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Coercion, Responsibility, and Discourse

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Philosophy

by

Elizabeth Anne Hamilton

March 2010

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DEDICATION

I would like to dedicate my dissertation to my parents, Dr. James J. Hamilton and Dr.

Linda Z. Hamilton. I cannot thank you enough for all that you have done.

ABSTRACT OF THE DISSERTATION

Coercion, Responsibility, and Discourse

by

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University of California, Riverside, March 2010
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Coercion and conceptions of legitimate authority intersect with freedom and autonomy at both the individual level and the political level, and are central to two separate discourses in philosophy, namely, to discussions of free will and agency, and to social and political theory. However, with few exceptions, these discussions have gone on independently of one another. Traditionally, theories of agency have analyzed autonomy in terms of responsibility, such that an agent can be regarded as autonomous only if she is responsible for her actions. Social and political theory, on the other hand, is primarily concerned with how we may preserve our autonomy and freedom in the face of economic pressure and political authority, and has typically linked individual freedom to questions of human rights and political entitlements. I use the conception of responsibility that has been crucial to discussions of free will and agency to correct for the current over-emphasis on entitlements in social and political theory. I show how the concept of responsibility, rather than rights and entitlements, may provide a basis for freedom, by linking responsibility to discourse and discourse to freedom.

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Introduction

Coercion, Responsibility, and Discourse

Coercion and conceptions of legitimate authority intersect with freedom and autonomy at both the individual level and the political level, and are central to two separate discourses in philosophy, namely, to discussions of free will and agency, and to social and political theory. However, with few exceptions, these discussions have gone on independently of one another. Traditionally, theories of agency have analyzed autonomy in terms of responsibility, such that an agent can be regarded as autonomous only if she is responsible for her actions. Social and political theory, on the other hand, is primarily concerned with how we may preserve our autonomy and freedom in the face of economic pressure and political authority, and has typically linked individual freedom to questions of human rights and political entitlements. In my dissertation, I hope to correct the lack of interconnection between these two literatures. In particular, I would like to use the conception of responsibility that has been crucial to discussions of free will and agency to correct for the current over-emphasis on entitlements in social and political theory. I will show how the concept of responsibility, rather than rights and entitlements, may provide a basis for freedom. Moreover, I would like to do so by linking responsibility to discourse and discourse to freedom. Philip Pettit has gone over some of this same ground, although with different results than those that I hope to achieve. Nonetheless, I begin with Pettit.

Chapter 1: The Moral Wrongness of Coercion: Accountability and Attributability

In *A Theory of Freedom*, Pettit develops an account of social freedom out of a conception of personal freedom as responsibility. In the first chapter of my dissertation, I will concentrate on this account. According to Pettit's conception of personal freedom as responsibility, a person is free insofar as she is capable of being held responsible for her actions. Pettit examines three different theories of the requirements for this sort of freedom as responsibility: the rational control account, the volitional control account, and the discursive control account. Thus, an agent will be considered free to the extent that she is in control of her actions rationally, volitionally, or discursively. Pettit argues that the discursive control model of freedom best captures freedom as responsibility.

One of Pettit's main arguments against freedom as rational control and freedom as volitional control is that they are both consistent with coercion. If having freedom is just a matter of having rational control or volitional control, then coercion should diminish that control because we intuitively consider coerced agents to be unfree. However, according to Pettit, it is possible to maintain rational control or volitional control and still be subject to coercion. Therefore Pettit concludes that both accounts of freedom are insufficient, and that discursive control is therefore an appropriate basis for an account of freedom. In order to enjoy discursive freedom, we must have the capacity for discourse and we must take part in discourse-friendly relationships of non-domination. Pettit believes discursive control can avoid the problem of coercion faced by the rational control and volitional control models because coercion limits an agent's discursive

interaction, which means that coerced agents would be considered unfree, and therefore unfit to be held responsible, on the discursive control model of freedom.

Although Pettit's account of responsibility and discourse is helpful, he confuses the relationship between freedom, coercion, and responsibility. Coercion seems to be an inherently freedom-restricting activity or relation that diminishes the responsibility of the agent, however, it remain fundamentally unclear how coercion can mitigate responsibility since coerced acts are voluntary, in the sense that we have options. But while coercion does restrict our options, it does not undermine responsibility in the way that Pettit imagines, because coercion restricts our choices and channels our behavior in a manner that is similar to that of natural obstacles and barriers.

What we find *morally* reprehensible about coercion is not its limitation of options, but the fact that our choices have been restricted *unjustly*. If the wrong-making feature of coercion is that it is a morally impermissible exercise of authority, and not simply that it restricts options, then it is unclear how coercion is relevant to freedom as responsibility. Indeed, responsibility is consistent with coercion. An agent may judge that compliance with her coercer's demands is her only reasonable option, and to that extent she is responsible for her coerced action in the same way that we may hold her responsible for an action necessitated by natural factors. However, the mere fact that the agent was responsible, in that she performed an action while remaining in rational or volitional control of her actions, is not sufficient for blame and moral condemnation. The circumstances surrounding the coerced agent's action would lead us to refrain from

holding her morally accountable or blameworthy for her actions, regardless of the fact that we may attribute those actions to her.

In Chapter One I suggest that we think about coercion in the following way: an agent is coerced when a threat is issued to her, which is aimed at getting her to perform an action that she does not want to do or would not do otherwise, and the threat succeeds in getting her to perform the action in a way that undermines the agent's moral blameworthiness for that action. This model of coercion will influence a later account of political autonomy.

Chapter 2: Pettit and Discursive Freedom

Pettit attempts to give an account of political freedom that is consistent with his theory of personal freedom in terms of discursive control. Freedom as discursive control stresses the importance of discursive interactions, which are characterized by the resolution of conflicts through an exchange of reasons. This shared reasoning allows agents to influence decisions mutually. While consensus or understanding may or may not occur as a result, the discursive task of continuing to engage in dialogue will always be furthered, as long as the issues being discussed are in principle decidable. So under the theory of freedom as discursive control, freedom is tied to persons' enjoyment of the control found within discursive relationships and access to such relations. In order to enjoy discursive freedom, we must be able to engage in discourse, as well as participate in it.

Pettit tries to elaborate a political ideal of freedom that is consistent with his conception of personal freedom as discursive control. He rejects the ideal of non-limitation, in which persons are free to the extent that limitations on impersonal and interpersonal freedom are absent. He also rejects the ideal of non-interference, in which persons are politically free to the extent that, first, they are not subject to interference by others and second, they are not subject to limitations on the enjoyment of such non-interference. Instead Pettit favors the ideal of freedom as non-domination. For Pettit, individuals enjoy non-domination to the extent that they are not exposed to an *arbitrary* power of interference on the part of others.

Pettit believes in a republican political philosophy, which is built around the idea of non-domination. Pettit's republicanism centers around two themes: first, that the person who is the slave or the subject of another is unfree, and second, insofar as the law of the land is non-arbitrary, it will not deprive individuals of their freedom. Pettit cautions against the dangers of *imperium*, or public power, as the collective subject will always represent a danger to freedom as non-domination. Although we may put restrictions on *imperium*, the state does legitimately possess the coercive powers of taxation, enforcing a code of behavior, and punishing those who offend against its laws. Pettit believes that this coercion is inescapable. So far as the state is coercive it will interfere with individual freedom, so far as it is inescapable, there is no guarantee that it will be forced to track interests of citizens. Moreover, even if the state tracks matters of common avowable interest, minorities will always be hurt. However, Pettit thinks that the republican state is

still best suited to protect citizens against one another's *dominum*, or private powers of interference, and external enemies.

The question I shall raise in this part of my dissertation is whether this republican account is a sufficient resolution to the problem of freedom and coercion. I will demonstrate how problems in Pettit's conception of coercion extend to his theory of political freedom, resulting in problematic conclusions about how freedom as non-domination is best realized.

Chapter 3: Discursive Democracy

Because Pettit sees coercion as limiting responsibility, it is difficult to see how he can find a place for responsibility in a republican state that must, at least at times, be coercive. Deliberative democracy is interesting in this context because it emphasizes the relationship between discourse and responsibility. In order to examine the alternative of deliberative democracy, I shall begin with an examination of the stated importance of rights and entitlements in liberal democracies. I shall argue that rights and entitlements have overtaken responsibility as the focal point of conceptions of autonomous agency in theories of liberal democracy.

In "The Politics of Recognition," Charles Taylor suggests that minorities' demand for the correct recognition of their identities is necessary both to individuals' personal identities and to the functioning of society. Taylor points to Rousseau, among others, as having given moral significance to individual identity and to the ability to remain authentic to that identity. In contrast to Rousseau, Taylor stresses the crucially dialogical

character of human life. The definition of our identity is ongoing and always in dialogue with others. Without dialogical relations, our identities could not be developed, as personal and social beings.

For Taylor the discourse of recognition occurs on two levels: the intimate, in which we define ourselves through and against significant persons in our lives, and the public, which demands equal political recognition, such that withholding recognition from others may be oppressive.[1] Liberal democracies guarantee the universal rights and equality of citizens. Yet, the politics of difference claims that this universality imposes a false homogeneity and takes the "white male" as standard.[2] According to the politics of difference, groups or individuals demand to be regarded as unique and distinct from others. Taylor thinks that to the extent that liberalism assumes equal dignity and the possibility of difference-blind principles, it may be inadequate. He cautions that in a pluralistic society, collective goals may require restricting citizens in ways that violate some of the entitlements to which they have laid claim.

According to Habermas, however, the question is not *whether* equality and respect for difference are compatible, but rather, *how* they are compatible. His answer returns us to Pettit's notion of discursive control. Habermas challenges western democratic countries to reverse the client relationship that has replaced citizenship. As he sees it, questions of what we have a right to do have been disconnected from the concerted decision-making through which states derive their authority to govern. The

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[1] Charles Taylor, "The Politics of Recognition," in *Multiculturalism*, ed. Amy Gutmann, 36 (Princeton: Princeton University Press, 1994).

