to identify the occurrence of both desirable and undesirable processes, and to determine their relative influence on dependent variables of interest. One place to begin is with models of opinion-change, and I make a modest start on this in Chapter 6.

The TCD Dublin Citizens' Jury on Waste Incineration

I turn to the description and analysis of a citizens' jury event held in Dublin in November 2003 that was used to generate original data on public discussion. I co-organised the event with Professor Michael Laver, while the Economic and Social Research Institute (ESRI) conducted juror recruitment.⁴¹ We combined elements of deliberative polling with the citizens' jury model in order, in part, to increase the sample size for statistical analysis. We chose a live, real-world policy controversy in Ireland – the issue of waste incineration.

In this chapter I describe the jury design in detail, before examining selection bias and attrition, and finally opinion change. In the chapter that follows I explore the effects and dynamics of the jury process in order to address empirical claims that are part of the normative justification of deliberative democracy. The jury experiment is used therefore to further assess claims that were introduced in 1.3 above and explored by reference to

⁴¹ The experiment cost of €38,100 (about \$50,000) All IES surveys, including the panel study dedicated to this experiment, were paid for from other sources. I thank Atlantic Philanthropies for funding the jury experiment.

the empirical literature in Chapter 4. The experiment should be seen as providing a valuable opportunity to test aspects of the empirical dimension of deliberative democracy in a real-world context. At the same time, this project was not only concerned with predictions from the deliberative literature, but with evaluating the jury model as a way of formally convening citizen deliberation to supplement representative institutions. Some of my conclusions concern potential problems and dangers in the use of citizens' juries and similar models for this purpose.

5.1 Jury design

Combining a deliberative poll and a citizens' jury

There are three major differences between citizens' juries and deliberative polling. Firstly, juries usually involve a small number of participants (between 12 and 24), chosen by quota sampling to represent a rough cross-section of the target population. Deliberative polling involves a random sample of several hundred participants. In juries, the small size of the group places an upper bound on the demographic and attitudinal variation that can be represented. The typical practice is to attempt to recruit a group that is diverse to some degree, involving a mix across standard demographic criteria. Although probability sampling is often used, in many cases non-

probability sampling is employed to fill quotas for particular groups. This may involve selection via public meetings or voluntary groups, or the placing of invitations in newspaper advertisements (see Coote & Leneghan 1997; Hall & Stewart 1996; Crosby, Kelly & Schaefer 1996; McIver 1998; Kuper 1996, 1997; Dunkerly & Glaser 1988; Abelson *et al* 2003; Kashefi & Mort 2004; Iredale *et al* 2006; Bennett & Smith 2007; Timotijevic & Raats 2007). The problem is that it is not clear how much attrition has taken place if details are not provided on the original quotas, the number of substitutes needed to fill them, and failures to fill the quotas. In deliberative polls by contrast, self-selection biases may be explored either by comparing the demographic profile of attendees with non-attendees from the larger probability sample of invitees, or using census data (see Merkle 1996; Luskin, Fishkin and Jowell 2002; Hansen and Andersen 2004).

Secondly, while attitudinal change is often observed in citizens' juries by means of attitudinal items or participants' self-reports (see Coote & Leneghan 1997; Hall & Stewart 1996; McIver 1998; Kuper 1996; Aldred & Jacobs 2000; Bennett & Smith 2007; Timotijevic & Raats 2007), there is generally no attempt to measure statistically significant shifts, as there is in deliberative polls – though there are exceptions (Abelson *et al* 2003; Goodin & Niemeyer 2003). In citizens' juries, greater emphasis is placed on the substantive recommendations that jurors produce in their final report. Thirdly and finally, juries are expected to reach a consensual, collective decision.

Deliberative polls do not seek a collective verdict, based in part on the concern that this may potentially create a pressure to agree and obstruct the expression of dissenting views (Fishkin, Luskin & Jowell 2000).

While we retained the term 'citizens' jury' for the event, we chose to randomly select a larger number of participants than is usually done, in order to study participant representativeness and opinion shifts in the manner of deliberative polls. However, we wanted a group that was still small enough to be given the responsibility to produce a collective "verdict" on an important public issue (our initial target was for 50 jurors), and for this reason we retain the term. We consciously chose a real political issue on a matter that was yet to be resolved. As the process had no connection with formal decision-making, we could provide no guarantees to the jurors that their verdict would be given consideration by policy-makers (and we communicated this to them). However we wished to observe the behaviour of jurors in a situation in which it was conceivable that their verdict could have such an impact, and in which they themselves believed that this was the case. We were interested in how the jurors would engage with the process, and how the jury method would fare, on a real issue rather than within the confines of a laboratory situation in which there was little at stake.

The issue

The issue we selected for deliberation concerned a proposal to build an incinerator/thermal treatment facility for the disposal of household waste generated in the Dublin area. Ireland has for some time been having a serious problem in managing household waste. Landfills are rapidly filling up and local citizens' groups have been very effective in opposing proposed new landfill sites. Recycling rates in Ireland are extremely low by European standards. A proposal had been made by Dublin City Council, the responsible public authority, for a thermal treatment facility to be built in the Ringsend area of Dublin.⁴² The Ringsend proposal was highly controversial and we chose it as a live, "hot button" issue.

At the time of our jury, the Ringsend proposal had been floated. However the process of obtaining planning permission and an Environmental Protection Agency license had not yet commenced. The survey population was defined as the group of citizens whose household waste would be in the area to be serviced by the proposed treatment plant. This was the group who faced the hard choice under current EU regulations between opting for thermal treatment somewhere in their area, and opting for some alternative solution to the disposal of household waste, given the rapidly declining and increasingly regulated option of landfill.

⁴² The website of this project and "official" statement of the case for thermal treatment in Dublin can be viewed at www.dublinwastetoenergy.ie

We offered the jury two questions for deliberation, one dealing with the general waste management issue, and one with the specific Ringsend proposal: (1) Is there a role for household waste incineration in an integrated waste management strategy for Ireland? (2) If so, should an incineration plant for Dublin household waste be built in the Ringsend area?

Selection of jury from election study respondents

We randomly sampled jurors from the set of respondents to the Irish Election Study of 2002 (IES), themselves a random sample drawn from the population of Irish voters. A three-stage clustered sample design based on the electoral register was used in the IES.⁴³ The survey had a response rate of about 60 percent and yielded 2663 interviews, of which 625 were respondents from Dublin constituencies. Thus, the IES respondent population from which our jury was sampled was potentially biased. Known demographic aspects of this bias were corrected by weighting survey respondents before sampling. The findings on the effects of jury attrition are conservative however, given that the sample is already biased, at least towards survey participation. This disadvantage is balanced by the advantage of sampling from the population of IES respondents. Our jurors were randomly selected citizens for whom we

⁴³ For a description of the IES, see http://www.tcd.ie/Political_Science/Staff/Michael.Marsh/ElectionStudy/.

had a great deal of demographic and attitudinal information, collected before the jury selection process and any treatment effect commenced.

The IES post-election study of 2002 was supplemented by a panel study of the entire IES sample, conducted by postal questionnaire in summer 2003. The survey yielded 1197 valid responses (a response rate of 45%), of which 287 were from Dublin. We included questions on this, focusing on environmental issues and the issues to be deliberated by the jury. The panel study was also completed before any aspect of jury selection began⁴⁴ (the IES surveys were conducted in June 2002 and June 2003, while the citizens' jury was held in November 2003). We repeated this panel study on the entire IES sample in June 2004, nine months after the experiment, allowing us to measure long-term attitude shifts among jurors, as compared to those of the control group. The IES 2004 yielded 1102 responses (with a relatively low survey response rate of 41%), of which 273 were from Dublin.

The intention was to end up with a jury of 50 participants, broken into four sub-panels, who were a random sample of citizens from the set of Dublin parliamentary constituencies serviced by the proposed incinerator. On the advice of researchers from the Economic and Social Research Institute (ESRI) – the organisation responsible for the fieldwork of the IES – we invited 221 of the original IES 2002 Dublin respondents to participate in the

⁴⁴ The full questionnaire for the IES 2003 panel study is at www.tcd.ie/Political_Science/Staff/Michael.Marsh/ElectionStudy/INES2.pdf

citizens' jury, with a view to eventually recruiting 50.⁴⁵ This reflected the ESRI researchers' estimate, based on experience of recruiting participants for focus groups, of the "wastage" rate we could expect when inviting people to come to a central location for a substantial period of time. On the strong advice of ESRI researchers, we abandoned plans to make the deliberation a two-day event with an overnight stay in a hotel. They believed this would introduce huge biases in the jury – which would be skewed heavily towards younger and older single people, and away from people with families – and that a one-day event with no overnight stay would be much less susceptible to this. Additionally, and also on the advice of ESRI researchers based on their experience of focus group work, we supplemented the sample with a small number of additional invitations randomly sampled from the electoral division within which the Ringsend facility was proposed. The aim was to get an over-sample on deliberation day of five jurors from the affected area, to remove the possibility that there would be no juror with local knowledge of the area likely to be affected by the proposal. This gave a revised target size for the jury of 55 citizens.

Invitation letters described the event and set out the incentives offered to invitees who chose to participate. One incentive was the chance to have some input on the issue. The moderator of the overall event was announced

⁴⁵ More precisely, data protection legislation in Ireland meant that we contracted the ESRI to conduct the sampling and invite selected jurors. The ESRI had previously given the standard assurances of anonymity to respondents when the IES was conducted, and it would have been illegal for them to have released the identities of respondents to third parties.

as Olivia O’Leary, a household name in Ireland and a very widely known and respected current affairs journalist with no track record of having taken a position on the issue for deliberation. The intention in picking a high-profile moderator was to signal to jurors that this was a significant event. Jurors were offered €100 to cover “out of pocket costs” and the “trouble they took in taking part in the day’s events”. They were also promised a ticket for a prize draw at the end of the event. The prize, guaranteed to be won by one of the jurors, was a €2500 credit for a holiday booked through an internationally famous travel agent. Jurors were also offered free hotel parking, lunch in the middle of the day, and a “nice dinner” in the hotel at the end of it all, during which the prize draw for jurors would be held. This dinner was also intended as an informal setting for the research team to debrief jurors.

5.2 Deliberation day

The jury deliberation was a one-day event held on a Sunday from 10am to 7.30 pm. Jurors met together for all information and briefing sessions; had lunch together; broke up for small group discussions; and then returned to a plenary session for a final discussion and verdict. The small-group discussions were monitored by non-participant observers who coded each intervention in sequence, allowing the discussion to be plotted and interventions related to demographic and attitudinal data about the speaker,

held in the IES and summer 2003 panel studies. Full details of the day's schedule are given in Appendix 2.

One of the main innovations we tried was to use professional "questioners" of speakers on either side of the debate. These were well-known barristers (trial lawyers) experienced in cross-examination. The expectation was that they would ask speakers tough questions while at the same time keeping things structured and leaving the moderator in a neutral position. After all speakers had been heard, the small groups of jurors met to decide whether they wanted to ask further questions of the speakers, who were then recalled and asked these questions. In informal debriefings of jurors after the event, it became clear that they regarded the use of barristers to question the speakers as a very effective technique. A final briefing document and witness and questioner biographies are given in Appendices 3 and 4.

Great efforts were made to line up speakers and briefing materials to present a balanced view of the issues involved. Despite these efforts, which extended to many months, this aspect of the experiment was a failure. Speakers on one side of the debate presented what everyone judged to be a much more effective case, while Dublin City Council, the responsible public authority (more specifically the Dublin City Manager's Office) eventually boycotted the event and refused to participate. The implicit rationale, communicated to one of the organisers in private, was that they did not feel

they could “win” a debate conducted in this type of forum – and that they would prefer not to participate at all than to participate and lose. The Irish Minister for the Environment wished us well, but declined to participate on the ground that he might eventually have licensing jurisdiction on the issue. All technical consultants used by the City Council found that they had intractable timetabling clashes on every one of the very flexible set of (Sunday) dates offered for the jury schedule. In the end, we were very grateful that a former mayor of Dublin, and a member of the main government party, did at the last minute agree to present what was both the City Council and government’s official policy on integrated waste management. If he had not done this, we would have been left with nobody to present and defend official government policy on this issue. The other “establishment” speaker in favour of thermal treatment was a prominent executive of IBEC, the Irish Business and Employers’ Confederation. We had to go to the Netherlands to find a technical specialist prepared to present research findings on safety standards for modern waste incinerators. We had no problem whatsoever, however, in finding a team of highly motivated speakers to present arguments against the thermal treatment of household waste. At the end of the day, the jury found unanimously against both the building of an incinerator in Ringsend and the use of incineration as part of an integrated waste management strategy for Ireland.

5.3 Selection bias and attrition

In principle random selection gives all citizens an equal chance of being selected, prevents manipulation of the composition of the citizen panel, and ensures that social groups are represented in proportion to their size. In practice things are more complicated. For one thing, random sampling here is subject to the same problems of non-coverage and non-response that confront ordinary opinion polls. But participation in a citizens' jury is even more onerous. All randomly selected invitees do not agree to participate, and all who agree do not actually show up on the day. This is particularly important in the context of the claim that deliberative forums can provide opportunities to help address existing inequalities in political participation. We need to know whether deliberative forums, in the long run, can be convened without systematically excluding known sections of the population. While other experimenters have investigated the issues of self-selection and attrition (see Merkle 1996; Luskin, Fishkin and Jowell 2002; Hansen and Andersen 2004), these issues must remain on the research agenda if we are to see a definite pattern emerging. From a practical point of view, seeking to observe a consistent pattern in the under-representation of particular groups would inform design decisions in relation to prior over-sampling of those groups.

The ESRI's experience in the recruitment of focus groups proved directly relevant for the selection of citizens' juries. Of the 221 people

invited, 61 gave a firm promise to attend the day-long event, and 49 presented themselves on the morning of the jury. In addition, 7 of the over-sampled citizens from Ringsend also presented themselves. (However, one juror failed to complete questionnaires, which leaves us with survey data on 55 participants). All in all though, of the random sample of 221 invitees, only 49 presented themselves on the morning of jury deliberation.⁴⁶ Thus about 22 percent of those invited actually turned up for the jury, while about 89 percent of those who had promised up until the very last minute that they would turn up, actually made an appearance.

Table 1 analyses jury attrition in terms of standard demographic characteristics. Comparing demographics for random invitees with those of the Dublin IES population, we see that the sample of random *invitees* had essentially the same demographic characteristics as the IES population as a whole (columns 2 and 3). However, Table 1 does show that there were indeed biases in *attrition* rates from the original sample of invitees, in terms of age, gender and educational level (columns 3, 4 and 5). The table also indicates whether these biases emerged at the point of agreeing to participate in the jury, or at the point of a last-minute no-show. Overall, the net result was that the eventual citizens' jury was older, more male, and better educated

⁴⁶ In this context it is worth noting that the ESRI team made series of phone calls to all invitees who had agreed to participate in the jury, ostensibly to keep them informed about the ongoing progress of the event but in effect to keep reminding them of what they had agreed to do. This included a final "ring-around" in the days immediately before the jury. It is difficult to see what more could have been done, other than a radical improvement in compensation rates, to increase participation levels.

than Dublin respondents in the IES. Relative to the final jury, statistically significant differences in proportions were observed, however, only for education (proportions attending compared to proportions invited; chi-square goodness of fit test).

In Table 1 I also include data from the 2002 national household census conducted by the Central Statistics Office (CSO),⁴⁷ taken on the night of Sunday 28 April 2002. Here there are statistically significant differences between the jury and the Dublin population in terms of marital status and educational level. Women and younger people are also underrepresented on the jury, although these differences are not statistically significant.

⁴⁷ Details available at <http://www.cso.ie/census/Census2002Results.htm> Unpublished information was requested directly from the CSO.

Table 1: Demographic characteristics of jury attrition

	Column 1 Dublin Census 2002 n = 860,773 [¶]	Column 2 Dublin IES2002 n = 625		Column 3 Random invitees n = 221		Column 4 Willing jurors n = 61 ^ψ		Column 5 Actual jury n = 55 [‡]	
	%	n	%	n	%	n	%	n	%
Marital status									
Married	44.6*	347	55.5	136	61.5	43	70.5	35	63.6
Separated /Divorced	5.1*	28	4.5	5	2.3	1	1.6	1	1.8
Widowed	5.6*	50	8.0	19	8.6	4	6.6	5	9.1
Never Married	44.7*	198	31.7	61	27.6	13	21.3	14	25.5
Age									
18-24	17.7	95	15.2	35	15.8	9	14.8	5	9.1
25-44	42.7	211	33.8	73	33.0	19	31.1	19	34.5
45-64	26.4	217	34.8	71	32.1	25	41.0	22	40.0
64+	13.2	97	15.5	42	19.0	8	13.1	9	16.4
Gender									
Male	47.6	303	48.5	115	52.0	34	55.7	33	60.0
Female	52.4	322	51.5	106	48.0	27	44.3	22	40.0
Education level									
Pre-Leaving Cert.	37.5**	221	35.4*	84	38.0**	16	26.2	12	21.8
Leaving Cert.	28.8**	141	22.6*	54	24.4**	18	29.5	11	20.0
Post Leaving Cert.	33.7**	262	41.9*	83	37.6**	27	44.3	32	58.2
Employment									
At work	58.5	393	62.9	140	63.3	39	63.9	33	60.0
Unemployed	5.2	18	2.9	6	2.7	3	4.9	2	3.6

[¶] Education computed on n = 706,392. Respondents whose education had not ceased or was not stated are excluded.

^ψ Plus 5 people of unknown characteristics from DEDs in Ringsend: of whom four are male and one is female.

[‡] Including 7 Ringsend jurors

* Difference in proportions compared to proportions in actual jury significant at 0.05 (chi-square goodness of fit test, exact sig.).

**** Difference in proportions compared to proportions in actual jury significant at 0.01 (chi-square goodness of fit test, exact sig.)**

A series of questions relating to political participation and efficacy were asked in the IES. The IES asked whether respondents had voted in each of the three opportunities to do this at a national level in the 12 months prior to the survey – the 2002 general election and two national referendums. Voting turnout in these three polls was aggregated to create a four point “voting rate” scale that ranged from 0 (no turnout in any of the three elections) for the most lethargic voters, to 3 (turnout in all three elections) for the most avid.

Table 2 compares the set of jurors who turned up on the day to the general Dublin citizenry on each of these measures. The table shows that although the jurors were no more likely to think they were better informed about politics; and were no more or less prone to think that politics makes a difference; they *were* more prone to vote than Dublin citizens in general. Also, they *were* significantly less likely to agree that politics is too complicated for people like them to understand. They therefore had a higher sense of *internal* efficacy.

Table 2: Attitudes towards participation/efficacy among jurors and all Dublin IES respondents

	Dublin IES2002 (n = 625)		Jurors who completed IES2002 (n = 44)		t	Sig. [‡]
	Mean	Std. Dev.	Mean	Std. Dev.		
Politics is too complicated for people like me to understand	3.84	1.88	3.16	1.46	2.367	0.018
The ordinary person has no influence on politics	3.56	1.84	3.18	1.53	1.342	0.180
I'm better informed than most people about politics	3.56	1.58	3.48	1.58		.494
Irish government can't influence what happens in this country	2.94	1.56	3.07	1.37	.217	.899
It doesn't really matter which political party is in power	3.91	1.83	3.95	1.75	.457	.60
Times voted 2001-2002 (0,1, 2 or 3)	2.14	1.03	2.43	.846	2.287	.033

All items except "Times voted" scored on a seven-point scale with 1 strong disagreement and 7 strong agreement

[‡]Independent samples *t*-test

Table 3 compares reported voting turnout in the 2002 general election for three groups:

- Dublin respondents in the CSO Quarterly National Survey (QHNS) *Voter Participation and Abstention* (third quarter 2002)⁴⁸
- Dublin respondents in the IES 2002
- The 44 of the 55 actual jurors who previously participated in the IES 2002

I use CSO reported turnout instead of actual turnout figures to compensate for the overstatement of turnout to which surveys are prone. The CSO note that reported national turnout in the QNHS was 75.5%, while the actual national turnout in 2002 was 62%, (CSO 2003). The table shows that reported turnout for IES respondents was essentially the same as that reported by the jurors. CSO respondents did however report a lower level of turnout than both, although due to the difference in sample sizes (625 in the IES2002 Dublin population compared to 44 juror respondents in the IES), CSO respondents were significantly different only to Dublin IES2002 respondents (one-sample *t*-test).

⁴⁸ Available at http://www.cso.ie/releasespublications/pr_poparchive2002.htm

Table 3: Turnout in the 2002 General Election among jurors, Dublin IES respondents and Dublin CSO Quarterly Survey respondents

	Dublin pop. (CSO QNHS Survey)	Dublin IES2002 (n = 625)	Jurors who completed IES2002 (n = 44)
Reported turnout %	71.6	80*	80

* Sig. different to Dublin population (71.6) at 0.05 (one-sample *t*-test)

The data allows us to investigate the extent to which the attrition effects resulted in a jury with unrepresentative *attitudes* on the precise matter for deliberation. It would seem plausible that those jurors who presented themselves were more interested than the general population in environmental issues generally, and the thermal treatment of waste in particular, since these attitudes would make them more likely to participate in the jury deliberation. Table 4 offers some answers to this question, comparing the environmental attitudes and political activity of those 39 jurors who both presented themselves and also completed the summer 2003 IES panel survey, with the overall group of 287 Dublin citizens who completed this panel survey. (Note that this group of 39 jurors excludes those who did not complete the 2003 IES – in particular, it excludes the 7 Ringsend jurors who were recruited via the oversample). The Dublin citizens’ jury, while certainly not perfectly representative demographically, does appear to

have been representative attitudinally – at least as far as relevant attitudes prior to the beginning of the jury process were concerned. It was simply not the case that jurors were more interested in the environment, or had distinctive attitudes on this, compared to the control group.

Table 4: Environmental attitudes among jurors and all Dublin IES respondents

	Dublin panel IES2003 (<i>n</i> = 287)	Jurors who completed IES2003 (<i>n</i> = 39)	<i>t</i>	Sig. [‡]
	Mean	Mean		
Concerned about environmental issues (4-point scale: 1 = very concerned, 4 = not concerned at all)	1.72	1.74	.296	.769
Member of environmental organization/would join one (3-point scale: 1 = yes, 2 = no but would consider it, 3 = no and would not consider)	2.51	2.44	.951	.348
Signed petition on environmental issues (2-point scale: 1 = yes, 2 = no)	1.61	1.59	.254	.801
Given money to environmental group (2-point scale: 1 = yes, 2 = no)	1.78	1.74	.514	.610
Taken part in protest on environmental issue (2-point scale: 1 = yes, 2 = no)	1.94	1.95	.244	.809
"I do what's right for environment"	5.36	5.23	.546	.588
"More important things to do than protect environment"	2.76	2.67	.386	.702
"Waste incinerators are an essential part of waste management"	4.51	4.54	.110	.913
"A waste incinerator should be built in Ringsend"	4.06	3.79	.993	.327

“Waste incinerators harm the environment”	4.45	4.54	.546	.588
“Waste incinerators are a threat to the health of people living nearby”*	4.56	4.41	.673	.505

Items scored on a seven-point scale with 1 strong disagreement and 7 strong agreement, unless otherwise specified

* Independent samples *t*-test

To conclude, there were jury attrition effects – in favour of older, male and better-educated citizens – and jurors were more likely to vote than the typical citizen and had a higher sense of internal efficacy. But these effects did not result in a jury with attitudes that were unrepresentative, either on general environmental issues or on the precise questions that were up for deliberation.

5.4 Opinion change

Studies of deliberative polls report statistically significant opinion change between the pre and the post-test questionnaire, at both the aggregate (net change) and the individual (gross change) level (see for instance Fishkin 1997; Luskin, Fishkin & Jowell 2002; Merkle 1996; Goodin & Niemeyer 2003; Hansen & Andersen 2004). In some cases a control strategy has been built into the research by means of self-administered or telephone surveys of non-attendees in the original sample, or with separate random samples – surveyed either before, or after, or both (see Luskin, Fishkin & Jowell 2002;

Merkle 1996; Hansen & Andersen 2004). Here, I report the scale of the aggregate-level opinion shifts during the Dublin jury event, while using the larger panel as a control group.

Table 5 makes two sets of paired comparisons on four attitude questions. These questions were included on both the IES 2003 and the jury survey-resurvey on the day of the event. For each of these four questions, the first pair compares attitudes in the summer IES 2003 panel, before any mention had been made of the jury, with attitudes on the morning of the jury. This comparison picks up any treatment effect arising from being selected as a juror and deciding to participate. The second pair compares attitudes in the morning, before the event, with attitudes in the evening, after the jury decision had been reached. This picks up the treatment effect of the deliberation itself. In each case, the earlier attitude score is subtracted from the later score. Table 6 gives detailed statistics. Table 7 reports the results of some further question items that did not feature in the IES 2003 but were used in the jury survey-resurvey.

The findings are unambiguous. There was no significant treatment effect from having been selected as a juror and having decided to participate (Pairs 1, 3, 5 and 7). But we can see a strong treatment effect following participation in the day's events (Pairs 2, 4, 6 and 8). Jurors showed a substantial and statistically significant shift of opinion against waste incineration. Substantively, the shift on each scale was large, from a mean

position of neutrality on the attitude statement (scale position 4) to a position between disagreement (2) and strong disagreement (1). Thus the strong opinion shifts observed in other experiments were replicated in the Dublin experiment.

Table 5: Opinion shifts during citizens' jury event

	Question	Mean shift	t	Sig. [‡] (2-tailed)
Pair 1	Waste incinerators are essential to waste management in Ireland: (morning) - (panel)	0.02	0.13	.895
Pair 2	Waste incinerators are essential to waste management in Ireland: (evening) - (morning)	-2.42	11.59	.000
Pair 3	A waste incinerator should be built in Ringsend: (morning) - (panel)	0.30	1.15	.260
Pair 4	A waste incinerator should be built in Ringsend: (evening) - (morning)	-2.04	9.64	.000
Pair 5	Waste incinerators harm the environment: (morning) - (panel)	-0.13	0.625	.536
Pair 6	Waste incinerators harm the environment: (evening) - (morning)	1.18	5.987	.000
Pair 7	Waste incinerators are a threat to the health of people living nearby: (morning) - (panel)	-0.03	0.136	.893
Pair 8	Waste incinerators are a threat to the health of people living nearby: (evening) - (morning)	1.19	6.567	.000

All attitudes are measured on seven point scales, with 1 strong disagreement and 7 strong agreement

[‡] Paired samples *t*-test

Table 6: Detailed statistics on opinion shifts

		Mean	N ^ψ	Std. Deviation	Std. Error Mean
Pair 1	waste incinerators essential to waste management in Ireland (morning)	4.56	39	1.334	.214
	(prior panel)	4.54	39	1.620	.259
Pair 2	waste incinerators essential to waste management in Ireland (morning)	4.31	55	1.502	.202
	(evening)	1.89	55	1.227	.165
Pair 3	waste incinerator should be built in Ringsend (morning)	4.03	37	1.343	.221
	(prior panel)	3.73	37	1.661	.273
Pair 4	waste incinerator should be built in Ringsend (morning)	3.69	54	1.635	.222
	(evening)	1.65	54	1.049	.143
Pair 5	Waste incinerators harm the environment: (morning)	4.41	39	1.186	.190
	(prior panel)	4.54	39	1.354	.217
Pair 6	Waste incinerators harm the environment: (morning)	4.56	54	1.298	.177
	(evening)	5.74	54	1.277	.174
Pair 7	Waste incinerators are a threat to the health of people living nearby: (morning)	4.38	39	1.390	.223
	(prior panel)	4.41	39	1.390	.223
Pair 8	Waste incinerators are a threat to the health of people living nearby: (morning)	4.56	55	1.273	.172
	(evening)	5.75	55	1.126	.152

^ψ "Prior panel" includes *only those members of the jury who had also completed the IES 2003*. Pairs 1, 3, 5 and 7 compare *those jurors'* prior panel opinions to their opinions on the morning of the event in order to test for any treatment effect due to being invited to participate, and prior to the actual event itself.

Table 7: Opinion shifts on other items

Item	Mean shift (evening) - (morning)	t	Sig. [‡] (2-tailed)
Waste incinerators make local water and farm products unfit for human consumption	+0.9	4.475	.000
Private companies that manage incineration plants respect environmental regulations	-0.93	4.658	.000
Private companies that manage incineration plants respect public health regulations	-0.93	4.698	.000
Building this waste incinerator [in Ringsend] should be a matter for the people who have to live close to it	-0.57	1.945	.057
I would oppose any plan to build a waste incinerator close to where I live	+0.86	2.579	.013

All attitudes are measured on seven point scales, with 1 strong disagreement and 7 strong agreement

[‡] Paired samples *t*-test

The data also allows us to analyse the extent to which different opinion shifts occurred among demographic groups in the jury for which there was biased representation. Recall that the jury was biased towards men, towards older people, and towards people who had completed higher levels of education. There was no gender effect on the opinion shifts following deliberation. Opinion shifts were about half a scale point higher for those under 45 than for those over 45, but these effects were not statistically significant. However, all opinion shifts were significantly greater for jurors who had not completed their education to the level of the Irish leaving certificate (marking

the end of secondary education and providing the qualification for admission to university).⁴⁹ Table 8 shows these effects.

Table 8: Relationship between demographics and size of opinion shift

Education level	Incinerators essential to waste management (evening minus morning)	Ringsend incinerator necessary (evening minus morning)	Happy to see my own waste incinerated (evening minus morning)	Total shift on waste manageme nt + Ringsend + Own waste
<i>Gender</i>				
Male	-2.36	-2.22	-2.03	-6.47
Female	-2.50	-1.77	-2.33	-6.62
<i>Age group</i>				
18-24	-2.60	-2.00	-1.80	-6.40
25-44	-2.58	-2.42	-2.58	-7.58
45-64	-2.41	-1.64	-1.90	-5.95
65+	-2.00	-2.25	-2.00	-5.63
No leaving certificate	-3.25	-3.00	-3.09	-9.30
Leaving certificate plus	-2.18	-1.79	-1.91	-5.88
F	4.739	5.786	4.298	6.063
Sig. [‡]	.034	.020	.043	.017
Total	-2.42	-2.04	-2.15	-6.53

Note: a negative shift on the seven point scales is a shift towards disagreement with the statement. The scale in the final column runs from 3 to 21
 No gender or age group classifications statistically significant; [‡] One-way anova

⁴⁹ The level of educational attainment in the population declines with age. However an OLS regression predicting total opinion shift during deliberation – measured on the 18 point scale in the final column of Table 6 – from gender, age and educational level shows that the education effect is independent of age.

Recalling also from Table 1 that voters with lower levels of education were substantially under-represented in the jury, we can infer from this that opinion shifts following deliberation might have been even higher than those observed, had the jury contained the proportions of citizens without a high school leaving certificate that are found in the general Irish population. Since all demographic groups substantially shifted their opinions in the same direction, however, this would have had no substantive effect on the eventual jury verdict in this particular case.

I discuss the results of the jury experiment in detail in the concluding section of Chapter 6. My aim here was to describe the experimental design of the project, and to report initial headline findings on attrition and opinion change. Within this framework further analyses were used to explore the effects and dynamics of jurors' participation. I turn to these below.

Inside the Dublin Citizens' Jury

Opinion change is one thing, but why it occurs and what it represents is another. We have seen that deliberative theorists have expectations about the mechanisms in virtue of which participants in group discussion will change their minds. These mechanisms are cognitive and epistemic on the one hand, and affective and moral on the other. At the same time there are concerns that negative group dynamics will undermine the process. What can we learn from the Dublin Citizens' jury in this regard? I use the available data to explore: the stability of opinion change, information gain, attitudinal constraint, political efficacy, participation rates, and group polarisation. Later I account for opinion change by adapting and extending Luskin, Fishkin and Jowell's (2002) regression model.

6.1 Stability of opinion change

In his review of research on low levels of political sophistication in mass publics, one issue that Philip Converse (1964) seized upon was attitude instability. A longitudinal study over a four year period enabled Converse

and his colleagues to ask the same attitude questions of the same people a number of times, usually separated by intervals of around two years. Analysis revealed that only about thirteen people out of twenty managed to locate themselves on the same *side* of the controversy in successive polls, when ten out of twenty could have done so by chance alone. Nine months after the Dublin citizens' jury experiment and as part of the 2004 panel of the Irish Election Study, the jury participants, along with all other members of the IES panel, were resurveyed on the two issues that were subject to deliberation. While this interval is not as long as two years, follow-ups of this sort are rare in deliberative poll and citizens' jury experiments. Fishkin (1997) and Hansen and Andersen (2004) do report ten and three-month follow-ups respectively, though without a post-test control group for comparison, while measures of statistical significance are provided only by Hansen and Andersen. In their paper 'Deliberation and "better" citizens' Luskin and Fishkin (undated manuscript; retrieved from <http://cdd.stanford.edu/>) also report ten-month follow-up results.

Table 9 shows that jurors did change their attitudes significantly in the nine months following the deliberation. There was a statistically significant shift in the opinions of jurors on both questions deliberated, in each case back in favour of incineration (pairs 1 and 3). This was in effect a moderate reversal of the opinion shift observed during deliberation. Since in Table 5 a negative sign implies a shift *against* incineration, a positive sign in

Table 6 represents a shift *in favour* of it. However, using the larger Dublin IES panel as a control group, it is also clear that, nine months after the jury deliberation, Dublin residents generally remained substantially more in favour of incineration than the jurors (pairs 2 and 4), a difference with strong statistical significance. Recall that the jury was not initially more interested in the environment than the Dublin control group as a whole, and did not have distinctive attitudes on the issues for deliberation (see Table 4 above). Table 9 thus provides systematic evidence that, while there was some opinion reversal nine months after the jury, the deliberation did have significant long-term effects on the attitudes of jurors on the matters under deliberation.