[2] Ibid., 44.

legitimacy of the democratic state is compatible with autonomy, on this view, because Habermas does not conceive of democracy in terms of rights, or individuals' claims against the government, but rather views citizens as the autonomous, active creators of the government. Government power is legitimated not by its legal form, but by legitimately enacted law, and only those laws that could be accepted by all citizens in a discursive process of will-formation count as legitimate. Individual self-determination may be institutionalized, for example, through opinion formation in the public sphere, participation in political parties, general elections, and parliamentary decision-making.

Habermas argues that a well-communicating public sphere, which promotes discussions that further self-understanding, can develop in a liberal culture, and through it the democratic process will be able to ensure different cultural forms of life. No alternate or further principle is necessary. The right of democratic self-determination includes the right to have an inclusive political culture, but does not necessitate assimilation to the dominant cultural form of life in the state.[3] Liberalism's mistake is to see autonomy in terms of rights, where rights are equivalent to citizens' entitlements from the government. Habermas argues that we must emphasize citizenship rather than a client relationship to the government, and see autonomy as possible only through joint, deliberative decision-making, rather than through claims of entitlement.

In this part of my dissertation, I am concerned with connecting discourse to responsibility. One way of understanding Habermas's turn to deliberative democracy is as an attempt to retrieve conceptions of autonomy and responsibility that he suggests

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[3] Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State," in *Multiculturalism*, ed. Amy Gutmann, 139 (Princeton: Princeton University Press, 1994).

have dropped out of democratic discourse. The concern with rights and entitlements must be joined to a concern with the autonomy of citizens as crafters of and participants in democracy.

Chapter 4: Deliberative Democracy, Moral Disagreement, and Responsibility

In this chapter of my dissertation, I investigate Amy Gutmann and Dennis Thompson's alternative theory of deliberative democracy, which has been posed as a response to Habermas's theory. Gutmann and Thompson's more constitutional, liberal theory contrasts with Habermas's commitment to a more procedural, egalitarian theory of deliberative democracy.

Gutmann and Thompson are primarily concerned with the problem of moral disagreement in modern democracy. They feel that prior theories of democracy are insufficiently equipped to handle moral disagreement. Specifically, they argue that Habermas's standard of reasoned impartiality with respect to moral issues is impractical in a modern, pluralistic society. In contrast to Habermas's theory, which is based on achieving mutual understanding and reasoned agreement through deliberation, Gutmann and Thompson argue for a standard of reciprocity when dealing with moral disagreement in a political arena, which creates a standard of fair social cooperation and mutual compromise and acceptability in the resolution of moral disagreements.

However, Gutmann and Thompson's amendments to deliberative theory significantly break with the central tenets of deliberative democracy. Their addition of constitutional rights to deliberative theory unravels the carefully constructed relationship

between responsibility and freedom in Habermas's deliberative theory. Further, in trying to rectify what they view as issues in Habermas's theory, Gutmann and Thompson have abandoned the core of deliberative theory by divorcing individual responsibility from deliberation. Instead they rely on rights and entitlements as the foundation of freedom in society. Habermas's theory is superior because a procedural approach crucially connects responsibility and freedom through participatory discourse, giving ownership and autonomy to citizens.

Chapter 1

The Moral Wrongness of Coercion: Accountability and Attributability

1. Introduction

Coercion presents a problem for ideas of freedom and responsibility. On the one hand, we think of coercion as an inherently freedom-restricting activity or relation that affects an agent's responsibility for his or her actions. On the other hand, we are unsure how coercion can mitigate responsibility, since coerced acts are generally voluntary, rather than acts of compulsion. Further, we may question how coercion can truly undermine freedom, since it does not diminish our options in a way that is importantly different from natural causes. Phillip Pettit examines this tension in his *A Theory of Freedom*, in which he tries to develop accounts of both personal and social freedom.

Pettit begins by discussing three "connotations of personal freedom," which are commonly-held ideas of what it means to be free. He favors freedom as responsibility, which establishes the extent of an agent's freedom in her capability to be held responsible for her actions. He then examines the three corresponding theories of the requirements an agent must meet in order to achieve the sort of freedom required for responsibility: the rational control account, the volitional control account, and the discursive control account, which means that to extent the agent is in control of her actions either rationally, or volitionally, or discursively, she will be considered free. Although both rational control and volitional control are necessary for freedom, Pettit does not believe either is sufficient. Instead, Pettit argues that the discursive control model of freedom best

captures freedom as responsibility because it posits freedom as non-domination. One of Pettit's main arguments against freedom as rational control and freedom as volitional control is that they are consistent with coercion, in that they allow an agent to be held responsible for her actions even when she is acting as a result of coercion. Because we believe that coercion is incompatible with freedom and responsibility, he concludes that rational control and volitional control are insufficient accounts.

In this chapter, I argue that Pettit mischaracterizes the nature of coercion and its relationship to personal responsibility, which plays a significant role in his support of the theory of discursive control and freedom as non-domination. Pettit's argument for discursive control rests on the questionable premise that freedom as responsibility is incompatible with domination due to his portrayal of coercion. I first look at Pettit's account of freedom as responsibility in order to see what it is that Pettit believes is required for an agent to be fit to be held responsible. Then, I will discuss the nature of coercion to understand how it limits an agent's freedom. Having both concepts in hand, we will see how, in fact, coercion affects freedom and responsibility.

2. Pettit's Critique of Freedom as Volitional or Rational Control

Pettit begins by unpacking the common-sense idea of personal freedom as the capacity to be held responsible for one's actions. As opposed to making theoretical judgments about responsibility, Pettit thinks that holding others responsible must be

understood in terms of the practice of reactive attitudes, such as praise and blame.[4] Reactive attitudes are our responses to others' actions that reflect their feelings or attitudes towards us and are grounded in our participation in interpersonal relationships. Their crucial importance is that only persons are the appropriate objects of these sorts of emotions. To be sure, under certain circumstances, persons could be deemed unfit to be held responsible. For example, if someone is unaware of other available options that she might have chosen, if she is mentally unfit to assess those options, or if she is unable to identify actions she has performed as hers, then she may not be free because she cannot correctly deploy and be an appropriate target for reactive attitudes.

Besides accessibility to reactive attitudes, Pettit stipulates three further conditions that persons must satisfy in order to be fit to be held responsible. First, the person must have been fit to be held responsible before her choice to perform the action, not simply after it. Second, the person must stand in a certain relationship to the world such that facts about her make it appropriate to hold her responsible. Finally, she must actually be fit to be held responsible, not merely being fit to be treated as if she were responsible, since we often treat those who are not actually fit to be held responsible as if they were in order to affect their future performance.[5]

The question Pettit asks is what account of freedom as responsibility best captures the idea of freedom as fitness to be held responsible. Pettit considers three accounts: the

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[4] Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (New York: Oxford University Press, 2001), 7.

[5] T. M. Scanlon advocates the use of a similar requirement when assessing the quality of will of an agent in "The Significance of Choice," in *The Tanner Lectures on Human Values*, Vol. 8. (Salt Lake City: University of Utah Press, 1988).

rational account according to which an agent is free and fit to be held responsible for her actions to the extent that she is rationally in control of them; the volitional control account according to which an agent is free and fit to be held responsible for her actions to the extent that she is volitionally in control of them; and the discursive control account, according to which an agent is free and fit to be held responsible for her actions to the extent that she is discursively in control of them.[6] With respect to each account, Pettit examines three aspects of the agent's freedom: the freedom of the action performed by the agent, the freedom of the self as it is manifested in the agent's capacity to identify with her actions, and the freedom of the person, which is held in virtue of having the kind of social standing that makes her action her own, and not a result of duress or other outside interpersonal influence. In this section, I focus on Pettit's examination of the first two models of freedom. Pettit argues that discursive control is the only satisfactory theory of freedom because the first two fail to sufficiently account for situations in which the agent's action, self, or person is compromised in such a way that, intuitively, we would not want to hold her responsible. I am interested in these analyses to the extent that they employ coercion as an example, since coercion demonstrates a way in which agents' freedom is importantly undermined.

Freedom as rational control understands an agent's freedom of action in terms of her exercise of rational control over those actions. To have rational control is to behave rationally with respect to beliefs and desires and to change those beliefs and desires rationally in light of new information. Since no finite being can always be perfectly

[6] Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, 34.

rational, total rationality is not necessary for free action. Rather, acting freely is acting as a rational subject who behaves intentionally with respect to her beliefs and desires.[7] However, not all actions are free actions. For example, tics and reflexes do not count as free actions because they are not intentional and hence not properly connected to the agent's beliefs and desires. Likewise, actions that seem to respond to the agent's beliefs and desires, but are not intended by the agent to lead to the action that directly follows, are not free.[8]

Agents' actions are also unfree when they lead to an action, albeit through beliefs and desires, but due to the absence of a comparable alternative that their beliefs and desires would have instead produced. Actions that are produced non-intentionally, or as the subsequent result of an intended action, cannot be free actions. An example of an unintentional action may be an agent tripping and falling into another person, thereby accidentally pushing her. This action is not free in the sense of freedom that is relevant to holding agents accountable for their behavior or making moral appraisals of them. We would not blame the agent for pushing another person—it was unintentional and could not have been helped. It makes sense to take moral stances toward people only if they are capable of controlling their behavior through moral judgment and have a capacity for self-control.

There are two possible ways to think of what it means for an action to be free when it is under an agent's rational control and performed in light of her rationally held

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[7] Ibid., 34.

[8] Ibid., 36-37. Pettit uses the example of a deviant causal chain, such as a muscle spasm causing your putter to sink the ball and produce the desired result.

beliefs and desires. The first, narrower reading says that in order for an action to be free it must be the active causal result of the agent's beliefs and desires, which are "causally occasioned by the psychological states that come and go, rationally in the agent's head."[9] A second, broader standard would characterize an action as free if it comes about under the virtual influence of those psychological states, rather than only under their active control, where virtual control refers to an agent's latent capacity for oversight that can become active in certain circumstances. As long as rationally held beliefs and desires are in virtual control of the agent's actions, regardless of whether they are actively directing the agent's actions at any given time, then the action may be considered to be free.