Table 9: Opinion shifts between the jury event and the 2004 IES panel study

	Question	Mean shift	t	Sig. [‡] (2-tailed)
Pair 1	Waste incinerators are essential to waste management in Ireland (Jury 2004) - (Jury deliberation evening)	+0.85	2.82	.007
Pair 2	Waste incinerators are essential to waste management in Ireland (Dublin 2004) - (Jury 2004)	+1.71	5.18	.000
Pair 3	A waste incinerator should be built in Ringsend (Jury 2004) - (Jury deliberation evening)	+0.56	2.41	.043
Pair 4	A waste incinerator should be built in Ringsend (Dublin 2004) - (Jury 2004)	+1.72	5.07	.000

All attitudes measured on 7-point scales, with 1 strong disagreement and 7 strong agreement

[‡] Paired samples *t*-test

6.2 Knowledge

We used two knowledge items on the jury pre- and post-survey. Jurors were asked: (1) *what happens to the majority of household waste that is collected in their area* (the alternatives given were ‘buried in a landfill site’, ‘burnt in an incinerator’, ‘recycled’, ‘don’t know’), and (2) *who is mainly responsible for dioxin emissions* (‘incineration plants’, ‘industry’, ‘households’, ‘don’t

know’). The correct answers were landfill and households respectively.⁵⁰

Table 10 represents the increase in correct answers. In the evening resurvey, we see a statistically significant increase in the mean number of correct answers in the group. These can be taken as proxies for information gain over a larger universe of issues, although it must be acknowledged that they were not especially demanding items.

Table 10: Knowledge increase

	Morning		Evening		Morning mean - Evening mean		
	<i>n</i>	%	<i>n</i>	%	<i>t</i>	Sig. (2- tailed)	
No items correct	6	11	1	2			
1 item correct	48	87	38	69			
2 items correct	1	2	16	29			
Total	55	100	55	100			
Mean	0.9091		1.27		+0.36	5.555 0.000	

⁵⁰ Source: EPA (2002) “Inventory of Dioxin and Furan Emissions to Air, Land and Water in Ireland for 2000 and 2010”.

6.3 Attitudinal constraint

Sturgis *et al* (2005) outline a number of criticisms that has been levelled at correlational measures of constraint, and at approaches using confirmatory factor analysis and structural equation modelling. The former may be either inappropriate from the start (Goodman and Kruskal's gamma; Balch 1979, Luskin 1987, Weissberg 1974); they may be affected by the distributional properties of the variables being correlated (Achen 1982, King 1986, Weissberg 1976); they may involve high levels of missing data (Bennett *et al* 1979); or they may lack tests of significance for differences in averaged coefficients. Multivariate correlational approaches such as exploratory factor analysis are problematic because there is a lack of consensus about whether more constrained systems should always lead to simpler factor structures (Luskin 1987; Marcus, Tabb and Sullivan 1974; Neuman 1981), and because solutions are heavily determined by issue content and the number of variables (Rosenberg 1988). Confirmatory factor analysis and structural equation modelling are not without their own difficulties; unstandardised factor loadings are meaningful only relative to the factor loading that is fixed to unity to set the scale of the latent variable (Converse 1980, Martin 1981).

Sturgis *et al* instead combine the use of Cronbach's alpha with application of the bootstrap (Efron 1979) to estimates of differences in alpha within and between groups. Following Sturgis *et al*, I use Cronbach's alpha

for scale reliability. I identified the scale by first grouping items *a priori*, then seeking to maximise alpha by dropping items if this were needed. From there, I sought to observe any further increase from the morning to the evening. Table 11 reports the items, item-remainder coefficients, alpha with items removed, and finally alpha for the morning and evening data.

Table 11: Attitudinal constraint

<i>Morning Survey</i>		
	Item-remainder coefficient	Alpha if item removed
Waste incinerators harm the environment	0.586	0.704
Waste incinerators are a threat to the health of people living nearby	0.673	0.676
Waste incinerators make local water and farm products unfit for human consumption	0.485	0.739
Private companies that manage incineration plants [do not] respect environmental regulations*	0.473	0.744
Private companies that manage incineration plants [do not] respect public health regulations*	0.473	0.746
		Alpha Coefficient = 0.765
<i>Evening Resurvey</i>		
	Item-remainder coefficient	Alpha if item removed
Waste incinerators harm the environment	0.663	0.658

Waste incinerators are a threat to the health of people living nearby	0.628	0.678
Waste incinerators make local water and farm products unfit for human consumption	0.445	0.741
Private companies that manage incineration plants [do not] respect environmental regulations*	0.434	0.743
Private companies that manage incineration plants [do not] respect public health regulations*	0.464	0.733

Alpha Coefficient =
0.756

* Original item reflected

In fact the statistic shows a modest decrease. In line with Sturgis *et al's* finding that the expectation of an increase is poorly supported in five U.K. polls, in this case there is no support for the claim, at least as an average across all respondents. When the data is disaggregated to educational level however, we do see that most of whatever gross decrease did occur is confined to those on the lowest category, while those in the middle category do show an increase (Table 12). This is both puzzling and troubling: puzzling because it is not clear why a decrease should occur at all, and troubling because we would hope that jury participation would particularly benefit those with lower educational attainment, in bridging any gap in political

sophistication that might exist between them and those with higher levels of education.

Table 12: Attitudinal constraint by educational level

	Morning Alpha Coefficient	<i>n</i>	Evening Alpha Coefficient	<i>n</i>	Evening - Morning
Less than leaving certificate education	0.781	12	0.631	11	-0.15
Leaving certificate	0.793	11	0.856	11	+0.06
More than leaving certificate	0.761	32	0.749	32	-0.012

6.4 Political efficacy

In the Dublin citizens’ jury six items were used to capture jurors’ interest in politics and perceptions of political efficacy. Change was statistically significant in the case of only one of these, a measure of external efficacy. At the end of the day there was a modestly greater level of *disagreement* with the statement “the ordinary person has no influence on politics.” Change was not statistically significant in the cases of: an increase in the level of interest in politics, an increase in the perception of being better informed than most, a decrease in the level of support for the view that governments have little

influence, and a decrease in support for the view that that it doesn't matter which party is in power. No change was registered on the item "Sometimes politics and government seem so complicated that a person like me cannot really understand what is going on". On the whole then, participation did not have any great impact on interest and perceived efficacy.

Table 13: Political interest and efficacy

	Morning Mean	Evening Mean	Mean shift (evening) - (morning)	<i>n</i>	<i>t</i>	Sig. (2- tailed)
How interested would you say you are in politics? [†]	1.93	1.89	-0.04	54	0.629	0.532
I think I am better informed about politics and government than most people [‡]	3.8	3.69	-0.11	55	0.676	0.502
<i>Internal efficacy</i>						
Sometimes politics and government seem so complicated that a person like me cannot really understand what is going on [‡]	3.04	3.04	0	55	0	1
<i>External efficacy</i>						
The ordinary person has no influence on politics [‡]	3.75	3.2	-0.55	55	2.591	0.012
In today's world, an Irish government can't really influence what happens in this country [‡]	2.7	2.63	-0.7	54	0.393	0.696

It doesn't really matter which political party is in power, in the end things go on much the same [‡]	3.98	3.81	-0.17	54	0.844	0.402
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[†] 1 very interested, 2 somewhat interested, 3 not very interested, 4 not at all interested.
[‡] Attitudes measured on 7-point scales, with 1 strong disagreement and 7 strong agreement

A further series of questions were asked of respondents at the end of the day only (table 14). These were used to determine juror’s feelings about the event itself. Although participation had little impact on general interest and perceived efficacy, overall jurors did feel positive about their experience and about the jury method as a means of public involvement in politics.

Table 14: Feelings about the jury event

		Freq.	% of total <i>n</i> (55)
If asked, would you take part in another citizens’ jury?	Yes	49	89
	No	0	0
	Don't know	3	5
	<i>n</i>	52	
Would you recommend taking part in a citizens’ jury to other people?	Yes	51	93
	No	0	0
	Don't know	1	2
	<i>n</i>	52	
Is a citizens’ jury a good way to involve the public in decision-making?	Yes	50	91
	No	0	0
	Don't know	2	4

	<i>n</i>	52	
Do you think that you have contributed anything to your community?	Yes	44	80
	No	3	5
	Don't know	5	9
	<i>n</i>	52	
Overall, how dissatisfied or satisfied are you with the Citizens' jury event?	Very satisfied	21	38
	Satisfied	27	50
	Neither	3	5
	Dissatisfied	1	2
	Very dissatisfied	0	0
	<i>n</i>	55	

6.5 Participation rates

As we have seen, critics (Sanders 1997 and Young 1989, 1996, 2000) expect public discussion to be marred by inequality, because the capacity to be articulate in public forums, and to be taken seriously, will be unequally distributed. In particular it is feared that women, minorities and the less well educated will be disadvantaged. In the Dublin jury, the assignment of jurors to groups was done in the days immediately prior to the event. The pool included all those agreeing to participate who had not cancelled by the time of final contact. For the purpose of assigning the jurors, the pool was divided into men and women, and into Ringsend (of which there were seven in total) and non-Ringsend residents. Ringsend residents were divided as equally as possible between the four groups by random assignment (2,2,2,1). The same

was done for men and women respectively. The purpose of having much the same composition in the groups was to maximise the perception of the “realism” of the event for participants; this was intended to be seen as a real-world intervention. We might have learned a great deal from mixing group compositions, but jurors would most probably have queried this, and it may have been distracting.

The second of the small group sessions was devoted to moderated group discussion. Each juror had been assigned an identification number that was clearly visible on a badge worn by the juror. A non-participant observer was assigned to each of the four small groups to record the sequence of contributions. A unit contribution encompasses the time from which a juror begins to speak on a particular occasion, to the time that he or she ends speaking and another juror begins. Observers recorded the *identity* of the contributor and the *direction* of the contribution.

Here I focus on the first set of data – the number of contributions made by each juror in the course of their group discussion. This is undoubtedly a crude way of measuring participation because it takes no account of comparative length or the form of the intervention. It does at least however address the issue of whether or not some jurors tended to stay silent and rarely intervene, or intervene more or less than others.

With number of contributions as dependent variable, I tabulate Mann-Whitney rank testing for identical distributions in men and women (Table

15), and Kruskal-Wallis tests for identical distributions across educational categories (Table 16). The categories of the Irish educational system used were 'completed no formal education' / 'completed primary education' (age 11 or 12) / 'completed the junior (intermediate) certificate' (age 14 or 15) / 'completed the leaving certificate' (age 17 or 18) / 'completed a third-level diploma or certificate' / 'completed a third-level degree'. Nonparametric rank tests were used in place of *t*-tests because of unequal variances and high skewness or kurtosis, due to the small sample size. Exact instead of asymptotic probabilities are used for Mann-Whitney (since samples *m* and *n* are within the threshold for exact tests of being ≤ 10 ($n \leq 12$ if $m = 3$ or 4); Siegel and Castellan 1998, 130). Exact probabilities are also used for Kruskal-Wallis (since sample sizes are ≤ 5 ; Siegel and Castellan 1988, 208).

What we find is that in fact neither gender nor education are predictors of jurors' participation. For both variables, there are no statistically significant differences in participation between the sub-categories. This does not of course establish that, once made, the remarks of women and the lesser educated were given equal consideration to those of men and the better educated, but it does conflict with the prior expectation that men and the better educated should participate to a greater extent. However, it is also worth noting that three of the four groups chose a female spokesperson to report back the groups' conclusions to the larger group in the time provided at the beginning of the plenary session (across the four

groups, six spokespersons were selected in total, since two groups chose a second speaker). However, all but one of six chosen had a post-secondary education, while the remaining speaker had a secondary education.

Table 15: Participation in small group deliberation: gender

Group A			Group B		
	<i>n</i>	Mean Rank		<i>n</i>	Mean Rank
Female	7	8.81	Female	6	8.33
Male	9	8.83	Male	10	8.6
Total	16		Total	16	
Mann-Whitney U	28.5		Mann-Whitney U	29	
Wilcoxon W	56.5		Wilcoxon W	50	
Z	-3.18		Z	-0.109	
Exact Sig. (2-tailed)	0.777		Exact Sig. (2-tailed)	0.935	
Exact Sig. (1-tailed)	0.386		Exact Sig. (1-tailed)	0.468	
Group C			Group D		
	<i>n</i>	Mean Rank		<i>n</i>	Mean Rank
Female	6	9.42	Female	4	6.25
Male	10	7.95	Male	5	4
Total	16		Total	9	
Mann-Whitney U	24.5		Mann-Whitney U	5	
Wilcoxon W	79.5		Wilcoxon W	20	
Z	-0.616		Z	-1.342	
Exact Sig. (2-tailed)	0.578		Exact Sig. (2-tailed)	0.206	
Exact Sig. (1-tailed)	0.297		Exact Sig. (1-tailed)	0.127	

Note: while we have questionnaire data on 55 participants, the total number of participants was 57. This includes one juror who failed to complete questionnaires, and one participant who had not been sampled but who showed up to accompany a juror in a wheelchair. We took the view that it would be wrong to deny her the opportunity to take part.

Table 16: Participation in small group deliberation: educational level

Group A			Group B		
	<i>n</i>	Mean Rank		<i>n</i>	Mean Rank
None	1	6	Primary	2	4.5
Primary	3	7.5	Lower secondary	2	8.5
Lower secondary	2	5	Higher secondary	5	9
Higher secondary	2	8.5	Diploma or certificate	4	12.75
Diploma or certificate	4	10.63	University degree	3	4.67
University degree	3	7.33	Total	16	
Total	15				
X^2	2.621		X^2	6.688	
<i>df</i>	5		<i>df</i>	4	
Exact Sig.	0.838		Exact Sig.	0.135	
Group C			Group D		
	<i>n</i>	Mean Rank		<i>n</i>	Mean Rank
Lower secondary	1	3.5	Primary	1	1
Higher secondary	3	8	Lower secondary	1	4
Diploma or certificate	6	8.83	Diploma or certificate	3	5.33
University degree	5	7.9	University degree	4	6
Total	15		Total	9	
X^2	1.297		X^2	3.413	
<i>df</i>	3		<i>df</i>	3	
Exact Sig.	0.809		Sig.	0.440	

6.6 Group polarisation

I turn now to the prediction that deliberating groups will polarise, either because of a desire for social approval or due to limited argument pools (Sunstein 2000). Group polarisation occurs where “members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members’ predeliberation tendencies” (Sunstein 2000, 74). The effect is to shift the median view in the group to a more extreme point in the direction of the predeliberation median (Sunstein), or alternatively the mean (Isenberg 1986, Myers & Lamm 1976, Wetherell 1987; cf. Sunstein 2000). A decrease in variance also occurs.

In their “first look” at potential group effects, Luskin, Fishkin and Jowell (2002) produce a table with three columns. The first column reports the percentage of the small groups who became more extreme with respect to the scale midpoint. This is done for each of a number of policy indices transformed to the [0-1] scale. The second reports the percentage whose means became more extreme with respect to the jury pre-deliberation mean. The third reports the percentage of groups whose within-group variance decreased. They find that of the 100 group-issue combinations (20 groups and 5 policy issues), 46 became more extreme in the first sense, and 51 became so in the second. Within-group variance decreased in a total of 53 of the 100 combinations. They conclude “the results are quite at odds with what

would be expected if small group mechanisms were solely or even largely responsible for opinion change” (2002, 478).

Table 17 below reports data on the four small groups in the Dublin Citizens’ Jury. The table indicates morning and evening means, and changes in standard deviations, on the two central questions. As can be seen, on the general incineration issue, 3 of the 4 groups were initially more in favour of incineration than against, though only marginally so. In the evening resurvey all 4 groups came out strongly against the option. Consequently, only 1 of the group means became more extreme in the same direction as its initial position relative to the scale midpoint (Group D). With respect to initial positions relative to the pre-deliberation mean of the jury as a whole, 2 of the groups did become more extreme (Group B and Group D). On the Ringsend incinerator issue, all 4 groups became more extreme with respect to the midpoint and 2 in respect of the pre-deliberation mean (B and D). Within-group variance did decrease in 7 of the 8 groups. However, regression analysis suggests no conformity effect, as I report below.