Nonetheless, Pettit poses a problem for the idea of free action as rational control, for the fact that an action is rationally controlled is not enough to make that action free. Non-human animals, for example, are capable of having rational beliefs and desires and acting rationally with respect to those beliefs and desires. However, if actions are free if and only if the agent is fit to be held responsible, then only those agents who can grasp the concept of rationality as well as meet its standard can be held responsible and count as free or unfree. Since Pettit believes that more is required for freedom as responsibility than merely having beliefs and desires in control of the action, a rational control account of freedom is not sufficient to hold an agent responsible for that action. [10]

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[9] Ibid., 38.

[10] A potential response to this criticism comes from Davidson, who holds that having the capacity to believe and desire requires that it is also possible for a being to be able to have beliefs about beliefs. Any subject who can form beliefs and concepts must also be able to form beliefs about rational constraints and standards, and would be able to rationally recognize whether they ought to perform that action. See Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, 41.

Another issue for the account of freedom as rational control concerns its notion of the free self. On this account, to the extent that the agent has the capacity for free action, she will also be a free self. Pettit believes that this correlation of freedom as rational control is problematic because it entails that an agent's freedom depends on whether her beliefs and desires conform to reason at any given time. This characterization of the self under freedom as rational control is problematic because it predicates an agent's freedom on the rationality of her beliefs and desires, rather than aligning freedom with the autonomy of the agent herself. Agents are more than a compilation of beliefs and desires, and thus, an evaluation of their freedom must be based on a more apt evaluation of their selves.

Most importantly for our purposes, with regard to persons, freedom as rational control requires only that a person be in rational control of her actions. But then she may also be said to be free when she has been coerced or threatened. A coerced agent is typically given a choice: either comply with the coercer's or else. When the agent deliberates and then chooses to comply with the coercer's will, she remains in rational control of her action. Since, intuitively, we would regard coerced agents as not fully responsible for their actions, Pettit argues that, while rational control may be a necessary condition for freedom as responsibility, it is ultimately insufficient because must regard the coerced agent as responsible for her actions.[11]

I now turn to the question of whether the theory of volitional control as fitness to be held responsible is an appropriate characterization of freedom. According to the

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[11] Ibid., 48.

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account of freedom as volitional control, an agent acts of her free will when she has a second-order volition to perform an action. Further, an agent has a second-order volition to perform an action, A, when she wants to be controlled by her desire to A. Insofar as an agent has a second-order volition, she identifies with her action and sees it as representative of her free will. In order to be a free agent who has volitional control, then, one must be capable of having first-order and second-order desires. First-order desires are simply desires to do or not do something. Second-order desires are desires that an agent has about other desires. There are two kinds of second-order desires: second-order volitions, which are desires to be effectively moved by a first-order desire, and second-order desires, which are desires to have a certain desire, but do not involve a volitional stance. When agents act on their second-order volitions, they are the authors of their actions. According to the volitional control model, if the agent cannot form second-order desires, or can form second-order desires but not second-order volitions, or cannot exercise her ability to act according to her second-order volitions, then the agent is not a free self.

Pettit distinguishes two ways that an agent may fail to exercise her capacity to act on her second-order volition. Either she may be unable to act as her second-order volition dictates, or she could not act differently if her second-order volition were to dictate that she act otherwise. These two cases are represented by the examples of the unwilling addict and the willing addict, respectively. The unwilling addict may have the second-order volition not to take the drug, but is unable to stop herself from doing so. The willing addict has the second-order volition to take a drug, but could not stop herself from

doing so if she were to have a second-order volition to do other than take a drug. The structure of volitional control is similar to the notion of rational control, in that rational control requires the agent to form beliefs and desires rationally, while volitional control requires the agent to form higher-order volitions and to act as those volitions dictate.

Although the agent will need volitional control over her actions in order to be free, Pettit notes that, as a theory of the free self, volitional control falls prey to the bystander problem, such that the agent does not identify with her action, even though she may have rationally controlled and desired it. If the action does not express her free will, then according to the volitional control account, the agent is still not free. The model of the free self under volitional control also seems to give special status to second-order desires, especially second-order volitions. Yet it seems equally possible for an agent to be alienated from her second-order desires, and therefore not attain the status of the free self.[12] Of course, one might argue that if an agent is alienated from her second-order desires, she must possess an even higher order of desire that disavows the lower-order desires.[13] However, Pettit does not think that this suggestion absolves volitional control of its problems. If the agent is alienated from her second-order desires—either by failing to approve or disapproving of them—then she must be a bystander to the first-order desire that the second order desire fails to endorse.[14] In other words, volitional control is incapable of grounding identification at whatever level of desire the agent approves and

[12] Watson develops this criticism in "Free Agency," in *Agency and Answerability: Selected Essays* (New York: Cambridge University Press, 2004).

[13] Harry Frankfurt provides such an argument in "Freedom of the Will and the Concept of a Person," in *The Importance of What We Care About* (New York: Cambridge University Press, 1988), 11-25.

[14] Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, 56.

by which she wants to be moved. The theory also fails to address how it is possible for an agent to fail to identify with her desire, and yet not fail to identify with her approval of a desire. For these reasons, Pettit believes that volitional control cannot give a theory of the free self that sufficiently explains how an agent is fit to be held responsible.

In order to act freely under volitional control, the agent must have rational control over her action and be moved by desires that she volitionally endorses. However, Pettit argues that neither rational control nor volitional control requires that free actions meet an agent's own normative standards of behavior. Rational control does not entail normative standards for the agent's will, and although volitional control provides for standards insofar as the agent has higher-order volitions, it does not ensure that agents will be fit to be held responsible for those volitions. As such, volitional control cannot help freedom as responsibility overcome the recursive problem, because it only accounts for the agent's fitness as far as that agent has higher-order volitions, not for how the agent should be fit to be held responsible for those higher-order volitions. [15]

As a theory of the free person, volitional control allows that agents will be free persons to the extent that their relations with other agents are consistent with their being free selves. Thus, as long as agents have volitional and rational control over their actions, they will be free persons.[16] The result is that in accounting for the freedom of the person,

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[15] A primary problem of the responsibility connotation is that its definition of freedom may be recursive in a way that threatens a regress. In order for an agent to be responsible for her action, she must also be responsible for whatever beliefs and desires directed that action. But in order to be responsible for those beliefs and desires, the agent must also be in command of more fundamental parts of her person, such as her habits. If the agent cannot be said to be responsible for any factor of her make-up that went in to that action, the agent cannot be held responsible for the action.

[16] Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, 60.

volitional control falls prey to the same problem as rational control, namely that volitional control is compatible with coercion. Since even a coerced agent can have volitional control over her actions, coercion would not necessarily restrict the agent's freedom under volitional control. When an agent is coerced, she may still have rational and volitional control by acting "in a way that answers to the beliefs and desires relevant to the situation and where [she] can act in fidelity to [her] higher-order desires as to what lower-order desires should effectively move [her] there."[17] We might insist that an agent's volitional control is reduced when he submits to a threat, since the motive under which he acts when coerced is one by which he would prefer to not be moved. Yet Pettit rejects this response because the fact that an agent may wish that she were not in the situation that gives rise to her first-order desire to avoid the penalty of the threat is consistent with that agent also wishing to be moved by her first-order desire to avoid the penalty. Because it cannot deal with coercion, Pettit claims that maintaining volitional control over one's actions is insufficient for free action.

3. Discursive Control

In order fully to understand Pettit's conception of freedom as responsibility, and why he rejects the rational control and volitional control accounts of freedom, we must examine his concept of freedom as discursive control. This concept begins with the notion of a free person and places importance on a model of discursive interaction. Discursive interactions let people resolve problems through a conversation in which they

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[17] Ibid., 61.

refer to relevant reasons. This shared reasoning allows agents to influence decisions mutually. Consensus or understanding may or may not occur as a result, but the discursive task means continuing to engage in dialogue, as long as the issues being discussed are decidable in principle. So under the theory of freedom as discursive control, freedom will be tied to persons' ability to engage in the kind of control and access they have within discursive relationships. In order to enjoy discursive freedom, we must have the capacity for discourse and we also must take part in these discourse-friendly relationships.[18]

Freedom as discursive control requires that persons meet both social and psychological standards to be free. The implication of discursive control is that control is no longer fully within one's own person, but is rather intersubjective, taking into account the nature of an agent's relationship with at least one other person. Pettit believes this feature allows the idea of freedom as discursive control to avoid the problem of coercion faced by the theories of freedom as rational control and volitional control. Coercion limits the mutual discursive interaction between the agent and at least one other party; hence the agent is not fit to be held responsible when coerced. Pettit allows for friendly coercion, which may amount to pleas, contractual bids, offers, all of which significantly affect the nature of the discursive interaction, but are not hostile, or in instances in which the coercee gives the coercer the right to coerce him.[19] Friendly coercion can be differentiated from hostile coercion to the extent that it does not restrict discourse, is

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[18] Pettit does not address outlying cases like a hermit, a misanthrope, or other mal-participants in discursive interaction, all of whom may have the capacity for discursive interaction, but choose not to participate.

[19] Here we may imagine something like Odysseus being tied to the mast by his oarsmen.

controlled by the coercee's avowable interests, and is controlled by the coercee so that the coercee may be fully responsible for what happens in a friendly coercive discourse. Nevertheless, there are other ways in which an agent's discursive control may be limited. Another person can intentionally but temporarily limit an agent's action through coercion, punishment, and manipulation. There are also enduring constraints, in which an agent is vulnerable to obstructions on her freedom due to the status she holds with another, as in the example of a wife who lives in a sexist society.[20] In the latter, limitations on an agent's discursive control may be a semi-permanent condition of her existence, while in the former her discursive control is only temporarily limited.