Table 17: Group polarisation

	Waste incinerators are essential			An incinerator should be built in Ringsend		
	Morning mean	Evening mean	Std. dev. change	Morning mean	Evening mean	Std. dev. change
Group A	4.47	2.07	-0.527	3.93	1.6	-0.3
Group B	4.19	1.94	-0.775	3.67	1.82	-0.329
Group C	4.67	1.87	+0.258	3.87	1.73	-0.973
Group D	3.67	1.56	-0.389	3	1.33	-1.232
Whole Jury	4.31	1.89	-0.275	3.69	1.65	-0.595

Attitudes measured on 7-point scales, with 1 strong disagreement and 7 strong agreement

We can also explore the jury deliberations themselves as dynamic processes, using the non-participant observer data. Observers coded the sequence of interventions in each small group deliberation (the second of the two small group sessions: see Appendix 2), assigning each intervention to a position on a 5-point scale (strongly against, against, neither for nor against, for, strongly for).⁵¹ For the analysis below, codings were first transformed to the seven-point scale used for attitudinal items (with 1 representing strongly disagree and 7 for strongly agree). This allows us to calibrate the range of views

⁵¹ Coders also noted whether the contribution concerned incineration in general or the Ringsend incinerator. A reliability test was performed. Two of the observers separately coded contributions by jurors during the final plenary session. The inter-coder reliability between the two was high (Pearson's $R = 0.972$; significant at .01), though the number of contributions made was low ($n = 16$).

expressed during deliberation to the survey–resurvey attitude scale. The polarisation literature predicts a discussion in which the direction of comments becomes more extreme. To seek to observe this I split each group’s discussion into two chronological halves, to measure differences in means and variances between the first and the second halves.

There is a statistically significant increase in mean expressed disapproval of incineration in Group B. Results are not significant for Groups A, C, and D (Table 18). However, the substantive shifts in Groups C and D are large – of the order of almost one point on the scale. Shifts of this magnitude would show up as significant in larger samples with correspondingly smaller standard errors. In Group D expressed disapproval grew more intense, but Group C moved in the opposite direction – in effect the discussion moderated over time. It is worth noting however that this moderation occurred from a starting point of initial interventions that were already very extreme. Certainly, the outcome in two of the four groups is consistent with a polarisation effect. In addition, there is a statistically significant reduction in variance in Groups A and B, a significant increase in Group C, and no significant change in Group D. The findings then, are somewhat mixed. There is no uniform extremity shift or reduction in variance.

This mixed result is confirmed by observation of rolling average plots of the sequence of interventions (Charts 1 to 4). The 5-point scale on which

interventions were initially coded is ordered from +2 to -2, with a midpoint between approval and disapproval at zero on the scale. For each of the groups I plot rolling averages of interventions, over intervals of five contributions. The plots are summarised by fitting a fifth-degree polynomial curve to the data (this is not intended to be any more than a useful visual summary).

What is most striking to note, and I will consider this shortly, is how consistently one-sided the deliberations were – how rarely a position favourable to incineration was expressed.

Table 18: Shifts in views expressed between small group first and second halves

	Mean	Mean shift	t	df	Sig. (2-tailed)	Std. dev.	Levene's F	Sig.
First half	3.11					1.22		
Second half	2.93	-0.18	1.06	172	0.29	0.97	7.942	0.005
First half	3.19					0.85		
Second half	2.85	-0.34	2.98	71.761	0.004	0.26	66.59	0.000
First half	2.02					1.1		
Second half	2.8	+0.78	-1.43	24.676	0.166	1.98	18.72	0.000
First half	2.88					1.02		
Second half	1.94	-0.94	2.66	34	0.12	1.09	0.257	0.616

Scored on a seven-point scale with 1 strongly con and 7 strongly pro

Note: There was some recoding of the initial coding decisions made by two of the coders. Both Group A and Group B were asked by their moderators to suggest alternatives to incineration. Debriefing revealed that the coder for Group A viewed these interventions as not specifically concerning incineration directly, and therefore coded the contributions as “neither pro nor con.” In contrast, the coder for Group B took it that these comments implicitly rejected incineration, and coded them as “somewhat con.” The decision was taken to recode for consistency, and to adopt the latter coder’s rationale and strategy.

Chart 1: Group A Rolling Average Plot

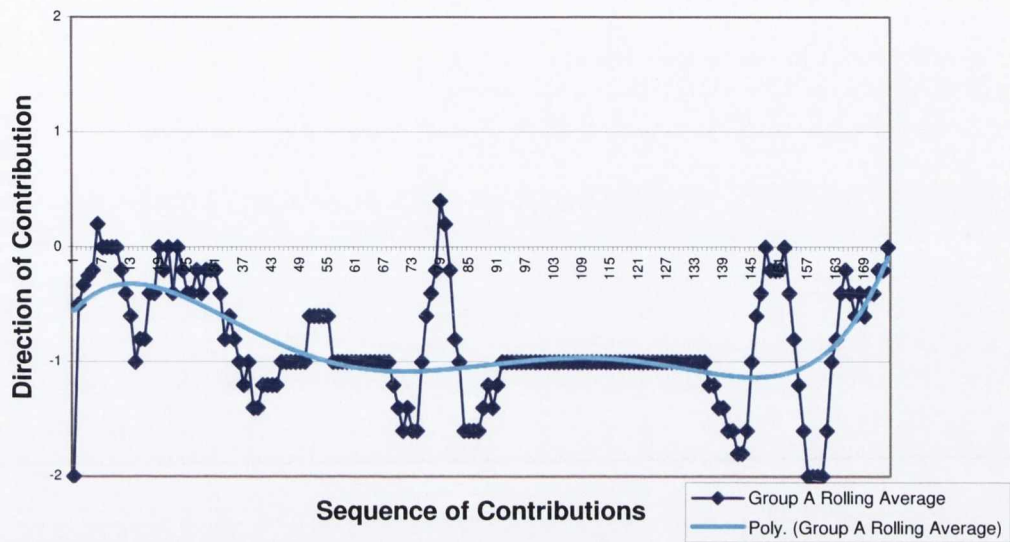


Chart 2: Group B Rolling Average Plot

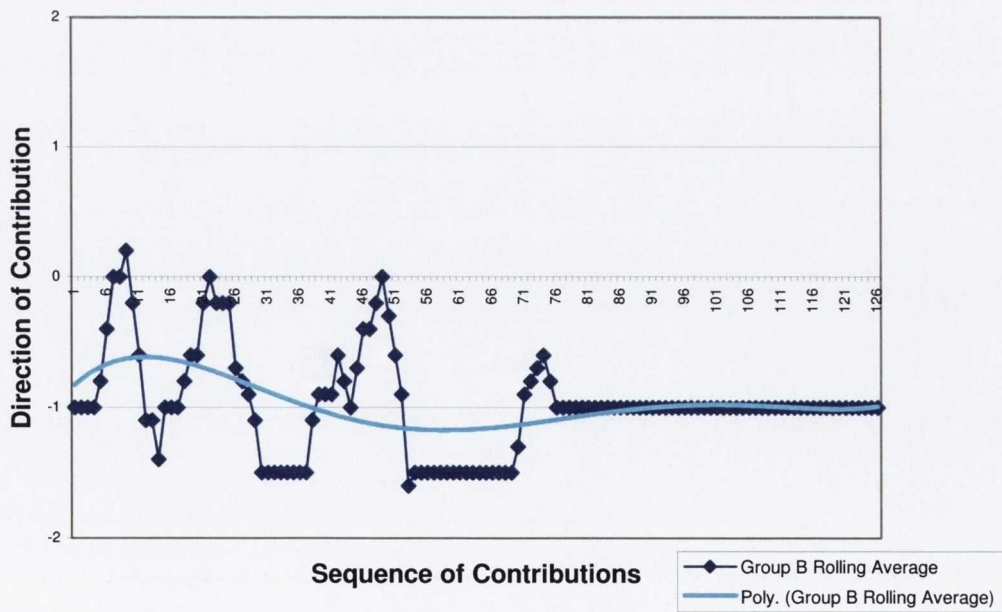


Chart 3: Group C rolling average plot

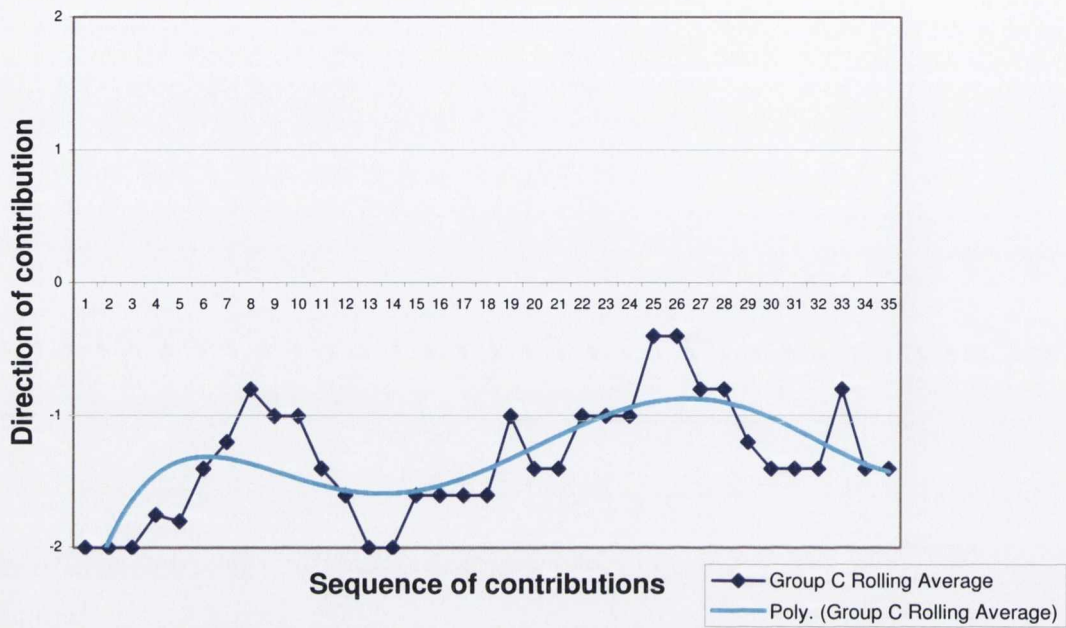
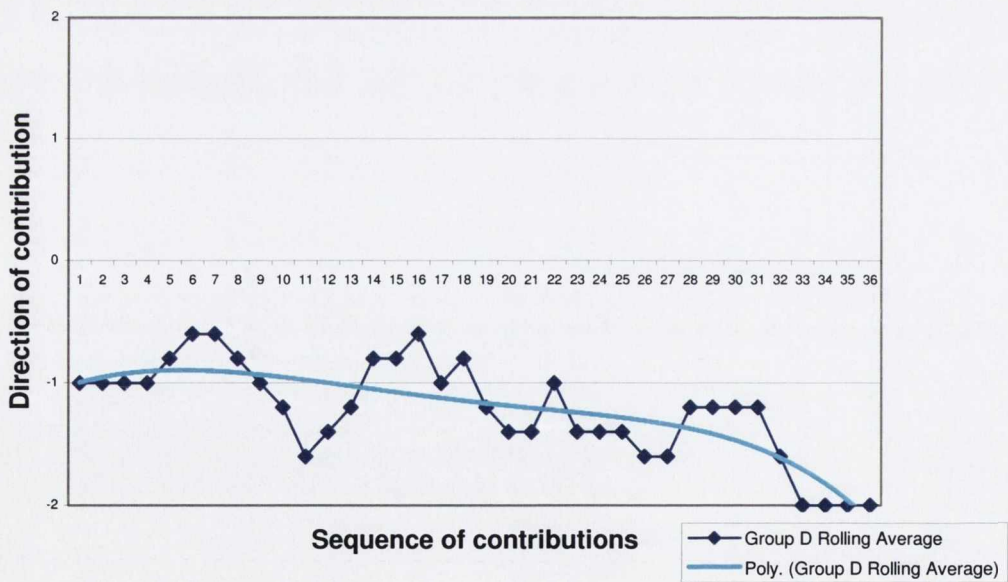


Chart 4: Group D rolling average plot



6.7 Accounting for opinion change

I now go on to model opinion change during the event, by adapting and extending Luskin, Fishkin and Jowell's (2002) regression model. I created an *opinion change* variable for each of the two main issue items, by subtracting each individual's score on the item according to the evening resurvey, from their score according to the morning presurvey. Following, Luskin, Fishkin and Jowell, this was then projected to the [0,1] scale. I then created independent variables for *information gain* and *group pressure*. In the original model, information gain is proxied using a measure calculated from seven knowledge items, scored 1 for each correct answer and 0 for each incorrect. The writers note that the most obvious measure might seem to be the difference in correct answers between the post and the presurvey ($I_2 - I_1$), but this is likely to be negatively correlated with information gain, since, as the psychology and communications literature suggests, the "the information-rich get information-richer" (2002, 480).⁵² There is a ceiling effect such that those who are able to answer all or most of the items correctly at the beginning are most likely to learn more still, yet subtracting their later from their earlier score would yield a low or zero score. Luskin, Fishkin and Jowell instead use correct answers at Time 2: "The participants with high

⁵² Luskin, Fishkin & Jowell cite the following: J. D. Dooling & R. Lachman 1971; J. D. Bransford & M. K. Johnson 1972; H. L. Chiesi, G J. Spilich & J. F. Voss 1979; S. T. Fiske, R. R. Lau & R. A. Smith 1990; R. W. Neuman 1976; V. Price & J. R. Zaller 1993; K. Viswanath & J. R. Finnegan Jr. 1996.

information scores at Time 2 have all presumably gained a lot of information, either observably, because they started much lower, or, unobservably, because they started high" (2002, 480). Accordingly, I use a measure of information about the issue under deliberation from the evening resurvey.

To capture group mechanisms operating on individuals, pressuring them to alter their preferences in the direction of the dominant view in the group, Luskin, Fishkin and Jowell use the difference between the participants' presurvey opinion on a given issue scale, and the mean presurvey opinion within the small group to which he or she was assigned ($P_I - G_I$), projected to $[0,1]$.⁵³ The rationale for the operationalisation is that group pressure on an individual should be proportional to the extent to which that individual is an outlier. If pressure to conform affects individuals' views, then the expectation is that those most distant from the group mean will move most, to reduce the gap between themselves and the group mean. I follow this method ($P_I - G_I$) in scoring a group variable.

Table 19 below is a replication of Luskin, Fishkin and Jowell's Table 7. Contrary to their findings, the post-deliberation information level has no significant effect. However, it is worth acknowledging the comparatively restricted variation in the information variable. Prior to projecting the scores,

⁵³ Means are calculated for other group members, excluding the particular individual for whom the score is calculated, and consequently vary slightly for individuals in the same group.

Luskin, Fishkin and Jowell use a 7-item and hence an 8-point scale, where we use a 2-item, 3-point scale.

The group pressure variable is significant both statistically and substantively, for both the incineration and the Ringsend issue, and it is correctly signed (Part A below). On average, a juror who was at the other extreme of the policy scale (1 or 0) compared to his or her small group, would change opinion by 64% more of the scale on the incineration issue and by 70% more on the Ringsend issue. The initial difference between P_I and G_I (with positive values indicating approval for incineration) would be cancelled out by a movement of that magnitude in the direction of G_I . Just as in Luskin, Fishkin and Jowell's original study however, this maximum distance does not occur for any individual, with the largest score for $P_I - G_I$ being minus 0.53 on the incineration issue and plus 0.48 on the Ringsend item. The largest shifts occurring then were a movement of 34% of the scale in favour of incineration (-0.64 multiplied by -0.53), and 34% against the Ringsend incinerator (-0.7 multiplied by 0.48).

However, this apparent group effect is illusory. As pointed out by Luskin, Fishkin and Jowell, it may be due to the presence of P_I in both the dependent ($P_2 - P_I$) and independent variable ($P_I - G_I$). In their original analysis, when P_I and G_I are treated as separate regressors, the coefficients of G_I become attenuated and insignificant on 3 of 5 issue indices. When this

second part of the model is replicated here (Part B below), the effect is shown to reside in P_I alone while G_I is has no significant effect.

Table 19: Accounting for attitude change

Explanatory variable	Incineration	Ringsend incinerator
<i>Part A: With the difference between t_1 attitude and t_1 small group mean as one variable</i>		
Intercept	-0.431** (0.63)	-0.303** (0.59)
t_2 Information	0.202 (0.139)	0.027 (0.128)
Distance from t_1 group mean [‡]	-0.638** (0.100)	-0.695** (0.079)
R^2	0.461	0.601
F	22.228	38.384
Probability	0.000	0.000
n	55	55
<i>Part B: With t_1 attitude and t_1 small group mean as separate variables</i>		
Intercept	-0.026 (0.285)	0.014 (0.224)
t_2 Information	0.214 (0.137)	0.032 (0.127)
t_1 Attitude	-0.686** (0.105)	-0.740** (0.085)
t_1 Group mean	0.019 (0.436)	0.134 (0.392)
Adj. R^2	0.452	0.594

<i>F</i>	15.845	26.870
Probability	0.000	0.000
<i>n</i>	55	55

Table replicated from Table 7 of Luskin, Fishkin and Jowell (2002); All variables projected to the [0,1] interval. Cell entries show coefficient estimates with standard errors in parentheses. N = 55 in all cases

* Significant at the 0.05 level. (2-tailed)

** Significant at the 0.01 level (2-tailed)

Extending the model

Modelling small group effects using $P_I - G_I$ assumes that the group effects have an immediate impact on individual's opinions. This does capture the way deliberative polls work, where small group deliberations precede question and answer sessions, but it was not the case in our (shorter) jury event. A morning session of presentations and questioning of speakers intervened between the presurvey and the small group deliberations in the afternoon. Had the participants been resurveyed after the speaker session and before breaking into groups, their views might have already shown some change (see also Goodin & Niemeyer (2003) who find in their citizens' jury that participant's views changed more in the course of the "information" phase than in the "deliberation" phase). This is likely to have been the case here since, as described above and discussed below, the speaker session came to be seen as a very one-sided process.

We chose the incineration issue because, as a live and potentially divisive “hot-button” issue, it provided a critical case for the jury model. What we found, as a consequence, is that a situation developed in which those who should have been present to argue for the incineration option refused to attend, while those who spoke against it appeared wholly committed, and were judged, essentially, to have been much more effective public speakers. While this was clear from our own non-participant observation and from informal debriefing of the jurors, there is clear confirmation of this in the answers to an open resurvey item in which participants were asked to identify the reasons for the jury’s decision. 34 of the 55 jurors made reference to what they viewed as the poor presentation of the pro-incineration argument, and I report selected comments that capture this sentiment in Table 20 below. Even on a generous interpretation, in 18 cases respondents made no mention of substantive concerns at all, mentioning only the speaker issue. Note that respondents were not prompted to evaluate or criticise the speakers, but were simply asked what the reasons for the decision were.

Table 20: Reasons for the jury's decision – selected juror's comments

As there was no argument for the incineration plant and, the argument "against" was brilliantly delivered to the jury, I agree with the alternative

No representative of the govt or city took part in the presentation in favour of incineration of household waste. Those opposed to the motion made a much stronger case.

The arguments "against" were informative, compelling & v. strong - the arguments "for" were the opposite - the decision was further fuelled by a lack of representation from Dublin City Council & Govt.

There was a very weak argument for incineration. People were annoyed at the lack of govt participation

Lack of pro-arguments for incineration, scare tactics and statistics used by the "against" party. Peoples' lack of knowledge initially and then receiving only one strong view

The case against incineration was well presented by people in clear possession of the moral high ground, while the case "For" was presented very badly & with no conviction

A substantially one sided presentation where utopian views were not balanced by realism

The anti-incineration side presented their case as if they believed they were right but the pro-incineration case lacked conviction and on the evidence presented the authorities (dept of environ, local councils and EPA) cannot be trusted

After hearing evidence on both sides of the argument it was obvious there was only going to be one decision and this was a resounding no to both questions

Lack of trust in the govt. and authorities to monitor & regulate. The presentation on behalf of the "for side" was poorly made and lacked conviction & provided little info. Conversely, the "against" were articulate, succinct & believed what they said

The lack of information for the pro-incinerator side – the lack of govt commitment to the discussion and the eloquence of two of the anti-incinerator speakers

Note: spelling and some grammatical errors have been corrected but abbreviation has been retained

I now to an extension of Luskin, Fishkin and Jowell's model. Here I use the non-participant observers data, and attempt to capture the speaker effect within the model. I use the mean coding of directional contributions in the

group (strongly against, against, neither for nor against, for, strongly for) as a measure of the direction of *group pressure exerted specifically within the group session*, again calculated for each individual by excluding that individuals' own contributions and averaging across the remaining contributions (and projected to the [0,1] scale). This variable captures pressure to agree to the majority view.

Second, I included a variable to tap *individual opinion leadership*. Studies of trial juries show that not only do men routinely talk much more than women, and the better educated more than the lesser educated (Marder 1987; Hans & Vidmar 1986; Hastie *et al* 1983), but particular individuals tend to dominate the process (Strodtbeck *et al* 1957; Hastie *et al* 1983; see also Merkle 1996, 607). This is problematic because those who speak the most are likely to be viewed as most persuasive, and it is the quantity, not the quality of their remarks, that drives the perception (Marder 1987). I calculated, for each juror, the mean coding of the contributions of the most vocal member in the group, and projected it to the [0,1] scale. For the most vocal member, I calculated the mean contribution of the next most vocal member.

The third additional factor that I incorporate into the model extension is *the speaker imbalance*. As the very pronounced speaker effect that we witnessed was not anticipated, we had not prepared in advance to ask participants to rate the speakers on dimensions such as attractiveness,

trustworthiness, perceived conviction and so on, nor to content analyse presentations. Instead I use a proxy variable to seek to capture the persuasive power of the anti-incineration side. Setting aside the merits or demerits of the argument, those who were most concerned at the time of the evening resurvey about the health risks of incineration were plausibly most influenced by the speakers. This issue, in the context of predicted dioxin emissions and their potential for harm, was a key part of the analysis provided by the anti-incineration side. Equally if not more importantly, it was the most dramatic aspect of the case against incineration. Those jurors who remained unconvinced by the health risks claimed for incineration must not have found the anti side very persuasive. Conversely, those who came to be very concerned on this issue are likely to have been most impressed by the speakers on the anti side. In short, concern about health risks at t_2 should be highly correlated with the perceived effectiveness of the anti side as speakers. As a proxy for the persuasiveness of the anti side then, I regress opinion change on evening resurvey attitudes on the item "Waste incinerators are a threat to the health of people living nearby" [0,1].

Of course some jurors may have been strongly concerned about health effects *before* the event, and some may have been convinced as a result of what they heard *after* the speaker session, but during the actual deliberation. To control for the first, I also include *morning survey* attitudes on the same item. I control for the second by retaining the variable formed from the *mean*

coding of the contributions made in each group, the scoring of which should correlate perfectly, in so far as the coding is reliable, with the expression of fears about health within the group. Consequently, the use of the t_2 health risks variable within the regression model picks out that component of the variation unrelated to both t_1 attitude and exposure to arguments within the deliberations themselves.⁵⁴

Table 21 (Part C) shows the results of including these extra variables. Neither the mean contribution within the group, nor the mean contribution of the most vocal group member, had significant effects on jurors' opinion change. In contrast, the resurvey item on the risks to health of local residents, the proxy for speaker effectiveness, is significant at 0.01 for both the incineration and the Ringsend issue. With a score of 1 indicating the extreme of approval for the statement, and consequently, of the perceived effectiveness of the anti side, a juror at that position (of which there were 13 at the end of the day) would on average have come to oppose incineration by as much as 52% of the scale, and to oppose the Ringsend incinerator also by 52% on the scale.

⁵⁴ A check revealed that the mean contribution to which each individual was exposed in the plenary session (see Appendix 2) was invariant, even calculated excluding that individual's own contributions. This variable cannot therefore account for any variation in the dependent variable.

Table 21: Accounting for attitude change: an extension

Explanatory variable	Incineration	Ringsend incinerator
<i>Part C: Extension with additional variables</i>		
Intercept	0.789 (0.402)	0.561 (0.332)
t_2 Information	0.152 (0.127)	-0.046 (0.116)
t_1 Attitude	-0.902** (0.122)	-0.885** (0.101)
t_1 Group mean [‡]	-0.335 (0.495)	0.012 (0.488)
Mean contribution in the group [‡]	0.454 (0.862)	0.104 (0.793)
Mean contribution of most vocal group member [‡]	-0.019 (0.520)	0.028 (0.435)
t_1 Attitude on health risks	-0.157 (0.147)	0.035 (0.120)
t_2 Attitude on health risks (proxy for speaker effects)	-0.520** (0.147)	-0.523** (0.132)
Adj. R^2	0.566	0.682
F	11.052	17.226
Probability	0.000	0.000
n	55	55

Extension of table replicated from Table 7 of Luskin, Fishkin and Jowell (2002). All variables projected to the [0,1] interval. Cell entries show coefficient estimates with standard errors in parentheses.

* Significant at the 0.05 level. (2-tailed)

** Significant at the 0.01 level (2-tailed)

6.8 Discussion

Findings from other experiments: how does the Dublin Citizens’

Jury compare?

Starting from the random sample of invitees drawn from the 2002 IES, there was a systematic process of jury attrition. Roughly only about one quarter (22 per cent) *of those invited* eventually participated; this was despite considerable efforts, in terms of regular phone calls, to maintain the interest of those who initially agreed to participate. The participation rate *relative to Dublin IES 2002 respondents* (i.e. the proportion of Dublin respondents in the IES who ended up as jurors) was 8 per cent (49 of 625). This appears to compare unfavourably with deliberative polls in which participation rates have generally been in the thirties, with some in the twenties and one over 50 per cent (Luskin & Fishkin 2005). It must be noted however that we were aiming for a jury of 50, and for that reason issued invitations to only 221 of the 625 respondents in the baseline sample. In deliberative polls the entire set of respondents in the baseline sample are invited to attend. Thus the comparable figure in the Dublin Citizens’ Jury is the figure of 22 per cent – not the figure of 8 per cent.

Given that it fails to account for non-respondents in the IES, this low participation indeed understates the degree of non-coverage that the jury

method implies. However, it is in the nature of citizens' juries to bring a much smaller pool of individuals together. Juries rest on the premise that a large probability sample cannot conceivably reach a collective verdict for which each participant can have some sense of ownership. To that extent a high level of non-coverage is necessarily built into the process, as part of an unavoidable trade-off.⁵⁵ The ratio of deliberators to the baseline sample is naturally smaller in citizens' juries than in deliberative polls.

The important question then, is whether, despite non-coverage, deliberators are representative of the larger population. Here I note the general trend in the research so far. In their review of the findings of deliberative polls, Fishkin and Luskin suggest that "participants are generally a bit older, better educated, and more interested in and knowledgeable about the topic than the nonparticipants"⁵⁶ (2005, 290). In their Danish deliberative poll Hansen and Andersen (2004) report a statistically significant under-representation of those in the two lower levels of educational attainment, and those in the youngest age category. Citizens' jury organisers do achieve a fair degree of diversity in their composition, although McIver (1997) mentions some concern among observers about the representativeness of the juries she evaluated. Ned Crosby's jury reports usually include a comparison of the

⁵⁵ Note that this may be less true for deliberative polls. Setting considerations of physical space aside, while deliberation must take place in small groups, there need not be an upper limit to the number of groups when the object is not to reach a collective decision but to conduct pre- and post-surveys.

⁵⁶ The "control" group here consists of non-attendees from the original probability sample who received invitations.

numbers of attendees with the quotas, and it appears that those in the lowest level of educational attainment are frequently under-represented (see www.jefferson-center.org).

Our efforts resulted in a set of jurors who were older, more male, and educated to a higher level than the citizenry they were ostensibly representing. The attrition process also resulted in a jury with a slightly higher sense of personal efficacy than the population as a whole, and a jury that was more prone to vote in elections, although differences were statistically significant only for education. I noted that despite these demographic biases arising from jury attrition, however, there appears to have been no bias in the jury in terms of attitudes and political activity with respect to environmental issues.

It appears from our findings and from others then that, at the very least, those with lower levels of education are consistently under-represented in deliberative polls and citizens' juries. There would seem to be a need, in future, to over-sample from the lowest level of attainment in order to ensure adequate participation. We also found that the less educated were more susceptible to attitude shifts, which suggests that the opinion-shifts reported for deliberative polls are lower than they would be if the less-educated were better represented. This finding appears to buck the general trend however, as Fishkin and Luskin report that opinion-change tends to be unrelated to sociodemographic variables (2005, 291).

The significant opinion-shifts that we observed also confirm the general trend in deliberative polls, and in citizens' juries on those occasions when statistical tests are used. In their ten and three month follow-ups, Fishkin (1997; appendix to the paperback edition) and Hansen and Andersen (2004) find some "shift-back" in attitudes, but not a return to prior attitudes. The post deliberation panel study using the IES 2004 similarly showed that, while a modest shift-back did take place, the opinion shifts that occurred during deliberation were durable. Nine months after the deliberation event, the panel of deliberators had attitudes that differed significantly from those of the control group.

The implications of combining a citizens' jury with a deliberative poll

Increasing the size of the jury permitted us to conduct analyses that are usually done only for deliberative polls. I should however comment on whether combining the methodologies might have affected the findings. I noted above that a criticism of citizens' juries is that the use of a consensus decision-rule may result in conformity and the suppression of dissenting views. Disagreements are of course permitted, and reports of juries to their sponsors often include minority views (Coote & Leneghan 1997). In some cases jurors freely express their unwillingness to agree to a consensus

(Crosby *et al* 1996). Nevertheless jurors do sometimes report reservations about their ability to express dissenting opinions (Hall & Stewart 1996). In the above analysis I investigated the effects of group pressure and opinion leadership, and found that neither variable was related to opinion-change. In the experiment, creating an expectation of consensus did not therefore have the normatively undesirable effects that have been predicted.

The dominant element was rather the pronounced one-sided speaker effect. It is worth noting that deliberative polls place greater emphasis on deliberators putting questions to experts and policy-makers than on speaker presentations. It might seem, therefore, that deliberative polls should escape this problem. Luskin, Fishkin and Jowell write that the formula of the deliberative poll involves transporting randomly selected citizens to a single site “where they can spend several days grappling with the issues, discussing them with one another in randomly assigned, moderated small groups and *putting questions* generated by the small group discussions to carefully balanced panels of policy experts and political leaders” (2002, 458/9; my italics).

Button and Mattson’s (1999) case studies of deliberative forums show, however, that the problem is one that may indeed apply equally well to deliberative polls. They observed a process in which, in the context of interactions with experts and political leaders, citizens become “locked...into a deferential and sometimes passive role,” and “become pupils rather than

participants” (1999, 622). For example, during the 1993 Citizens’ Jury on the Clinton Health plan, when asked if he would like to sit or stand during his presentation, Senator Wellstone explained that he had been a “college professor” and wanted to stand:

Even though Wellstone has a “folksy” and populist style of presentation...his role as a “professor” giving a lecture inherently limited discussion and dialogue. The citizens became glassy-eyed in his presence, acting like students gathering information for a forthcoming test. At one point, a citizen looked wistfully at Wellstone and said: “You’re good, you’re really good” (Button & Mattson 1999, 625/6).

What suggests that this is potentially an issue for deliberative polls is the fact that a similar dynamic of deference occurred during forums organised by the League of Women Voters, in which (1) great efforts were made to prevent it, and (2) the interaction between speakers and citizens took place by means of a question-and-answer session. Organisers had provided extensive reading materials, ran information days, and laid down ground rules including that office holders should not emphasize technical policy issues, and that there should be no “lectures”. Nevertheless, the question and answer sessions were stilted, start-stop affairs without any real interchange or dialogue. Quite literally, “citizens posed questions and “answers” came from the representativeness” (Button & Mattson 1999, 627). There is no reported evidence to suggest that deliberative polls have been compromised by this

kind of deference, but neither is there any reason for assuming they should be immune to it. Having said this, the difficulties in the Dublin Citizens' Jury arose from deference (to one side) *combined* with unequal commitment and performance on the part of the (anti-establishment) speakers, and these difficulties need not arise unless a comparable imbalance occurs. I discuss this further below.

An additional difference between our experiment and deliberative polls is the reduced sample size. In principle this should not have affected participants' behaviour independently of the expectation of a consensual decision, considered above. In deliberative polls, as in the Dublin experiment, deliberation is conducted in small group sessions. The main fear is that small sample size may lead to Type II errors – failure to reject a null hypothesis of no effect when there is in fact an effect. Careful examination of results reported in the tables in this paper, however, shows no “knife edge” inferences need be drawn. The results are robust in the sense that statistically significant effects are strong and non-effects do not come close to statistical significance.

Finally, we might also note that the Dublin Citizens' Jury took place over the course of a single day, as a result of which it might seem that jurors were under greater pressure to make a decision during their group discussions. Both citizens' juries and deliberative polls usually take place over several days, but as noted above, on the advice of the ESRI we reduced

ours to a one-day event. It is likely that the pronounced speaker effect we observed would have effectively made any further deliberation redundant. From this perspective, it would be inappropriate to generalise specifically in relation to the impact of less time for deliberation.