Under discursive control, agents are free selves when they think of themselves first-personally as the bearer and author of their beliefs, desires, and other attitudes. The manner in which the agent forms her attitudes and beliefs must be uniform with her fitness to be held responsible. Personal identity is essential to the freedom of the agent under discursive control. An agent must be able to see herself as the same being existing through time so that she may situate her current actions and assertions against her previous actions, claims, and beliefs. Without continuity of perspective, the agent could not understand why she should be answerable for her previous actions or states.

An agent who possesses discursive control must also be a person and a self with personal and self-identity. In order to have discursive control with respect to the self, the agent must be a coherent self through time, own the vast majority of her past, and acknowledge and accept her past actions and beliefs. An agent cannot be free if she is

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[20] Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency*, 78.

aloof from her actions, or in Pettit's words, has an elusive self, or if she does not endorse her self-identity, and has a weak self. [21] Discursive control's conditions for the free self avoid the bystander problem found in both rational and volitional control. Although discursive control does presuppose the kinds of control present in the theories of rational control and volitional control, it also requires an agent to approve of her action and identify with that act of approval through discursive exchange. Through its emphasis on identity and social interaction, discursive control avoids the bystander problem. As a result, accepting the discursive control model means agreeing to the idea that an agent's freedom is contingent upon the cooperation of others.

Actions are free under discursive control when the action is owned by a free person who has discursive control. Free action may be interpreted either narrowly or broadly. The narrow view of free action under discursive control says that free actions must be explicitly discursively controlled, which Pettit believes is implausible because it carries the implication that most of our actions would then be unfree. A broader construal of free action differentiates between active and virtual control, and allows for an action to be free as long as discursive reflection is virtually controlling the action.[22] Previous problems of free action encountered by rational control and volitional control also may be overcome by discursive control. The nature of discursive control implies that all agents who have discursive control over their actions were able to do otherwise, which means

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[21] Ibid., 86.

[22] Ibid., 91.

that all discursively controlled actions are free because the agent had the ability to do other than what she did.

Discursive control may also effectively deal with the recursive problem of fitness as responsibility, which maintains that in order for an agent to be fit to be held responsible for her action, it must have been controlled through her beliefs and desires, which she must in turn also control, as well as all stages of her being that had some influence over the action. If the agent is not in control at any one of these stages, then she cannot be in control of her action, and therefore cannot be fit to be held responsible for it. The assumption made by the recursive problem, according to Pettit, is that an agent is fit to be held responsible for an action in virtue of its being controlled by a separate state or event within the agent.[23] If instead we conceive of the agent as being in active control over the beliefs that directed her action, then the agent is fit to be held responsible for that action only because of the involved role those beliefs had. The agent's active control over her beliefs demonstrates that she be equally fit to be held responsible for the beliefs involved in the action as she is for the action itself. Even if the agent has at least virtual discursive control over her beliefs and desires, which lead her to perform the action, there is no separable state for which the agent must be held separately accountable.

Finally, Pettit argues that the theory of freedom as discursive control is appealing because it demonstrates why our practice of holding agents responsible is permissible. The recognition of persons' status as discursive agents, who have the capacity for discourse and meet the standards and demands of reason as equal discursive partners, has

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[23] Ibid., 98.

the implication that our holding others responsible is acceptable and even required by the discursive nature of our interactions as free persons.

4. Coercion, Accountability, and Freedom

One of Pettit's main arguments against conceptions of freedom as rational or volitional control is that both are consistent with coercion. According to these accounts, we can consider an agent to be coerced, and therefore unfree, only when she does not have full rational or volitional control over her actions. Since one can maintain rational or volitional control and still be subject to coercion, neither account can consider coercion an impediment to freedom. Therefore Pettit concludes that neither account is sufficient, and that something beyond these two forms of control must be required of the free agent if we are to capture the intuitive idea that coercion diminishes freedom. For Pettit, freedom as discursive control accomplishes this task by imposing both social and psychological conditions on freedom. In order to enjoy discursive freedom, we must have the capacity for discourse and take part in discourse-friendly relationships of non-domination. Pettit believes discursive control can avoid the problem of coercion faced by the rational control and volitional control models because coercion limits an agent's discursive interaction, which means that coerced agents would be considered unfree, and therefore unfit to be held responsible.

However, this criticism is misplaced because Pettit misunderstands the nature of coercion and fails to distinguish two different phenomena. Coercion does not diminish options in a way that is special or distinct from limitations imposed by natural causes,

since both may leave an agent with no real choice to do otherwise. Suppose I cannot drive to the airport because someone has threatened to bomb my car, or suppose I cannot drive to the airport because a monumental snowfall makes any attempt at travel highly treacherous. In both cases, my options are restricted by events over which I have no control. My feasible options have been diminished; my freedom to do otherwise and my responsibility for my actions, or lack thereof, is the same in both sets of circumstances. In neither case am I responsible, in Pettit's sense, for missing my flight because it would have been unreasonable for me to go in light of the obvious peril to my life. Yet, if natural causes and coercion have the same effect on an agent's responsibility for her actions, then we cannot attribute the wrongness of coercion solely to its diminishment of our freedom and responsibility for our actions. Moreover, if coercion is wrong for reasons other than the fact that it diminishes freedom as responsibility, then we must question Pettit's reason for rejecting the rational control and volitional control accounts in favor of the discursive control account. One of Pettit's primary arguments for framing freedom in terms of non-domination rests on his construal of the nature of coercion. Although discussing coercion in terms of domination is insightful, domination is problematic in itself because it is an unacceptable violation of another's autonomy, not because it lessens responsibility.

To see why coercion is wrong, we need to look at the source of our moral outrage. I propose that the wrongness of coercion lies in the fact that it is a morally impermissible exercise of authority. Coercion is an unjustifiable form of interpersonal interference that violates personal autonomy. What we find morally reprehensible is not coercion's

limitation of options, but the fact that our choices have been unjustly restricted, and perhaps even legislated, by another. If the wrong-making feature of coercion is that it is a moral wrong, not that it restricts options, then it is unclear how coercion is relevant to freedom as responsibility. Our responsibility for our actions is unaffected by coercion, because coercion restricts our choices in a manner that is similar to the effects of natural causes. The moral wrongness of coercion does not affect whether we are responsible for our coerced action, but rather whether we are held accountable or blamed for our action. Agents who remain in rational control or volitional control of their actions when they are coerced may still have their conduct attributed to them, or be held responsible for their actions, because their decision reflects and was guided by their judgments about reasons.[24] An agent may judge that compliance with her coercer's demands is her only reasonable option, and to that extent she is responsible for her coerced action in the same way that we may hold her responsible for an action necessitated by natural causes. However, the mere fact that the agent performed an action while remaining in rational or volitional control of her actions is not sufficient for others' moral condemnation. The circumstances surrounding the agent's action, namely that she was dominated and was without fair opportunity to do otherwise, would lead us to refrain from holding her morally accountable or blameworthy for her actions, regardless of the fact that we may attribute them to her.

Conduct may be attributed to an agent when it reflects her identity and character. Actions that embody and carry out the agent's adopted and foreseen ends, and are

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[24] This account is incomplete because there are some non-reflective actions that we may still wish to attribute to agents because they do reflect the agent's normative commitments.

therefore to some extent an expression of the agent's self, may be attributed to her because she has manifested herself in them and they are self-governed. However, in order to hold an agent morally accountable or blameworthy in such a way that she can be sanctioned with negative reactive attitudes or other forms of retributively justified punishment, a separate set of conditions must be met. Holding others responsible or blameworthy is not only a matter of evaluating the individual and her relationship to her conduct. The practice of praising and blaming and, by extension, holding others morally responsible is only appropriate only in the context of "a social setting in which we demand (require) certain conduct from one another and respond adversely to one another's failures to comply with these demands."[25] The agent's actions must be understood contextually, which means that it would be unjustifiable to hold agents morally blameworthy for all conduct which can be attributed to them. Regardless of whether the agent's conduct can be attributed to her insofar as it reflects her judgments about reasons, she must meet a different standard in order to be morally accountable for her actions. Therefore, it is possible to attribute an action to an agent, while denying that she is morally accountable for it.[26]

To hold accountable is to hold another to expectations or demands such that her failure to meet them would make her open to the reactive attitudes of others.[27] Not all

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[25] Gary Watson, "Two Faces of Responsibility," in *Agency and Answerability: Selected Essays* (New York: Cambridge University Press, 2004), 262.

[26] It is possible to hold a person morally accountable for a morally neutral action, which does not involve moral obligation, insofar as we regard the person as the sort of agent who is the proper subject for moral demands, and the proper target of reactive attitudes if those demands are not met.

[27] Watson, "Two Faces of Responsibility," 274.

actions are appropriate targets for reactive attitudes. Certain conditions may obtain that would inhibit our emotional responses to another's action, as in cases of coercion. The nature of our reactive attitudes would preclude victims of coercion and other excusing conditions, such as natural coercion, to be subject to morally condemnatory emotional responses. Gary Watson argues that the "avoidability" of the action should be a criterion for accountability. This standard is reflected in our common concern about whether someone could have done otherwise when we are considering whether blame or sanctions are appropriate. When judging an agent's behavior, we generally excuse agents whose circumstances have been severely limited because we feel that it would be unfair to punish someone when he had no real opportunity to have done otherwise. It is widely held that agents who cannot reasonably avoid performing an action do not deserve to suffer its consequences because they had no viable alternative. The fact that we are concerned about the agent's ability to have acted differently implies that in order to be subject to sanctions, we think the agent must have reasonable access to alternate possibilities.[28] If the agent could not have reasonably avoided his action, then we generally feel that holding him accountable would be inappropriate.[29] Since coercion is

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[28] Another way of thinking about avoidability is that it must be possible for the agent to have been another type of agent than she now. Ibid., 264.