Research issues

The experiment suggests that it is possible, with a careful research design, to estimate, and potentially correct distortions in the citizens' jury process that arise from jury selection and attrition. Despite enormous efforts to create a balanced presentation of the issues, however, we did not succeed in achieving this. Our experience in this regard has significant implications for the empirical evaluation of deliberative experiments in real-world settings. The "framing" of any particular jury deliberation involves a huge range of variables. We can of course conduct laboratory research, but our interest in investigating the effects of deliberation has more to do with its intended use in real world contexts. There are however so many degrees of freedom in designing a deliberative (even quasi-) "experiment" that it is difficult even to identify, much less control, salient features of experimental design. Having said this, we could do more to try to integrate the persuasive communications literature into deliberative research, in respect particularly of speaker effects, in order to attempt to explore these effects in a more systematic way. In any

deliberative event it cannot be assumed as a matter of course that a balance of speakers has been successfully achieved, and our experience demonstrates the need to treat this as a research topic in its own right. Indeed, in this respect ours has been an instructive failure. It is unlikely that other deliberative events are likely to have been compromised by effects as severe as those we encountered. It is, perhaps, for this very reason that little attention has been made to those effects that may actually have occurred.

In social psychology there is a long tradition of inquiry into the relationship between persuasion and attitude change, stemming from the work of Hovland, Janis and Kelley (1953). Studies have compared the differential effects of experts and non-experts; of popular and unattractive communicators; of rapid and slow speakers; of the perception of a deliberate intention to persuade versus its absence; of fear-arousing and neutral messages, and so on (see the citations in Hogg & Vaughan 2002, 203). We could do more to identify and disaggregate these effects in deliberative contexts, using either participant ratings or content analysis, and to incorporate them in models of opinion change. The puzzle for organisers however is that, while we might be able to identify these effects after the event, it is not entirely clear how we could correct for them in advance.

Substantive issues

In our citizens' jury, the stakeholders who expected to be on the "losing" side were able to influence and de-legitimise the eventual outcome by withholding their cooperation. As a direct consequence of our choice of a live, contested issue, the jurors' verdict was ultimately driven by this unwillingness to participate. One particularly important set of "stakeholders" here are public representatives and officials. A number of commentators on public consultation have questioned the extent to which the public are empowered to advance proposals that the relevant public authority "does not anticipate or like" (Coote & Lenegahan 74, Pratchett 1999*b*, Smith & Wales 2000). Indeed Pratchett warns that "participation initiatives can be seen to offer public relations opportunities for organisations: opportunities which enhance the legitimacy of policy decisions by giving the appearance of greater popular control without having to devolve power out of the organisation" (1999*b*, 632). In part the issue is that public consultation is multi-faceted and serves no single purpose – agencies can use it to obtain information from citizens, to gain public approval for projects or decisions, to legitimate previously taken or unpopular decisions, to legitimate the organisation itself, to foster community action, or simply to meet statutory requirements (Langton 1978*a*, Rosener 1978, Harrison & Mort 1998, Webler & Renn 1995, McIver 1997). And there are examples of what appears to be a

very genuine commitment to consultation via citizens' juries (see Hall & Stewart 1996).

Our experience is however, a vivid empirical demonstration of what, for some, may be a suspicion. It shows how deliberative events may fail to secure the involvement of decision makers, and what the resultant effects on opinion-change may be. It is true that we chose an issue having particular characteristics, and having a particular political context. The topic for deliberation was a controversial and unpopular proposal, on which, although no final decision had been made, both the government and the city manager did have a current preference – one which they had reason to fear would be rejected by the jury. They would have no doubt been aware that in the preceding year the incineration issue was a divisive one. Action groups had mobilised at various stages of the planning process against attempts to build three incinerators in counties Cork, Meath and Tipperary, gathering thousands of signatures on petitions in the process. A decision by the government to permanently transfer responsibility for regional waste plans from local councils to city and county managers, in order to fast-track the planning process, had been deeply unpopular.

In more favourable conditions the support of decision makers is more likely to be achieved. For precisely this reason however, we need to pay greater attention to the circumstances in which public representatives and officials are supportive and when they are not. If in some cases these forums

simply cannot be convened with the support of representatives or officials whose participation is needed – even when private organisations and research institutes are ostensibly free to convene whatever forums they wish – then their potential to empower citizens is undermined. Citizens are obstructed by effective “gate-keepers” from meaningfully deliberating in such forums on issues that may be of concern to them.

It is of course also possible that, if the jury had been making a decision that was guaranteed to be implemented as part of a formal statutory process, then all sides would have had an incentive to participate in the most effective possible way. This would not negate the possibility that one side of the case would be better presented than the other, but it would remove the possibility that one side would attempt to undermine the deliberative process if it feared being on the eventual losing side. The trouble here is that if the level of support among decision makers is in question, then we can hardly expect those same decision makers to bind themselves to statutory forums.

The Dublin Citizens’ Jury was seen as a great success in the eyes of the jurors themselves, virtually all of whom were very enthusiastic indeed about being asked to participate in a decision making process such as this, very much enjoyed the day, and urged us to do it all again as soon as possible for a range of different issues. The potential of occasions such as these is undeniable. Caution is needed however, all the more since citizens’ juries and similar forums have recently begun to make national news, accompanied

by a good deal of fanfare on the part of their public sponsors. Recent updates on The Jefferson Center's website⁵⁷ feature Gordon Brown's pledge to hold citizens' juries as part of his "new politics." Since that statement, juries have been held in Bristol and Leicester. The website also carries links to a *Guardian* report in which Patricia Hewitt's intentions as health secretary were to include using citizens' juries as "new channels of democracy" in order to facilitate "listening harder to what ordinary people are saying" (Carvel 2005). In the 27 states of the enlarged EU, an ambitious project modelled on the citizens' jury process called the "European Citizens' Consultations" is underway, run by a consortium of independent European foundations and civil society organisations, and co-financed by the European Commission.⁵⁸ The democratic credentials of citizens' juries and similar forums, when they purport to give citizens a say, require a commitment from policy makers to follow the argument *wherever* it leads. More precisely, from a deliberative perspective, opportunities for unconstrained deliberation should be available on all issues that citizens might wish to discuss and influence. The increased use of these forums, combined with official declarations of support, should not obscure failures to meet this requirement.

⁵⁷ www.jefferson-center.org

⁵⁸ See <http://www.european-citizens-consultations.eu/>

Findings for the empirical dimension of deliberative democracy

I have till now been largely concerned with the unanticipated consequence of our choice of issue, and this has shown that we need to monitor whether it is possible to use citizens' juries effectively to supplement standard representative institutions, across the range of issues of concern to the public. These issues are relevant to deliberative democracy insofar as citizens' juries and related models are means that we might use to institutionalise citizen deliberation. What we saw in the case of our jury experiment, however, is the very reverse of unrestricted communication, occasioned by what appears to have been a strategic decision by interested parties to evade the process.

I want here, also, to connect with the more general discussion of deliberative democracy as a theory whose normative justification rests in part on empirical claims – both because its desirability rests on expected consequences, and because its relevance does. Positive findings from the jury in this regard, aside from the absence of attitudinal bias and the significant opinion shifts, include the stability of opinion change over the nine months after the event, the significant increase in correct knowledge items, a significant increase on a measure of external political efficacy, the absence of significant differences in participation across gender and education, the absence of a clear polarisation effect, and the absence of conformity and opinion leadership effects in the regression model. Negative results, aside

from juror attrition, included the lack of an increase in attitudinal constraint, the lack of significant changes on five of six items concerned with political efficacy and attitudes, the lack of a relationship between information gain and opinion-change, and the effect of the speaker imbalance on opinion-change as proxied in the model. Thus while the jury interaction appeared to have been free of inequality, and free of pressure to conform, the outcome was not driven by increased information but rather by the imbalance in witness presentations. The evidence of this experiment for the normative expectations of deliberative theorists is therefore very mixed. Overall it would be difficult to conclude positively, given the distortion of the process that occurred. It must be acknowledged that this was a single experiment, and any generalisations that we might wish to draw about these events will only emerge from cumulation. We might however take away the warning that the experience gives us.

It is worth highlighting the features of the speaker presentations that led to the outcome we saw. What was most obvious, firstly, is that speakers on the anti side appeared more concerned about the issue. It seemed much *more urgent* for them, and they communicated this urgency to the audience. This was conveyed through emphatic speech, a degree of annoyance, and the sense that they were personally involved in and animated by the issue. By contrast, the case for the pro side was drier and less emotive. Neither speaker gave the impression that the issue mattered a great deal to them personally,

nor did they raise their tone of voice. Second, the anti side raised *much wider issues*. Rather than concentrating simply on factual matters about incineration (volumes of material, percentages of emissions, percentages of energy recovery and so on) they dramatised two issues very effectively: reasons to be distrustful of private incinerator companies and state regulators, and to particularly great effect, a contemporary culture of consumption and waste, a loss of community, and moral bankruptcy in our treatment of the environment and our lack of concern for future generations.

The contrast between the scientific consultants on each side was quite significant. The consultant on the anti side effectively raised a doomsday scenario in terms of the toxic effects of dioxins and fly ash, our relationship with the earth, and our inability to collectively control our affairs in a responsible way. The consultant on the pro side argued, essentially, that first-generation incinerators are no longer with us. Incinerators now meet higher standards and emissions are within tolerable limits. We need incineration for the waste we cannot recycle or reuse, and it is a better alternative than landfill.⁵⁹ The necessity for incineration was countered by the anti side,

⁵⁹ The following are slides from the speaker presentations that illustrate the difference in their approaches.

From the consultant on the “anti” side:

We are living on this planet as if we had another one to go to.

We are allowing multi-national corporations to define progress

A throwaway society is incompatible with a finite planet

which argued that alternative approaches that have been successful in other jurisdictions have not been considered, while the idea of a “zero-waste” policy has also not been given the attention it deserves

There is a risk built in to the design of citizens’ juries, given that invited speakers can cue the jurors’ discussions with their pre-prepared presentations, with the potential to significantly shape the discussion. In this context, the rhetorical and emotive properties that are a familiar part of language, can have particularly dramatic effects when they are used by “experts” that may already be perceived to have some degree of authority or expertise. We should be very cautious about identifying citizens’ juries too readily, and without further examination, with unrestricted discussion. At the very least, we need to pay more attention to modelling these effects.

Landfills BURY the evidence

Incinerators BURN the evidence

We have to re-establish community over corporate interests

From the consultant on the “pro” side

Summary Technical Measures

– During the last decade

- Close-down of old incineration installations
(Zaanstad, Leiden, Leeuwarden, Alkmaar)
- Improvement of the incineration process itself
- Intensive improvement of flue gas cleaning of the other installations plus addition of extra techniques

Enlargement of the incineration capacity with new modern ovens, including the most up to date cleaning technologies

Conclusion

Interest in deliberative democracy is likely to be with us for some time. There is much work yet to be done in order to tease out the full implications of the theory, to explore dilemmas and critical issues that perhaps have not yet emerged into view, and to deepen the empirical investigations that are underway. I have touched on these, but what I have said here makes no claim to be the final word on the issues. I might however recall the plan I started out with, and retrace the steps of the argument as it has developed. I began by sketching a brief statement of what deliberative democracy implies, and followed this with a short account of the theory's genesis. I then introduced James Hyland's conception of the nature and tasks of political theory, which I have adopted here. Political theory is essentially normative, aiming to be a directive influence on a unified set of human practices by formulating the principles that these should embody. As such, political theory requires a complex form of inquiry that includes philosophical-theoretical, normative and empirical elements. It integrates an analytic level, a normative level, and a level on which claims on these two other levels are explored and examined in their relationship to background conceptions of human beings, society, knowledge and so on. I offered this thesis as an attempt to engage in this kind of inquiry, with deliberative democracy as its focus.

What this meant for my analysis of deliberative democracy should be evident, I hope, in the variety of questions that were addressed. I began the main body of the thesis by asking what it would mean to justify deliberative democracy as a normative ideal, suggesting that we need to know how this meshes with defining democracy more generally. However desirable deliberative democracy might look, there must be a point of contact between these, otherwise the 'democratic' part of deliberative democracy would remain obscure. I have argued that the way to address this is to see deliberative democracy as a theory that tries to account for our intuitions about democracy better than alternatives. In this vein, when exploring a set of positive arguments in favour of deliberative democracy, I tried to identify ways in which these capture our intuitions. The conceptual dimensions of these arguments were addressed as far as they could be in Chapter 1, but it was not possible to conclude the assessment of the justifiability of deliberative democracy at that stage. This was in part due to the fact that a fuller discussion of Habermas was needed, and moreover, this discussion would involve more foundational issues of epistemology and moral theory. It was also due to the fact that the normative justification of deliberative democracy rested in part on expectations about consequences for individuals and groups that could not be assessed prior to empirical study. It also rested, in the case of Habermas, on the assumption that under the conditions of contemporary societies, the public sphere could successfully act as a medium

for a relatively unrestricted and politically effective circulation of communication. This issue, and the implications for deliberative democracy of the diversity of moral frameworks that characterise modern societies and the public controversies they give rise to, were addressed in Chapter 3. In terms of the model of political theory sketched above, Chapter 3 can be seen to operate on the level of background theory and its implications for the deliberative ideal.

Chapter 2 presented accounts of the main varieties of deliberative democracy, and addressed both foundational and normative issues in the course of this. It did have some contact with background issues in respect of the deliberative capacities of the public (Bessette), our perspectival limitations (Young, Rawls and Habermas), and the relationship between political institutions and citizens' motivations (Taylor and Habermas). Chapter 4 surveyed the empirical literature, the need for which was signalled in Chapter 1. Finally, Chapters 5 and 6 continued the empirical investigation of deliberative democracy in the context of an experiment designed in the attempt to maximise external validity, while at the same time providing an opportunity to assess a particular model for convening citizen deliberation as a supplement to standard representative institutions.

This then, was the structural logic of the thesis. I might now retrace the argument. I first distinguished 'deliberation' as an ideal-typical phenomenon; 'discussion' as an actual activity, 'communication' as the

actual exchange that occurs via the media; and 'reflection' understood as conscientious thought. The arguments for deliberative democracy, distinguished by Maeve Cooke (2002), had to do with its procedural fairness, the quality of resulting decisions, expectations about the effects of discussion, and the congruence of the ideal with our self-understandings. In relation to the first, I argued that deliberation is likely to improve on voting by shaping outcomes in particular ways, because it allows participants to discriminate between preferences. In this respect deliberative democracy better captures the intuition that democracy concerns the equal consideration of interests than vote-aggregation in the absence of deliberation, on the assumption that the equal consideration of interests is not to be understood in purely formal terms. To the extent that real world discussion can have this kind of result, supplementing voting with discussion would improve outcomes on grounds of substantive justice. I argued in addition that deliberative democracy captures the ideal of moral autonomy better than alternative views because of the importance it attaches to the exercise of judgement on collective issues, and the conditions of the formation of preferences.

I continued to explore the issue of the epistemic character of deliberative democracy by reference to Cooke's objection that Habermas does not provide a clear account of how deliberation contributes to the quality of decisions. Here I argued that Cooke misinterprets Habermas, in

failing to recognise that there is no “democratic discourse” as such. Instead, Habermas clarifies practical rationality in terms of the logics of pragmatic, ethical and moral discourses. He interprets the principles and institutions of the constitutional state as the means by which such discourses can be legally institutionalised, so that political power can receive its authorisation through popular sovereignty. In this way Habermas accounts for the logic of democratic institutions in deliberative terms. Setting Habermas aside, the deliberative perspective also involves individual-level expectations, such as more informed, considered, or integrated attitudes. If these expectations can be given empirical support, then this has implications for the quality of public opinion – and thus for deliberative democracy’s epistemic claims. The intuition captured here is that that democracy has a purpose; we are not indifferent to the intelligence of the democratic process.

I then turned to claims about the effects of democratic participation, more specifically political discussion. I explored Cooke’s presentation of educative and community-generating effects by reference to Rousseau and J.S. Mill, and Carole Pateman’s (1970) discussion of these. I argued that both Rousseau and Mill understood the educative or developmental function of democracy in terms of the tempering of self-interest and the enlarging of concern. Part of the educative notion was also the belief that having responsibility for decisions would increase feelings of political and personal efficacy, understood in a measurement context as indicators of autonomy. I

suggested that the empirical literature is unlikely to support these expectations on a very strong interpretation. However, more modest empirical inquiry would explore observable effects within discussion settings like those effects investigated in Chapters 4 and 6. Cooke rightly pointed out the need for an account of the mechanisms by which these outcomes might be produced, and I suggested a number of these drawn from the literature. I concluded this part of the discussion by considering the claim that this kind of argument is not sufficient to justify deliberative democracy because the effects in question are essentially by-products. This is not damaging since, if deliberative democracy is at least as good as alternatives in terms of justice or efficiency, then on the assumption that these effects obtain, this gives us a reason to prefer deliberative democracy. Also, I argued that there is a danger here that “educative effects” might be seen to be dispensable. If our democratic commitments include a background ideal of moral autonomy, then the scope afforded to this by our institutions is of critical importance.