[29] The interesting question arises about our evaluation of the avoidability of the coerced agent's action. It is possible that we may not judge the threat sufficiently coercive, such that the agent's action was not necessitated in the way that would excuse her action from moral blameworthiness. For example, if the agent had been threatened with the loss of her little finger or the mass destruction of the city of Los Angeles, the loss of a mostly insignificant limb might not seem sufficiently severe to choose its preservation over that of twelve million lives. In that case, we may say that the threat was not sufficiently coercive to justify the agent's choice, and although the threat was hardly fair, she should have chosen otherwise. In this case, we would hold the agent morally accountable for her choice. In a different way, if the agent had instead judged that the action that the coercer demanded of her was so reprehensible that she

one such obvious case, it would be unjustifiable to hold coerced agents accountable or blameworthy for their actions.

Being held morally accountable consists in being apt to have reactive attitudes, or other forms of sanction, such as punishment, directed at you. P.F. Strawson's argument in "Freedom and Resentment" draws upon the notion of reactive attitudes as a touchstone for moral responsibility. Rather than focusing on the nature of agents' beliefs when they make moral judgments, Strawson's account concentrates on the psychology of an agent who makes a moral judgment against another. Our reactive attitudes upon witnessing, experiencing, or committing a morally wrong action are emotional responses, which Strawson believes are sufficient to hold someone morally responsible for her wrong action. Reactive emotions are aroused in accordance with our judgments about the attitudes of others towards us as expressed through their actions. For example, we may resent a person when she maliciously injures us because this action expresses her ill will toward us. However, these reactive emotions are not simply responses to injuries because injuries may not be accompanied by the objectionable attitudes that elicit these emotions.[30] Strawson emphasizes the fundamental nature of our reactive attitudes by demonstrating that they lay the foundation for our own moral practices, expectations, and standards of human interaction. It would be both psychologically and practically

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would rather lose her life than perform it, her conduct would be also be attributable to her, and we may also morally praise her for her action.

[30] In addition to first-personal reactive attitudes, which are our reactions to the attitudes others hold toward us, there are also third-personal reactive attitudes, which we may take on behalf of other parties, and which are aroused by the attitudes directed at them.

impossible to give up these reactive attitudes and refrain from holding others morally accountable for their actions.

The power of reactive attitudes and the difference between attributability and accountability is manifested in Watson's example of a criminal who had been abused as a child. While we still think of the criminal as responsible because his actions were in accord with his moral capacities and expressed his practical identity, we feel ambivalent about blaming him for his criminal behavior. Watson ascribes our ambivalence to feelings of fairness, since the criminal might have had no alternate possibility to his life of crime. So although the criminal was normatively competent from the standpoint of attributability, he lacked normative competence from an accountability perspective.

Another way to think of how to judge whether an agent is morally accountable is through the quality of her will. If the will is the guiding force of the agent's action, then the quality of one's will is the emotion or motivation that is expressed in the will of the agent, such as the quality of a set of commitments that the agent has, or his inclination to treat certain states of affairs as reasons to act. As the self-governing and animating force of the agent, the will expresses certain emotions or commitments, such as love, contempt, or benevolence. An agent may be excused in cases where she had no eligible alternative, because the quality of the will is expressed through the agent's willingness to engage in a course of action, and her will is not manifested in her action in the way that makes reactive attitudes toward the quality of her will appropriate. When we morally evaluate an agent's action, we are interested in more than just the physical facts of the action itself. We are concerned with the reasons the agent performed that action. If I were to injure

you purposefully, then what animates my capacity for self-control is a negative attitude I have towards you. If, on the other hand, I injured you while pushing you out of the way of oncoming traffic, then the quality of my will would rather express care and concern for your well-being, with the unfortunate side effect that I bruised you in the process. In cases of coercion, the agent's action does not reveal the quality of will that would normally be revealed by her action, so she is not an appropriate target for reactive attitudes. If a bank teller is told, "The bank's money or your life," the teller's quality of will toward his employers when he hands over the money is not to do his employers harm. In fact, he may well recognize his fiduciary obligations and bear the bank no ill will. He does, however, value his life more than those obligations, which commits him to handing over the money. Although the teller's action does demonstrate a set of commitments he has, namely, that he places more importance on his life than on money, it is not the case that he performed the action willingly, as a result of his dislike for his employers. His quality of will is not of the correct kind for his employers to blame him for his actions. While the act is still fully his, the quality of will indicated is not blameworthy because he acts under conditions that change the quality of will expressed in the action.[31] His employer's knowledge of the circumstances inhibits the reactive attitudes he may otherwise have had because the employer recognizes that it would be inappropriate to hold the teller blameworthy. Because the teller's preferences were not revealed, and because his will in doing the action was not of the right sort for blaming, we would not hold him accountable for his action.

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[31] T.M. Scanlon, "The Significance of Choice," 163.

I suggest that we think about coercion in the following way: an agent is coerced when a threat is issued to her, aimed at getting her to perform an action that she either does not want to do or would not do otherwise, and when the threat succeeds in getting her to perform the action in a way that undermines her moral blameworthiness for that action. As we have seen, it is possible for an agent to act reasonably and still be coerced. Although the agent acts in accord with her values and preferences, which makes the action attributable to her, she may not have been able to do otherwise due to her coercer. When an agent has acted reasonably within a set of circumstances, we cannot say that she has done something wrong or objectionable, because it is what any rational person would have chosen to do given the situation, and therefore the action is regarded as justifiable. Agents who have not committed any moral wrongdoing cannot be blamed for their actions. In this way, agents who retain the power of reflection and whose actions can be attributed to them may still be excused from blame for their actions because they acted reasonably. Although it is possible that disagreements about what constitutes reasonable action may arise, we may still use this standard as a way to understand coercion.[32]

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[32] My account differs from Frankfurt's, who believes that instances of coercion are importantly different from instances of merely being threatened. Frankfurt stipulates that the penalty threatened must make doing otherwise substantially less attractive, and that the coerced agent must believe that either it would be unreasonable of him to defy the threat, or that he is justified in submitting to it. But these two conditions alone are insufficient. Even if the agent *correctly* believes that it would be unreasonable for her to do otherwise, the lack of a reasonable choice does not relieve her of moral responsibility, according to Frankfurt. As a result, Frankfurt institutes the very strong condition that in order for an agent to be properly labeled coerced, the agent must have no alternative at all but to submit to the threat. This condition can be satisfied only in cases where the threat appeals to the motives or desires of the agent, which are so forceful or inherent that the agent cannot control them. The agent must be incapable of doing otherwise, regardless of what it is reasonable or rational for her to do in the situation. The agent must no longer be autonomous in order to be coerced—her will must be violated or circumvented. See Harry Frankfurt, "Coercion and Moral Responsibility," in *The Importance of What We Care About* (New York: Cambridge University Press, 1988), 26 – 46.

While we still may be able to attribute a coerced action to an agent, this is not to say that coercion does not diminish an agent's freedom generally. Our intuitive belief that coerced agents are unfree still stands because coercion restricts the agent's freedom to do otherwise. When my options are restricted, I am less free to act than I was earlier. Natural causes have the same effect on freedom as coercion. Take the case of an agent who is told, "If you walk down that path, I will cause a boulder will fall on you"—his freedom is not diminished in a way that is importantly different from when he is told, "Walking down that path will cause a boulder to fall on you—the rocks are very unstable there." In both cases the agent knows that if he walks down the path, a boulder will fall on him. In both cases his freedom to do otherwise has been restricted. Nonetheless, in the former case the agent has had his freedom restricted interpersonally, while in the latter he has not. As such, coercion, as the interpersonal diminishment of options, does restrict freedom as the ability to do otherwise, but not freedom as responsibility. We are less free than we were before because we have fewer feasible options, but diminishment of opportunity does not necessarily affect freedom as responsibility.

Once we have distinguished the assignment of responsibility from blameworthiness, it becomes clear that Pettit's requirement of non-domination is irrelevant for freedom as responsibility. Whether someone's action has been coerced or dominated by another does not necessarily reduce her responsibility for that action, although it may reduce her blameworthiness or her freedom to do otherwise. Pettit's argument for discursive control partly rests on the idea that it can overcome the shortcomings of rational control and volitional control with respect to coercion. However,

Pettit mischaracterizes the nature of coercion, which, once corrected, gives Pettit's theory of discursive control no advantage over the theories of rational control and volitional control in this regard. Whatever advantages Pettit's account of discursive control may have, these considerations about coercion, attributability, and accountability undermine his reasons for rejecting the rational and volitional control models of freedom as responsibility.

Chapter 2

Pettit and Discursive Freedom

1. Introduction

Under Pettit's theory of personal freedom as discursive control, freedom is realized through persons' possession of the control and access found within discursive interactions and discursive relationships. Not only must we have the capacity for discourse in order to enjoy discursive freedom, but we must also take part in discourse-friendly relationships.[33] Agents exchange reasons in discursive interactions, which allows agents to influence decisions mutually and to resolve conflicts. While Pettit allows that consensus or understanding may not always occur as a result of discursive interaction, engaging in dialogue will always further the discursive task, as long as the issues being discussed are in principle decidable. Agents will be free to the extent that they engage in discursive relationships and that discursive influence between parties is not undermined.

In this chapter, I examine Pettit's conception of political freedom that he claims is consistent with his conception of personal freedom. He rejects a conception of political freedom that rests on a simple absence of limitations on impersonal and interpersonal freedom. He also opposes a conception of political freedom that is based on the absence of interference, in which persons are politically free to the extent that they are neither subject to interference by others, nor subject to limitations on the enjoyment of such non-

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[33] Pettit does not address outlying cases like a hermit, a misanthrope, or other mal-participants in discursive interaction, all of whom may have the capacity for discursive interaction, but choose not to participate in dialogue.

interference. Instead, Pettit chooses a conception of freedom that emphasizes non-domination as the best theory of political freedom to achieve personal freedom as discursive control. For Pettit, individuals enjoy non-domination to the extent that they are not exposed to an *arbitrary* power of interference on the part of others. In his view, republicanism is the best articulation of this sort of freedom. I want to show how shortcomings in Pettit's portrayal of coercion with respect to personal freedom carry over into his conception of political freedom, with the conclusion that Pettit's conceptions of coercion and interference lead to faulty inferences about what conditions are necessary to achieve freedom as non-domination.