The final argument that I considered in the discussion of Cooke rested on the idea that there are certain conceptions of knowledge, the self and the good life that are so fundamental to Western history and traditions that we cannot conceivably reject them, and that deliberative democracy is most consistent with these. I had been implicitly arguing along these lines in justifying deliberative democracy by reference to the value of freedom of self-determination and moral autonomy. I suggested two things at this stage

however. First, although this line of argument does give someone who shares these conceptions an account of why they should accept a deliberative conception of democracy, it can be complemented with Habermas's more systematic account. Second, I noted that Habermas does not present the justification of his theory as conditional on our unavoidable cultural inheritance, but as redeeming a conception of moral universalism whose defence I presented in Chapter 2.

In Chapter 2 I further explored the case for deliberative democracy by distinguishing its main varieties: republicanism, Rawls, and Habermas. My goal was partly the interpretive one of clarifying these perspectives. In this context I presented the rationale for Habermas's general programme and his deliberative theory. This included his theories of communicative competence, discourse ethics, self and society, and modernity. I developed Habermas's discursive account of legal legitimacy and popular sovereignty, by which he explicates the constitutional state and the role of the public sphere. I used the discussion to make some critical claims about what a defensible account of deliberative democracy should contain. I focused on James Bessette's insulation of deliberation from society, on John Rawls's monological account of deliberation, and on the implications for Habermas of Charles Taylor's account of republican patriotism. Against Bessette I defended a non-elitist and participatory conception, using the women's movement as a model. Against Rawls's monologism and using Young's

critique of perspectival distortion, I defended Habermas's dialogical version of deliberative democracy. Against Taylor I suggested that Habermas could accommodate patriotic and particularistic attachment, though Habermas addresses this by acknowledging the need for an anchoring of constitutional values and opportunities in background culture. In the course of this discussion I defended a view of deliberative democracy that is participatory, dialogical and adversarial.

In Chapter 3 I argued that Rawls's idea of public reason and Habermas's account of the presuppositions of argumentation do not in themselves give us a clear way of seeing how controversial moral issues might be resolved, but that voting supplemented by deliberation can improve the legitimacy of decisions when disagreement persists. As Bohman (1996) has highlighted, continued cooperation despite disagreement is reasonable where a democratic association is an ongoing concern, disagreement does not extend to all issues that are urgent for some constituency, deliberation filters out the more unacceptable alternatives, and present minorities can reasonably expect that they might become future majorities by persuading others to join with them. With respect to the mediated character of the public sphere, I argued that while its features represent significant deviations from an ideal deliberative procedure, civil society groups may still have the potential to exert a significant influence on public attitudes and formal decision-making. This is based on three considerations – evidence of past successes with

respect to the salience of issues and the disruption of normal routines, the unavailability of media framing and opportunities for frame contestation, and the active construction of meaning by consumers of media.

In Chapter 4 I set out a number of hypotheses about the effects of political discussion and surveyed the empirical literature, while introducing public involvement and in particular, deliberative polls and citizens' juries. These hypotheses included: more informed individuals, greater attitudinal constraint, greater political efficacy, constraints on the public expression of self-interested or prejudiced claims, enlarged concern (perspective taking, empathy and sociotropism), greater tolerance, and positive civic attitudes. More damaging predictions concerned deliberative inequality and group polarisation. For the most part these have found some support in the literature, but evidence for the more desirable outcomes was modest since I draw on a very small number of studies. Promising results were found in some areas. However, overall, the evidence might be seen to be somewhat fragmentary and dissatisfying. Taken as a whole, the empirical claims of deliberative theorists have not as yet been shown to have very robust support, though there have been some promising findings in particular areas.

In Chapters 5 and 6, finally, I reported the results of the TCD Citizens' Jury on Waste Incineration. There were positive findings in regard to the absence of attitudinal bias in the panel of jurors who attended the event, the strong opinion shifts and their stability, the significant increase in

correct knowledge items, a significant increase on measure of external political efficacy, the absence of significant differences in participation across gender and education, the absence of a clear polarisation effect, and the absence of conformity and opinion leadership effects in the regression model. Negative results included a degree of attrition in favour of older, male and better educated respondents, the lack of an increase in attitudinal constraint, the lack of significant changes on five of six items concerned with political efficacy and attitudes, the lack of a relationship between information gain and opinion-change, and the effect of the speaker imbalance on opinion-change as proxied in the model.

The distortion caused by the imbalance in the commitment and performance of the invited speakers, and the unwillingness of public officials to participate, raises a whole series of questions about the prospects of using citizens' juries and similar forums to institutionalise citizen deliberation. From a research point of view there is a very real need to include speaker ratings or content analyses in models of opinion-change. More generally, we need to continue to develop models and measurement strategies to assess the relative influence on dependent variables of interest of the variety of desirable and undesirable processes, starting with opinion change. In this regard the model presented above, and its treatment of potential conformity pressures and the speaker effect, is a modest step in the right direction.

From a substantive point of view, we need to monitor the commitment of public representatives and officials to citizens' juries and similar models, as part of a wider exploration of how open and unrestricted, or how distorted, are the discussions that place in these contexts. We should be wary of too hasty an identification of these with the image of thorough and enlightening debate drawn from normative theory. However, if the arguments for deliberative democracy have been effective, considered as a whole, the need for continued experimentation and effort in convening these processes should be clear. Despite their shortcomings, models like these facilitate the participation of ordinary citizens in settings that at least hold out the promise of high-quality deliberation. Everyday contexts aside, there are no obvious alternatives for the deliberative involvement of lay people who are not active in associations, community organisations, parties, or political movements. While I have to a great extent rested deliberative democracy on civil society and those citizens who are especially active within it, deliberative democracy stands in the 'strong democracy' tradition that I sketched in the introduction, in which the maximisation of participation is a central aspiration. If participation contributes in some way to the development of latent powers, then a commitment to egalitarianism would require the promotion of opportunities for all to participate in settings in which these could be developed. While in addition, the substantive and epistemic dimensions of deliberative democracy point to a presumption that

ultimately the political system allows citizens to avail of opportunities for discursive participation, openly, freely and without obstruction.

Overall, the normative case for deliberative democracy is a cogent one. I have argued that it is more consistent with some of our basic intuitions about democracy than the alternative aggregative conception – in particular with respect to the equal consideration of interests, moral autonomy, and the quality of decisions. I have also defended the theory in part by defending Habermas's explication of legal legitimacy, the constitutional order, and the institutionalisation of discourse – and tied to this, his defence of discourse ethics, which requires a deliberative interpretation of democracy. The defence of Habermas was tied to a participatory, dialogical and adversarial conception of the discursive contribution of civil society. Empirical studies of individual-level effects are however far from conclusive, and more research is needed here if we are to get to grips with the full range of what happens in public discussion.

There is of course a whole range of areas of research that are relevant to deliberative democracy. Those of us who are interested in the ideal will rightly await developments in these areas with interest. These include continued empirical studies of deliberation in small and large group contexts; deliberation within formal institutions; the quality and determinants of public opinion, political participation and civic attitudes; the responsiveness of political leaders to public opinion; the nature, strategies and impacts of civil

society organisations and social movements; studies of the media and the political activity of corporations – not to mention proposals for addressing acute moral disagreement, and continuing philosophical debates surrounding the principal exponents of deliberative democracy. As always, there is lots to do.

Appendix 1

Glossary of Involvement Methods

1) Market research-like methods of public involvement

Complaints/ suggestion schemes: facilities for making complaints or suggestions, particularly on service quality, e.g. fill-in cards or a telephone line.

Surveys: information questionnaires, whether postal, telephone, door-to-door or online.

Opinion polls: a ballot taken from a sample of people chosen to be representative of a larger population.

Focus groups: a more open and in-depth way of getting information on people's views. Around 12 people come together to offer their opinions on a particular issue. Focus groups need not be representative of the general population, usually involving a particular target group. Discussions may focus on the specific needs of that group, on the quality of a particular service, or on ideas for broader policy or strategy.

User panels: panels of service users, which meet at intervals to act as "sounding board" for public authorities or agencies on their services.

Citizens' panels: the views of a set panel of representative residents or citizens sought on a regular basis, normally by means of a postal questionnaire.

2) Traditional methods of public involvement

Consultation documents: policy, planning or strategy documents to which replies are invited.

Viewing of planning document / draft development plan: planning or development plans available to the public for inspection.

Viewing of environmental impact statement: environmental impact statement available to the public for inspection.

Consultative conferences: conference events; may be held annually, where public bodies present their recent policy efforts and future plans to an audience of their consultees.

Public meetings: a meeting in a local hall usually with a platform of public officials and based on an open invitation to members of the public to attend

Public hearings: trial-like public meetings involving a panel of officials with statements from and questioning of those brought before the hearing.

Question and answer sessions: held at the end of council or committee meetings providing citizens with an opportunity to ask questions of elected members.

Workshops: events that are part public meeting and part training seminar.

Referendums: ballots that invite all relevant citizens to vote on policy-specific options.

Shadow councils/parliaments: consultation in which community members or young people elect their own representatives to councils/parliaments formed of those representatives, in order to present views to public officials.

3) Electronic techniques

Communities of interest emailing list: a tool that allows users to send emails to multiple addressees using a single email address. All those on the list automatically receive messages sent by any member on the list.

Online complaints / suggestions: online form of *complaints / suggestions* (see above).

Online polls and surveys: online form of *polls and surveys* (see above).

Online referendums: online form of *referendums* (see above).

Online citizens' panel: online form of *citizens' panels* (see above).

Online petitions: allow citizens to petition government or local authorities on a specific issue or policy decision. Created in web page form and can be distributed through emailing lists.

Live chat events: enables two or more users to communicate in real time on the internet. Users engage in dialogue by typing their messages and the entered text appears on screen along with the text of the other chat room visitors. Typically a pre-assigned group of participants would engage in dialogue at a set time and on a specific issue.

Online conference: a conference or public hearing in which participants engage from remote locations.

Online submissions for public hearings: allows the submission of testimony or views by citizens from remote locations before, during or after a physical public hearing. People at the hearing can distribute electronic copies of documents and statements online.

Online focus groups: online form of *focus groups* (see above).

Online citizens' juries: online form of *citizens' juries* (see below).

Online deliberative polling: online form of *deliberative polling* (see below).

4) Community visioning/planning mechanisms

Action planning: structured events in which sections of the community work closely with specialists from different disciplines (such as town planning, urban design, architecture, development economics, ecology and so on) to produce proposals for planning and urban design issues. Events are normally hosted by a partnership of local interests. Events typically last 4-5 days but may last anything from one day to several weeks

Community auditing/appraisals/profiling: a survey of the community by the community, and an action plan or list of recommendations for the future.

Community plans/needs analysis: the purpose of these is to set out priorities for local service provision and local authority policy, often on a community-by-community (or neighbourhood) basis. In general, councillors take primary decisions about the budget while citizens review (and may reorder) specific priorities.

Community indicators: the use of measures whose purpose is the monitoring of issues selected and agreed in the community as being important to its health and sustainability, and to raise awareness.

Future search: a way for a community or an organisation to create a shared vision for its future. These are facilitated by a steering group, and may have a sponsoring body (e.g. a local authority). A large group of stakeholders take part in a structured two and a half-day process covering five stages: 1) reviewing the past, 2) exploring the present (a map is made of trends affecting the local community; stakeholder groups identify important trends and what they would like to be doing about them; groups share what they are proud of and unhappy about in their community; 3) creating ideal future scenarios, 4) identifying a shared vision in small and large groups, 5) making action plans.

Local sustainability model: A way for a community to assess its present position and test the likely effects of projects. The Local Sustainability Model consists of a three by three matrix. The columns represent the three components of sustainability (the natural environment; the community and its culture; the economy). The rows represent various states of these components (robust - little affected by external events; stable - locally well-founded but subject to external shocks; fragile - locally at risk and prey to external effects).

Area/neighbourhood mapping: aims to enable to a community to explore its local distinctiveness, resources and assets. A mapping group seeks to encourage wider involvement, often with the support of a community arts worker. Arts media are used to physically express the features that participants select.

Participatory strategic planning: enables a group to come to a shared vision of its desired future, and to create a plan of action. It is one application of the group facilitation methods developed by the Institute of Cultural Affairs (ICA), known as the Technology of Participation (ToP). The process typically involves 15-50 people. Participants should be those who intend to implement the resulting plan. The standard process involves four half-day sessions. Each session uses a process that involves 'brainstorming' to generate ideas, 'organising' to explore the ideas and new insights that emerge, and 'naming' to discern the consensus of the group.

Participatory theatre: dramatic enactment and physical movement used to explore issues of conflict and division.

Planning for real: a method by which people determine what needs to be done to improve their area. A large 3D model of the neighbourhood is made and used by local schools and local groups. This model is taken around to different venues to raise awareness. Interest can also be created through resident-led surveys that identify local resources of skills and experience. The model is used at open meetings. Illustrated suggestion cards are available, covering community facilities, crime and safety, the local environment, health, housing, leisure, traffic and transport, work, training and the local economy. Blank cards are also available for people to make their own suggestions. This can be followed up by community meetings to sort and prioritize the suggestions so that a profile of needs to be drawn up

5) Consensus building and public dispute resolution

Consensus building and dispute resolution processes: processes chaired by a third-party, often a planning or regulatory authority, which bring stakeholders together in an attempt to facilitate their active participation in negotiation or mediation. Examples include mediations, and in the United States, 'regulatory negotiation'.

6) Deliberative forums

Deliberative polling: a deliberative poll begins by interviewing a random sample of the population. Following the interview, respondents are invited to come to a conference centre for a weekend of face-to-face discussions and are sent a package of background briefing information. Discussions are held in randomly assigned groups chaired by an impartial moderator, and they alternate with question-and-answer plenary sessions with experts and policy-makers on the issue. After a weekend of information and discussion, participants complete the same questionnaire as when first contacted. In this way, a deliberative poll aims to measure the extent to which opinions change as a result of exposure to information and discussion.

Citizens' juries: these bring together a group of randomly selected citizens to deliberate on a particular issue, whether it is the setting of a policy agenda or the choice of particular policy options. Participants are exposed to information about the issue and hear from witnesses, who are selected on the basis of their expertise or on the grounds that they represent affected interests. Jurors are given the opportunity to cross-examine the witnesses and, on occasion, call for additional information and witnesses. Following a process of deliberation amongst themselves, the jurors produce a decision and typically provide recommendations in the form of a citizens' report.

Consensus conferences: originally a Danish Board of Technology method developed for consultation on technology regulation issues. Similar to a citizens' jury process, though in contrast the jury itself formulates the questions to be addressed and decides on the experts to answer them. Attended by a public audience and the press.

Scenario workshops: originally a Danish Board of Technology method, involving dialogue between local policy-makers, business representatives, experts and citizens (20-25 participants). Before the workshop takes place 'scenarios' describing alternative solutions to a problem are written. The participants are asked to criticize and comment, in the process of developing their visions and a local plan of action.

Roundtables: these bring together often traditionally adversarial stakeholders on a once-off or regular basis, to discuss common issues in depth and to attempt to reach consensus.

Citizens' inquiries: large-scale public hearings or roundtables initiated and controlled by citizens' representatives or citizens' groups.

7) Mapping techniques

Multi-criteria mapping: techniques for comparing policy options, particularly in transport and land-use planning, siting, energy policy, waste management, medicine, commercial decision-making, and sometimes technology assessment. Their background lies in dissatisfaction with orthodox cost-benefit analysis, environmental impact assessment and risk assessment. Multi-criteria mapping allows researchers to create a map of a controversy involving polarised participants, in a way that is sensitive to the framing of crucial assumptions and the treatment of uncertainties, in addition to providing performance scores.

Stakeholder decision analysis: a method combining a deliberative procedure, e.g. discussion and negotiation between stakeholders, with systematic multi-criteria mapping.

Deliberative mapping: similar to stakeholder decision analysis, but with a special emphasis on the joint participation and mutual contribution of citizens and experts.

8) Citizens' advisory committees

Citizens' advisory committees: policy committees that include citizens or community representatives, to advise government departments, agencies or local authorities on policy-making or decisions.

9) Local authority co-option

Committees of local authority members, which members of the public or community/voluntary representatives are invited to join.

10) Forums

Service user forums: ongoing consultative bodies of users that meet on a regular basis to discuss issues relating to the management and development of a particular service. May have a set membership or operate on an open basis. Such groups may have the power to make recommendations to specific council committees or even to share in decision-making processes.

Issue forums: also ongoing bodies with regular meetings, but focusing on a particular issue (e.g. community safety or health promotion). Again, they may have a set membership or operate on an open basis, and are often able to make recommendations to relevant council committees or to share in decision-making processes

Shared interest forums: similar to issue forums but concentrate upon the needs of a particular citizen group (e.g. young people or minority ethnic groups). Likewise, they may have a set membership or operate on an open basis, and are often able to make recommendations to relevant council committees or to share in decision-making

Area / neighbourhood forums: forums concerned with the needs of a particular geographically defined area or neighbourhood. Meeting regularly, they may deal with a specific service area (e.g. planning or housing) or with a full range of local services and

concerns. Area forums may or may not have dedicated officers attached to them. They may have a close link with local. Membership may be set or open. Where there is a formally established membership, members of the public may be free to participate in an open discussion session at meetings.