2. Liberty, Interference, and Domination

In a famous essay, "Two Concepts of Liberty," Isaiah Berlin distinguishes between positive and negative liberty. We can think of the difference between positive liberty and negative liberty in terms of whether the features that make an agent free are internal or external to him. Negative liberty has to do with the extent to which an individual is exposed to external interference, while positive liberty concerns an agent's ability to govern her behavior in accordance with her rational self. As a formal conception of freedom, negative liberty epitomizes a commonly-held notion of what it means for someone to be free: freedom is the ability of the agent to act as she chooses or desires, free from limitation or restriction.[34] A more developed conception of negative liberty suggests that freedom is more than just the simple absence of restrictions on

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[34] Isaiah Berlin, *Four Essays on Liberty*, (New York: Oxford University Press, 1990).

action, but rather depends upon the presence of an environment that guarantees the absence of interference.[35] Positive liberty, by contrast, is more commonly attributed to individuals within collectivities, or to collectivities themselves. A theory of positive liberty characterizes freedom in terms of an individual's self-realization or autonomy, in accordance with the importance of the rational and self-conscious nature of humanity. This conception of freedom derives from an individual's wish for self-mastery: an agent's desire that her decisions and life are a reflection of choices that she has made and with which she identifies.

However useful the distinction between positive liberty and negative liberty may be, Pettit thinks it fails to recognize the importance of a third concept of freedom, namely, freedom as non-domination.[36] If positive liberty emphasizes freedom through self-mastery and negative liberty focuses on the absence of interference, then these two theories of liberty do not define freedom in the same way and thus do not respond to the same types of limitations on freedom. The divergent focuses of positive liberty and negative liberty fail to cover all ways in which freedom may be obstructed. In particular, Pettit argues that neither conception addresses the important case of domination, which also limits freedom. For this reason, Pettit offers a third concept: freedom is the absence of mastery by others, which he terms freedom as non-domination.[37]

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[35] See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997).

[36] Ibid., 18.

[37] Ibid., 22.

Pettit distinguishes his theory of freedom as non-domination from negative liberty by contrasting domination and interference. Pettit has five requirements for an action to qualify as interference: it must make things worse for the interferee, it is intentional, it includes coercion of the body or will, it involves manipulation, and it need not be wrongful.[38] Domination, in contrast, is exemplified by a relationship between master and slave. An agent is dominated if another person has the power to interfere with her on an arbitrary basis, thereby having the power to arbitrarily restrict her behavior and options.[39] The dominating agent's capacity to interfere must be actual, rather than potential, and is not influenced by the opinions of those who are dominated. However, domination does not need to be universal; one may dominate only with respect to certain choices or aspects of an individual's life, or periods of time. These conditions, according to Pettit, are sufficient for domination, and when they are present, it is likely to be common knowledge between the parties that one is dominating the other.

Pettit thinks it is possible to avoid interference without avoiding domination. He gives as an example the case of the benevolent master, who is capable of interfering on an arbitrary basis in the choices that his slave makes and hence dominates the slave. Yet, the master simply may choose not to interfere in the slave's life. Interference without domination is also possible: I may interfere with you by stealing your car, but I still may fail to have any power over you. For Pettit, escaping interference means "escap[ing] coercion in the actual world. For a relevant range of possible choices no one coerces you

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[38] Ibid., 52 – 54.

[39] Ibid., 52.

to choose one way or another; were you to face one of those choices, you could make your choice without hindrance, threat, or penalty."[40] However, in order to escape domination, Pettit requires more: non-domination necessitates that the world is constituted in such a way that one is secured against those who are more powerful and capable of domination by arbitrarily interfering in other's lives.[41] Pettit argues that a policy of non-interference is not sufficient for freedom because it does not guard against domination.

Pettit's account of freedom as non-domination is problematic for several reasons, many of which arise from its relationship to interference. An initial concern is the fact that Pettit's account of the nature of interference is ambiguous. For example, he says that competition for scarce goods should not count as interference. However, he also regards someone else's use of a public phone that you need in order to make a call as an instance of interference.[42] These statements conflict because a phone booth seems to be a very clear example of a limited resource, and it is unclear what Pettit considers to be a limited resource if he excludes resources such as public phones. The question as to what counts as interference is significant for two reasons. First, if others' use of public resources does count as interference, then it seems that citizens of a state will always have to contend with a high degree of interpersonal interference, much of which can become arbitrary. Second, since Pettit's account of freedom as non-domination depends heavily on his

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[40] Ibid., 24.

[41] Ibid.

[42] Ibid., 52 – 54.

conception of interference, our ability to ascertain the extent to which his conception of republicanism can successfully protect its citizens from domination is limited.

A second, more global issue is Pettit's choice to define domination in terms of interference. Pettit is determined to keep his theory of republicanism rooted in a historical context that values non-interference. This commitment unnecessarily complicates his conception of freedom as non-domination, and ultimately causes freedom as non-domination to fall back into freedom as non-interference. Take Pettit's primary argument to demonstrate domination and interference's inherent differences: that it is possible to dominate without interfering. The example he gives in defense of this phenomenon is a kindly slave master who dominates her slave by being capable of arbitrary interference, but refrains from interfering. This scenario almost certainly contradicts what Pettit says elsewhere about the nature of interference, and seems practically impossible under any given set of circumstances. Pettit's broad definition of interference would deem any contact a slave-owner has with her slave as interference due to the imbalance of power in their relationship. Any intentional interaction a master had with her slave would limit other courses of action the slave could take, thereby making things worse for the slave. Surely the very existence of a master interferes with a slave's life and livelihood—it is a limitation of his available options, and that, according to Pettit, is interference. While domination and interference may be different, Pettit's defense of that fact is unconvincing. It is impossible to experience domination without interference because the presence of a dominating force necessarily shapes and limits an agent's options. The mere fact that an agent knows she is dominated is a source of limitation and interference

in an agent's life. As such, Pettit's ability to show how the two notions are different is significantly hampered by his own commitment to creating a central role for arbitrary interference in his political theory and while maintaining a very general conception of what counts as interference.

3. Republicanism and Positive Liberty

The foregoing addresses Pettit's attempt to differentiate his republican conception of liberty from a traditional negative account of liberty, but he also tries to distinguish republicanism from positive liberty. A theory of positive liberty argues that humans think of themselves as rational, self-reflective beings with wills and desires who bear responsibility for their actions, and emphasizes the primacy of democratic participation to freedom. Pettit, while recognizing the significance of democratic participation, places equal importance on also "avoiding the evils associated with interference."[43] So rather than defining the possession of liberty in positive terms, through the extent to which one participates in, or is represented in democracy, republicanism defines liberty through the extent to which interference is avoided. While republicanism aims at non-domination, Pettit insists that non-interference is also central to the theory insofar as the desire for freedom comes from a desire not to be ruled and to live freely.

Republicanism, as Pettit defines it, conceives of freedom as a condition created by the laws of society and enjoyed by citizens. One may be free only by being a citizen in a lawful society. In contrast, Pettit argues that a political theory that equates freedom with

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[43] Ibid., 27.

non-interference would see the state and its system of laws, regardless of limits in their scope or their intentions, as coercive. As a response to both models of freedom, his conception of freedom as non-domination equates institutional restrictions with the limitations posed by natural obstacles. So although Pettit defines freedom as non-domination, and non-domination as the avoidance of interference, he does not object to all kinds of interference. Instead, he objects to arbitrary interference. Pettit believes that agents can only be dominated when they are interfered with on an arbitrary basis. Pettit does not attempt to regulate all types of interference because such restrictions on interference would themselves be sources of interference, creating a further lack of freedom. Additionally, he believes that the efficacy of laws aimed at curtailing all forms of interference would be relatively low. The increase in governmental interference through law, combined with the inability to enforce those laws, would lead to a net increase in interference from both the government and others. By limiting his conception of domination to instances of arbitrary interference, Pettit claims to have constructed a republican conception of freedom that is both negative and positive. Republicanism is negative insofar as it argues against domination and thus is interested in the absence of arbitrary interference, and positive in that it requires guaranteed security from arbitrary interference through government intervention.

Nonetheless, Pettit's theory of republicanism does not convincingly move beyond the values of negative liberty by defining freedom in these terms. Pettit tries to introduce elements of positive liberty into his theory of republican liberty by arguing that freedom as non-domination requires security from arbitrary interference, thereby differentiating

his theory from a theory that values negative liberty. He sees his requirement for protection against arbitrary interference as a sign of republicanism's roots in a theory of positive liberty because it recognizes the importance of security against outside influences. However, it is negative liberty, not positive liberty, which is primarily concerned with the avoidance of interference. A political theory based on the avoidance of interference would also focus on protecting its citizens from interference. Consequently, Pettit has not significantly incorporated elements of positive liberty into republicanism, and it is questionable as to whether he has really advanced his conception of republicanism much beyond a more developed notion of his basic conception of negative liberty.

Further, while Pettit claims that non-interference is insufficient for freedom as non-domination, he favors avoiding interference over a positive ideal of democratic participation for republican liberty. This choice causes republican liberty to collapse back into negative freedom. If republicanism directly ties liberty to lack of interference, rather than lack of domination or some other value, then although republicanism may be distinct from a theory of positive liberty, it is the same as freedom as non-interference. Pettit tries to circumvent this problem by objecting only to arbitrary interference, but the way in which he characterizes interference is also problematic. Pettit takes pains to distinguish arbitrary interference from non-arbitrary interference, and objects to arbitrary interference by asserting that arbitrary interference is different from interference generally. Although Pettit argues that non-arbitrary interference is acceptable because it is analogous to interference resulting from natural causes, this line of reasoning does not helpfully

distinguish non-arbitrary interference from arbitrary interference. Such a distinction cannot be drawn because *both* kinds of interference are akin to restrictions imposed by natural events. The two have not been distinguished in a way that explains why one type of interference is analogous, but the other is not. As we have seen in the previous chapter, arbitrary interference also may be characterized in the same manner as natural causes, and is therefore not distinct from non-arbitrary interference in the way Pettit suggests. For example, my ability to travel to Cuba would be practically impossible whether the government makes a law forbidding travel to Cuba, or a large storm made travel to Cuba impossible, or another person had the ability to kill me and vowed to do so should I travel to Cuba. Interference diminishes the amount of available options, regardless of whether it comes from natural causes or from another agent. In all cases, an agent's freedom to do otherwise and her responsibility for her actions are the same. The origin of the interference is irrelevant to the impact it has on an agent's options. Therefore, Pettit's argument that non-arbitrary interference is acceptable because it is the same as natural causes is incorrect. While it is certainly the case that arbitrary interference and non-arbitrary interference are dissimilar for several reasons, they are not different for the reason that Pettit offers. If arbitrary interference and non-arbitrary interference cannot be distinguished for the reasons Pettit gives, then we cannot accept his argument that freedom as non-domination is different from freedom as non-interference because freedom as non-domination only objects to arbitrary interference. Without any appreciable difference between the two conceptions of freedom, republicanism has not advanced beyond a political theory that values non-interference.

By positing arbitrary interference as a special, and especially objectionable kind of interference, Pettit makes the same type of mistake that he does with respect to freedom as responsibility and coercion. Although it may diminish an agent's freedom generally, coercion is not objectionable because it lessens freedom as responsibility and limits our options. Coercion is a moral wrong. Similarly, arbitrary interference is objectionable not *because* it limits our options and not *because* it is a special kind of interference—its status is no different from non-arbitrary interference with respect to the restrictions it imposes on the agent. All interference has a negative impact on an agent because it restricts her freedom to do otherwise, which means that she is less free to act than she otherwise might have been. Arbitrary interference is unacceptable because it is an interpersonal intrusion on autonomy. Pettit attempts to give arbitrary interference and coercion a special status such that acts of arbitrary interference and coercion themselves can confer wrongness through their limitation of options, when in fact the wrongness is moral in nature. If arbitrary interference cannot be distinguished from non-arbitrary interference, then arbitrary interference does not lessen freedom as non-domination for the reasons Pettit asserts. While something like arbitrary interference may very well be part of the characterization of freedom as non-domination, it should not be accepted for the reasons Pettit has offered, namely that arbitrary interference is a special kind of interference that is dissimilar to natural causes and can therefore be cast as objectionable.

4. The Republican State and Society

Instituting freedom as non-domination is supposed to remove uncertainty as to

whether others will interfere with us because it reduces interference from those who are more powerful. By mitigating the potential influence of the powerful, those who they might otherwise dominate will not have to anticipate their whims or stay out of their way. Pettit thinks freedom as non-interference cannot provide the same kinds of institutional safeguards; instead the best way for an individual to minimize interference may be to develop a strategy of placation or cunning to out-maneuver those with more power. Living with this level of uncertainty is too great a cost for Pettit; in his view, those who favor a theory of freedom as non-interference do not give sufficient weight to the uncertainty that he believes is a significant detriment to those who must endure it.

The republican tradition separates civil freedom from natural freedom and focuses on how freedom as non-domination may be realized within society. Pettit introduces the use of constitutional provision as a means of successfully achieving freedom as non-domination. The idea of constitutional provision invokes the power of a constitutional authority to eliminate arbitrary interference and, as far as possible, to punish such interferences when they occur. Pettit argues that a constitutional authority will not be a dominating force because it will track citizens' interests and be responsive to the common good, which means its authority would end the domination of some parties by others, and also not itself be a dominating force.[44]

In arguing for a conception of political freedom as non-domination, Pettit tries to prove that it is "a personal good that practically everyone has reason to want

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[44] Ibid., 68. Unfortunately, Pettit here fails to explain what he means when he refers to the common good, which is important to understanding how he conceives of constitutional authority truly being a force for non-domination.

and…value," that it is "something which inherently concerns individual institutions, not something that can just be left to individuals," and finally, that it is a goal, rather than a constraint on other goals those institutions may have.[45] I look at each of these claims in turn.

Pettit believes that an important consequence of freedom as non-domination is public knowledge of that freedom, which he believes does not appear in the ideal of freedom as non-interference. In a society in which conditions of freedom as non-domination obtain, Pettit maintains that all citizens in the society know that they are secure from domination. Because of this shared understanding, participants enjoy the power of having control over their lives and being secure from arbitrary interference. This sense of feeling free and knowing others respect your freedom is important to the continuation of non-domination.

Two issues arise from Pettit's account of public knowledge as a consequence of freedom as non-domination. First, it is not clear that the conditions of non-domination necessarily precipitate a shared understanding of non-domination. While citizens living in a society may be more or less aware of their rights and social standing, depending on the nature of the government, freedom as non-domination itself does not seem specially equipped to make these conditions known. Pettit does not discuss any further institution or body that would be responsible for promulgating this information, nor does he explain how understanding would occur in the absence of such an institution. Second, it is unclear why, in comparison with non-interference, non-domination possesses special

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[45] Ibid., 81.

properties facilitating citizens' shared understanding of their freedom. Why would public knowledge of the conditions in a society not obtain regardless of how that society views freedom, whether as non-domination, non-interference, or some other way? While it may be beneficial to a society that its citizens share an awareness of their freedom, this virtue does not specifically result from a political theory that values freedom as non-domination. Pettit, however, seems to view public awareness as a consequence that specifically results from the conception of freedom as non-domination.

Pettit also maintains that non-domination is, in Rawls' terms, a primary good: something that it is rational to want regardless of one's ends in life.[46] Non-domination makes the achievement of an individual's ends easier, because her ability to make plans and carry those plans out will be enhanced by a situation in which uncertainty is minimized and non-domination is maximized. Although non-domination is in this sense a personal good because it enhances the citizens' personal lives, Pettit believes it cannot be pursued simply at the level of individual. Non-domination may be realized only through the state, and it is primarily political, rather than personal, in nature. Freedom as non-domination allows for the state to exert coercive pressure to ensure that citizens can effectively resist interference from others. Pettit asserts that a state organized under the principles of freedom as non-interference would reject coercive pressure in favor of leaving each individual to devise a strategy against the interference of others. This political stance may result in inequalities due to natural endowments, initial position, health, social connections, influence, etc. Pettit feels that while constitutional provision

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[46] John Rawls, *A Theory of Justice, Revised Edition* (Cambridge: The Belknap Press, 1999), 79.

may be more costly to implement and may result in an overall diminishment of freedom, such an arrangement is preferable to the decentralized non-interference model, which could result in a Hobbesian war of all against all.[47]

Pettit's endorsement of constitutional provision as the best method of realizing freedom as non-domination is partially due to his conception of coercion. He believes that the wrongness of coercion lies in the way it diminishes responsibility by restricting available options. As we have seen in the previous chapter, this notion of coercion is misguided, and, as a result, Pettit mistakenly labels all kinds of interference coercive.[48] He equates the enjoyment of non-interference with the absence of coercion, and interference with coercion.[49] However, it seems that, although some kinds of interference may be coercive, there are obvious differences between the many kinds of interference and coercion. According to Pettit, although interference always negatively impacts an agent, it may not be in itself a wrong act. My use of available resources, for example, may prevent your use of the same resources, but that does not necessarily mean I have done something impermissible or morally unacceptable. However, Pettit terms this kind of interference coercive.[50] I have interfered with the choices that are available to you, and in that way I have hindered your range of available options. Pettit also includes threats and penalties as instances of coercion.

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[47] Pettit, *Republicanism: A Theory of Freedom and Government*, 95.

[48] As we have seen in the first chapter, not all forms of interference are coercive in nature.

[49] Pettit, *Republicanism: A Theory of Freedom and Government*, 24, 54.

[50] Ibid., 54.

In this regard, Pettit fails to recognize an important distinction, namely that between passive interference and active interference. The difference between the two lies in the intention of the actor. If I am using a public pay phone when you wish to make a call, or if I park my car in a space that you would like to use, I have *passively* interfered with your available options for talking on the phone or parking your vehicle. However, I was within my rights to use these public goods, and I did so without intending to harm or to interfere with you. Active interference, on the other hand, occurs when an actor intended to interfere with another in some way. In actively interfering, I purposely try to induce another's action, or to keep someone from acting.

This is not to say that passive interference can never be objectionable. For example, if I abandon my car in a public parking space, or occupy a phone booth for hours and hours, my actions fail to exhibit proper regard for reasonable standards of use of public property and lack consideration for others. T.M. Scanlon attributes our negative reactions to passive interference to the fact that such interferences reveal objectionable judgment-sensitive attitudes on the part of the other person. Generally speaking, judgment-sensitive attitudes "constitute the class of things for which reasons in the standard normative sense can sensibly be asked for or offered."[51] Judgment-sensitive attitudes are dispositions to think and judge in certain ways. The judgment-sensitive attitudes of a completely rational person would conform entirely to the weight of objective reasons. Sufficient reasons to form a judgment-sensitive attitude would bring it about, while a judgment-sensitive attitude that was no longer supported by the correct

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[51] T.M. Scanlon, *What We Owe to Each Other* (Cambridge: The Belknap Press, 1998), 20 – 21.

kind of reasons would be relinquished. Judgment-sensitive attitudes can thus be things for which we are responsible, even though we may not have consciously chosen them. We are responsible for our judgment-sensitive attitudes in the sense that we can be asked to defend them by giving our reasons for them, because their presence depends upon our judgments about the reasons we have.