11) User Management

User management of services boards: citizens are given direct control over the management of local services and resources. Examples of user management include community-based housing organisations (or tenant management co-operatives) and community-run nurseries, youth clubs and community centres. Such initiatives usually operate through an executive committee, elected by the wider group of users.

12) Partnerships

Partnerships: a broad category of formalised multi-agency collaboration between public bodies, businesses, and community and voluntary organisations. These meet as partnership boards. Local partnerships exist particularly in regeneration and development, health, and peace and reconciliation.

Appendix 2

TCD Citizens' Jury Timetable of Events

10.00-10.30am: Registration of jurors.

Coffee on arrival. Self-completion of short questionnaire by jurors, facilitated by experienced interviewers from the ESRI.

10.30am-1.30pm: Morning session

Members of the jury assemble to hear evidence and argument about the issue of waste incineration. This will include evidence from politicians and policy makers speaking on both sides of the issue, as well as scientific experts from overseas with direct experience of incineration, who will also present evidence on both sides of the case. A professional "questioner" will be appointed for each side of the case – to put the hard questions to the witnesses after they have spoken.

1.30-2.00pm: Buffet lunch

During an informal buffet lunch, jurors will be encouraged discuss the morning's evidence with each other.

2.00-2.30pm: First small group sessions

The jury will break up into four small groups, each with a facilitator, to get to know each other and for a brief discussion of whether the witnesses need to be asked any more questions.

2.30-3.00pm: Recall of witnesses

The witnesses will be recalled if requested to answer these additional questions from jurors. Witnesses are free to go after this, though will be free to observe, though not participate in, the jury's deliberations.

3.30-5.00pm: Second small group sessions

The jurors will break up again into small groups, with facilitators. Each group will discuss matters among themselves and will be encouraged to try and come to a common view on the questions at issue, together with reasons for coming to that view. They should choose a spokesperson or spokespersons to report their views and reasoning to the full jury. If they cannot agree on a single common view, they may choose to present two conflicting views.

5.00-5.30: Tea/coffee break**5.30-7.00pm: Plenary session of jury**

The full jury will come back together for a full discussion of the issue. This will begin with a report on the conclusions of each small group, together with the reasons for this. There will then be open discussion among the jury as a whole. The jury will be instructed to make every effort to come to a consensus verdict on the issues at stake. If it simply cannot do this by the end of the evening, the jury may then record a split decision.

7.00-7.30: Debriefing

Self-completion of short questionnaire by jurors, facilitated by experienced interviewers from the ESRI. Jurors will be paid the €100 promised to cover their out of pocket costs and the trouble they took in taking part in the day's events. They will also be given a ticket for the prize draw.

7.30: Dinner

Everyone will be rewarded with a nice dinner, at the beginning of which the prize draw for jurors will be held. The prize will be a €2500 credit for a holiday booked through Thomas Cook, Grafton Street.

MODERATOR

Olivia O'Leary

IN DEFENCE OF INCINERATION AS PART OF AN INTEGRATED WASTE MANAGEMENT STRATEGY FOR IRELAND

Pat Carey TD (Fianna Fáil, Dublin North West. Former Lord Mayor of Dublin)

Donal Buckley (Head of the Environment Unit, Irish Business and Employers' Confederation))

Toon Ansems (Emission Assessment Department, TNO Consultants, the Netherlands)

AGAINST INCINERATION AS PART OF AN INTEGRATED WASTE MANAGEMENT STRATEGY FOR IRELAND

John Gormley TD (Green Party, Dublin South East)

Tom Prendeville (Earthwatch Ireland)

Paul Connett (Professor of Environmental Chemistry, St Lawrence University, New York)

QUESTIONERS

Colm MacEochaidh, BL (questioning advocates of incineration)

Noel Whelan, BL (questioning opponents of incineration)

Appendix 3

TCD Citizens' Jury Briefing Document

TO ALL PARTICIPANTS IN THE TCD POLICY INSTITUTE'S DUBLIN CITIZEN'S JURY EXPERIMENT

9 NOVEMBER 2003, HOLIDAY INN, PEARSE STREET, DUBLIN 2

This is a note to confirm details of the upcoming citizens' jury experiment for all who have so kindly agreed to participate. An outline of the days' events can be found attached to this message.

The six presenters will each have a slot of 25-30 minutes, and are asked to present for at most 15 minutes, to allow time for questions. Presentations to the jury will begin at 10.30 sharp on the day, and will run for three hours (with a short break in the middle), until a buffet lunch at 1.30.

The **two questioners** have the job of teasing out the points made by the presenters and asking questions that address what they see as weak points in these. Their role is to represent jurors who might have views on either side of the question being deliberated. Thus one questioner has been asked to represent jurors who might be generally opposed to waste incineration, and one to represent those generally in favour.

Both presenters and questioners are reminded that the whole purpose of the morning is to have a calm, balanced and dispassionate debate in front of the jury on the issues at stake. Issues should be opened up and explored rigorously, but every attempt should be made to avoid this debate becoming bitter, angry or confrontational.

The six presenters are asked to make themselves available for a period after lunch, in case anyone from the jury wants to ask further questions. After this, the jury will be deliberating and the presenters and questioners, while they are very welcome to stay on as observers, will be free.

The four facilitators of the small group jury discussions should attend the presentations, since this will obviously help them in their task. Their job will be to ensure that everyone on the jury has their say, and that their small group of jurors move towards a clearly articulated position or positions on the questions under deliberation.

The point of the small group sessions is to bring a limited number of well-articulated positions to the plenary session that follows, which will be moderated by Olivia O'Leary. The small groups should thus also decide who it is that they want to present their views to the plenary session.

Following the jury's deliberations in plenary session, there will be a dinner at 7.30, at which all presenters, questioners and facilitators will be very welcome indeed, **although I would be grateful if people could let me know in advance if they propose to attend the dinner.**

I look forward to meeting everyone on what I hope will be a very interesting and productive day.

Appendix 4

TCD Citizens' Jury Witness Biographies

"WITNESSES" ARGUING IN FAVOUR OF INCINERATION

1. PAT CAREY TD stepped in a very short notice after Conor Lenihan became unavailable. Fianna Fáil TD for Dublin North West since 1997, he was first elected to Dublin City Council in 1985.
2. DONAL BUCKLEY is head of IBEC's Environment Executive. IBEC has been very clear in its advocacy of incineration as part of a waste management strategy for Ireland. The IBEC briefing paper on this was part of the materials circulated in advance to jurors.
3. TOON ANSEMS is head of the Emissions Assessment Department at TNO consultants in the Netherlands, where waste incineration is used extensively. TNO is a very large consultancy advising European governments and other major players on, among many other things, waste management and emissions control. He has travelled to Ireland specially for this event.

"WITNESSES" ARGUING AGAINST INCINERATION

1. JOHN GORMLEY TD. Green Party TD for Dublin South East since 1997. He was first elected to Dublin City Council in 1991, and was Lord Mayor of Dublin 1994-95.
2. TOM PRENDEVILLE is a prominent member of Earthwatch Ireland. He has been an active campaigner on many environmental issues and in particular on the problem of waste management in Ireland.
3. PAUL CONNETT is Professor of Environmental Chemistry at St Lawrence University in the United States. He has spoken in Dublin before on the issue of waste management and incineration, but has flown from the USA specially for this event.

"QUESTIONERS"

NOEL WHELAN BL will question those opposed to waste incineration.

COLM MacEOCHAIDH BL will question those in favour.

Both are well-known barristers who are also active politically. But their primary role today is to represent the jury in questioning the people who will be making presentations - using their expertise at running a sceptical eye over other people's arguments.

Appendix 5

Wording of Survey Questions

Q. 2 Please tell me to what extent you disagree or agree with each of the following statements

	Strongly Disagree	Disagree	Slightly disagree	Neither agree nor disagree	Slightly agree	Agree	Strongly agree
1. Sometimes politics and government seem so complicated that a person like me cannot really understand what is going on.....	☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....
2. The ordinary person has no influence on politics.....	☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....
3. I think I am better informed about politics and government than most people.....	☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....
4. In today's world, an Irish government can't really influence what happens in this country	☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....
5. It doesn't really matter which political party is in power, in the end things go on much the same	☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....

Q.3 To what extent are you personally concerned about environmental issues? [Put a tick (✓) in one box]

Very	Fairly	Not very	Not Concerned
Concerned..... ☐ 1	Concerned ☐ 2	Concerned ☐ 3	at all ☐ 4

Q.4 Are you a member of an environmental organisation or would you consider joining such an organisation?

[Put a tick (✓) in one box]

I am a member of an environmental organisation	☐ 1
I am not a member of an environmental organisation but would consider joining one	☐ 2
I am not a member of an environmental organisation and would NOT consider joining one	☐ 3

Q.5 In the last five years, have you ... [Put a tick (✓) in one box for each statement]

signed a petition about an environmental issue.....	Yes ☐ 1	No ☐ 2
given money to an environmental group?.....	Yes ☐ 1	No ☐ 2
taken part in a protest or demonstration about an environmental issue?	Yes ☐ 1	No ☐ 2

Q.6 Please indicate how strongly you disagree or agree with the following statements.

[Put a tick (✓) in one box for each statement]

Strongly Disagree	Disagree	Slightly Disagree	Neither Agree nor Disagree	Slightly Agree	Agree	Strongly Agree
☐ 1.....	☐ 2.....	☐ 3.....	☐ 4.....	☐ 5.....	☐ 6.....	☐ 7.....

A. It is just too difficult for someone like me to do much about the environment

- B. I do what is right for the environment, even when it costs more money or takes more time.**.....☐1.....☐2.....☐3.....☐4.....☐5.....☐6.....☐7
- C. There are more important things to do in life than protect the environment**.....☐1.....☐2.....☐3.....☐4.....☐5.....☐6.....☐7
- D. There is no point in doing what I can for the environment unless others do the same**.....☐1.....☐2.....☐3.....☐4.....☐5.....☐6.....☐7

Q.7 From what you know, what happens to the majority of household waste that is collected in your area?

- It is buried in a landfill site☐1
- It is burnt in an incinerator☐2
- It is recycled☐3
- Don't know☐4

Q.9 Please indicate how strongly you disagree or agree with the following statements about the burning of household waste in incinerators.
[Put a tick (✓) in one box for each statement]

- | | | | | | | | |
|--|----------------------|----------|----------------------|----------------------------------|-------------------|-------|-------------------|
| | Strongly
Disagree | Disagree | Slightly
Disagree | Neither
Agree nor
Disagree | Slightly
Agree | Agree | Strongly
Agree |
|--|----------------------|----------|----------------------|----------------------------------|-------------------|-------|-------------------|
- A. Waste incinerators are essential for effective waste management in Ireland**☐1.....☐2.....☐3.....☐4.....☐5.....☐6.....☐7
- B. Waste incinerators harm the environment**☐1.....☐2.....☐3.....☐4.....☐5.....☐6.....☐7
- C. Waste incinerators are a threat to the**

health of people living nearby ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

D. Waste incinerators make local water and farm products unfit for human consumption..... ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

Q.10 A proposal has been made to build a waste incinerator in the Ringsend area of Dublin, to treat part of Dublin's household waste. Please describe how strongly you disagree or agree with the following statements about this.
[Put a tick (✓) in one box for each statement]

Strongly Disagree	Disagree	Slightly Disagree	Neither Agree nor Disagree	Slightly Agree	Agree	Strongly Agree
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A. A waste incinerator should be built in Ringsend to deal with part of Dublin's household waste ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

B. Building this waste incinerator should be a matter for the people who have to live close to it ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

C. I would be happy to see my household waste treated in a waste incinerator ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

D. I would oppose any plan to build a waste incinerator close to where I live ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7

Q.13 Have you heard of dioxin emissions?

Yes	☐ 1	No	☐ 2	Don't know	☐ 3
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Q.14 From what you know, who is mainly responsible for dioxin emissions?

Incineration plants	☐ 1
Industry	☐ 2
Households	☐ 3
Don't know	☐ 4

Appendix 6

Letter to the Minister and the City Manager



University of Dublin

Trinity College

Department of Political Science

Professor Michael Laver

Head of Department

phone: +353 1 608 2036 fax: +353 1 677 0546 email: mlaver@tcd.ie

Mr Martin Cullen
Minister for the Environment
Department of the Environment, Heritage and Local Government
Custom House
Dublin 1

10 November 2003

Dear Minister

Dublin Citizens' Jury on Waste Incineration

You will be aware the Dublin Citizens' Jury on Waste Incineration was held on 9 November and that, following my efforts to involve Dublin City Council in this event, I was informed by a letter dated 1 October 2003 from Matt Twomey that "having considered the matter ... the Council is not prepared to participate in your experiment".

In the event, the government position was put by Pat Carey, TD. Donal Buckley of IBEC also argued the IBEC position in favour of thermal treatment as part of an integrated waste management strategy, as did Mr Toon Ansems, a highly-qualified Dutch technical expert.

On the day, 55 randomly selected Dublin citizens assembled to hear evidence and argument, moderated by Olivia O'Leary on two questions:

- Is there a role for household waste incineration in an integrated waste management strategy for Ireland?
- If so, should an incineration plant for Dublin household waste be built in the Ringsend area?

Those speaking in favour of thermal treatment were questioned by Colm MacEochaidh, BL and those speaking against were questioned by Noel Whelan, BL.

The event was judged by all to be a great success and jurors were clearly gratified to be involved in an important discussion from which they felt they had hitherto been excluded.

The "verdict" of the jury was unanimously against the use of thermal treatment as part of an integrated waste management strategy for Ireland, and also firmly against the potential location of a treatment plant in the Ringsend area of Dublin.

The jury asked me to write to you seeking your response on a number of points.

1. On the official policy on thermal treatment of household waste as part of an integrated waste management strategy for Ireland, it was strongly felt that citizens have been presented with very little evidence and argument in favour of this policy, by those who are responsible for it.
2. On the widely mooted potential location of a facility in Ringsend, it was strongly felt that citizens have been presented with very little evidence and argument in favour of this, particularly given problems with infrastructural access to the area. This concern was aggravated by the understanding that the provision of such a facility has already been put out to tender, which sends the signal that a decision on the matter already been taken.
3. There was thus considerable disappointment at what was seen as the failure of the City Council to present arguments on these matters to the jury.

On the general issue of thermal treatment, the concerns raised by the jury, to which they would welcome your response, were as follows:

4. There was concern that incineration would not remove the need for landfill, and would indeed create the need for new landfill sites dealing with highly toxic residues of thermal treatment.
5. There was concern that even modern thermal treatment processes would increase emissions of toxic substances, including dioxins.
6. There was concern that insufficient attention and research had been devoted to "zero waste" initiatives taken in other jurisdictions, for example Nova Scotia, which remove the need for what was seen as potentially hazardous thermal treatment, replacing this with effective waste segregation, environmentally friendly treatment and "cleanfill".

7. There was little confidence in the track record of the appropriate Irish authorities both to monitor and to manage potentially hazardous thermal treatment facilities, and in particular that current monitoring standards are insufficient.
8. Accordingly, there was a view that a safer option was to rely on the monitoring and management of more environmentally friendly waste treatment facilities that did not involve such potentially hazardous implications.
9. It was felt that the economic case for thermal treatment has not been established and that a zero waste strategy could be more economically effective.

In relation to the nature and location of a thermal treatment facility for Dublin household waste, the following concerns were raised:

10. It was felt that citizens should be informed whether a landfill sites in the Dublin area have been selected both for the toxic residues of thermal treatment and for the non-toxic bottom ash. If so the jury would like to be informed of the location of these sites.
11. It was felt that the scale of the proposed thermal treatment facility was too large for the level of waste that would be generated, given current targets for recycling. In particular it was felt that a facility of this scale would undermine the proposed recycling programme, in the sense that it would need to be "fed" with potentially recyclable waste in order to make it cost-effective.
12. The jury would like to be informed whether contracts with the operators of this potential facility would involve an obligation on the part of the City Council to supply a minimum volume of waste for thermal treatment, potentially undermining incentives for effective recycling.
13. There was a concern that a facility of this size would create incentives to "import" waste from other areas in order to make it cost-effective.

I am sure you will agree that these are well-articulated and well-informed concerns, and that it would be very helpful if you could address these in a reply that I will then circulate to all jurors involved in this event.

I also hope that you will agree that the citizens' jury raised a range of issues that you will find helpful in future policy-making when developing the integrated waste-management strategy for Dublin.

I also do feel that the citizens' jury was a very effectively way of involving citizens in important policy decisions, a method that you and your colleagues may well wish to consider in the future.

With best wishes,

Michael Laver
Professor of Political Science

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