To illustrate the relevance of judgment-sensitive attitudes, consider the following case: in the United States on a street or highway with at least two lanes going in one direction, the left-hand lane is considered to be the passing lane. Drivers are supposed to stay in the right-hand lane except to pass other cars. If a driver in the left-hand lane is going more slowly than the cars behind him, the rules of the road dictate that he should safely merge into the right-hand lane to let those cars pass. A driver who fails to do so, and slows the flow of traffic, may be held responsible for his neglect, despite the fact that he is only passively, and perhaps unintentionally, interfering in others' ability to use the road. The driver's inaction displays a lack of courtesy and respect for others. A driver who inconsiderately allows traffic to back up behind him does not judge others' rights for equal use of the road as a sufficient reason to merge into the right-hand lane when it is appropriate to do so. As such, we may attribute his attitudes to him in a way that makes him responsible for his actions: he has evaluated reasons for and against following the rules of the road, and has decided not to respect them, or at least to be inattentive to them. While he may not bear any ill will toward the drivers behind him, or even be aware of the traffic jam he is causing, his attitude of negligence in his driving still makes him open to negative reactive attitudes from others as a result.

Thus, passive interference may be objectionable and those who passively interfere with others can be held responsible for actions insofar as they issue from objectionable judgment-sensitive attitudes. However, this form of interference is significantly different from coercion, which is necessarily an active form of interference. Coercion occurs when a threat is issued to an agent in an effort to get her to perform an action, which she either does not wish to do or would not do otherwise. It would be impossible to coerce someone passively, because coercion is an interpersonal phenomenon that requires that the coercer aim at some end.

By putting coercion in the same category of interference as using a public pay phone, Pettit grounds his characterization of coercion in the ideals of negative liberty, which casts the relationships between agents as inherently negative, limiting, and unhelpful. Rather, his characterization should draw upon freedom as non-domination. The realization of autonomy in society necessitates a more complex understanding of interpersonal relations. Pettit acknowledges the importance of understanding autonomy through personal interaction in his treatment of personal freedom as discursive control, which makes his commitment to this version of coercion all the more questionable.

By framing coercion in terms of interference, Pettit fails to sufficiently acknowledge the moral significance of the act of coercion. Pettit's definition of coercion also undermines his goal of achieving freedom as non-domination in republican society. If the state is naturally coercive and interfering, and the best realization of freedom that can be achieved under Pettit's model is a reduction of arbitrary forms of interpersonal interference, then the republican state does not seem like a very successful medium for

freedom as non-domination. Pettit tries to circumvent this problem by separating arbitrary interference from non-arbitrary interference and attempting to legitimize the non-arbitrary interference of the government. However, as we have seen, this distinction is insufficient to capture the difference between acceptable and unacceptable forms of interference.

Finally, Pettit believes that non-domination should be viewed as a goal to be valued by political institutions, rather than as a constraint that hems in the state's other political goals. Pettit generally favors a consequentialist stance, which takes non-interference as a good to be maximized by the institutions of society, over a deontological stance that regards non-interference as a constraint and therefore minimizes the state's role in society because it is a source of interference.[52] Republicanism does not fit neatly into either normative category. Pettit believes that freedom as non-domination is constituted *by* state institutions, not causally brought into existence through them, as in the case of the goal of non-interference. The difference between the two theories, according to Pettit, is that freedom as non-interference brings freedom into existence post-fact through institutions, while for freedom as non-domination, the institutions themselves manifest freedom.

Unfortunately, Pettit does not explain how it is possible for institutions to embody freedom rather than being platforms for it. Hence, he cannot indicate how freedom may be attained. While it may be the case that freedom as non-domination must be

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[52] While the republican tradition does not articulate either a teleological or a deontological position, Pettit believes that pre-modern republicans would have favored a teleological approach because they treated freedom as an empirical issue, not a matter of "a priori resolution." Pettit, *Republicanism: A Theory of Freedom and Government*, 100 – 101.

implemented through societal and political institutions, rather than the level of the individual, in order to be realized effectively in society, it is unclear how an institution may itself manifest freedom, or how it then confers that freedom onto its citizens.

5. Republicanism and Equality

According to Pettit, republicanism embodies the ideals of *liberté*, *égalité*, and *fratérnite,* through its commitment to egalitarianism and community.[53] As such, he rejects political structures that maximize utility or non-interference because they do not ensure equal treatment. A strategy of maximizing utility may result in the unequal treatment of citizens because the allocation of resources that yields the most net utility may be unequal. Non-interference could lead to the restraint of those who are more likely to interfere, while protecting those who are more vulnerable. These practices are unacceptable under freedom as non-domination because the government would be acting as a dominating force over everyone in the society, necessarily reducing its citizens' freedom. Pettit argues that the "*imperium*" of the state will be worse than the "*dominum*" it intended to prevent.[54]

Pettit's argument against the government acting as a dominating force over its citizens comes in direct conflict with his earlier assertion regarding a constitutional provision of government authority in which freedom as non-domination would allow coercive pressure to be exerted by the state, diminishing overall freedom in order to

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[53] Ibid., 110.

[54] Ibid., 112.

secure citizens against interpersonal interference. While Pettit's discussions of the proper extent of government intervention are made with respect to different theories: freedom as non-domination in the former versus freedom as non-interference in the latter, his treatment of the two theories leave little difference between them. Earlier, Pettit argues that freedom as non-domination would be maximized through the elimination of interference, and in order to do so, the state must intercede. When Pettit turns to arguing in favor of structural egalitarianism, a policy that advocates non-interference, any form of egalitarianism that would lead to a government dominating its citizens and lessening freedom is an objectionable state of affairs. If freedom as non-domination were achieved through means other than the elimination of interference, his apparent contradiction with respect to the role of the state in maximizing freedom may be coherent. However, both freedom as non-domination and freedom as non-interference aim to achieve freedom by promoting non-interference. The *reason* that Pettit gives as an objection to unequal treatment of citizens is that it would lead to the state's reduction of citizens' freedom. Thus, Pettit's main concern is the coercive role of the state in implementing freedom as non-interference. According to Pettit, however, the state would play a very similar role under freedom as non-domination. Regardless of whether Pettit is discussing structural egalitarianism or the maximization of freedom as non-domination, his position on the state acting as a coercive authority should remain constant.

Pettit argues that the maximization of freedom as non-domination requires a compromise between its "extent" and its "intensity." Intensifying non-domination means lessening the amount of domination that agents encounter in certain areas. Non-

domination's extent refers to the number of different areas of the individual's life that are not dominated. The intensity of non-domination enjoyed by individual citizens cannot be varied by the republican state, but the extent of non-domination may be left unequal. This policy, which Pettit labels structural egalitarianism, emphasizes the intensity of freedom as non-domination, and thus, the amount of protection from domination. The level of intensity achieved by any given individual is the relation between her power and ability to deter interference from others and the powers had by those others, who constitute the rest of society. Rather than going against basic principles of equality and employing a strategy to minimize domination by increasing the powers of some and decreasing the powers of others to try to minimize domination, Pettit argues that all legislation must be pro-equality and therefore must increase the intensity of freedom for all.[55]

Pettit's latter description of a society that values non-interference conflicts with his former descriptions of living in a society that values non-interference. Earlier, he suggests that freedom as non-interference leaves citizens without proper safeguards against interference from others, resulting in inequalities due to lack of government regulation and the possibility of devolving into a society in which each individual must fend for himself.[56] In the current discussion, he argues that freedom as non-interference gives an inordinate amount of resources to the vulnerable at the expense of equality. While freedom as non-interference may not be a suitable ideal of freedom for society, it hardly seems fair to accuse it of giving its most vulnerable citizens insufficient protection

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[55] Structural egalitarianism does not require material egalitarianism because material equality will not necessarily reduce overall domination.

[56] Pettit, *Republicanism: A Theory of Freedom and Government*, 95.

against the powerful, and of unfairly favoring them at the expense of equality. It is certainly the case that a society that values freedom as non-interference does not necessarily set equality as a goal, and would likely be less regulated than the society that Pettit proposes. However, Pettit's conception of the realization of that society should be consistent at the least. Pettit's argument for freedom as non-domination's superiority is significantly weakened if tension exists in his treatment of its main point of comparison, freedom as non-interference.

Pettit's defense of equality is further damaged by his argument that freedom as non-interference is inegalitarian in its protection of the vulnerable. It seems that Pettit's issue with freedom as non-interference is that, under these conditions, the government unfairly restrains those who interfere in order to guard those who are vulnerable to interference. However, a society modeled on the maximization of freedom as non-interference and a society modeled on the maximization of freedom as non-domination would both attempt to curb behavior that limits freedom. In both societies there are individuals who are more likely to interfere or dominate, and those who are less likely to do so. Under freedom as non-domination, those individuals who wish to dominate will be prevented from doing so, and protection is issued to those who may otherwise be dominated. The same is true of a society that values freedom as non-interference. Thus, the effects of the government's positions will be the same: those who wish to interfere or dominate will be prevented from doing so, and those who are vulnerable to such attacks will be safe. Although freedom as non-interference does not posit egalitarianism as a

goal, Pettit's argument against giving aid to the vulnerable fails to take into account that freedom as non-domination's tenets manifest themselves in the same manner.

Pettit argues that freedom as non-domination will only increase freedom and will do so equally for all, without objectionably dominating its citizens. Freedom as non-interference, in contrast, may give unequal treatment to citizens depending on their position in society. Pettit fails to explain why freedom as non-domination can be achieved by treating all citizens equally, while freedom as non-interference cannot.[57] Although Pettit is correct in his assessment that a consequentialist perspective would not make equality a fundamental goal in its treatment of citizens, freedom as non-interference, exclusive of consequentialism, could very well be achieved in the same manner as Pettit suggests for freedom as non-domination. If freedom as non-interference could be achieved in the same manner as freedom as non-domination, then it is difficult to see what strides freedom as non-domination makes with respect to individual autonomy along the lines that Pettit has suggested.

Pettit claims that his vision of republicanism incorporates elements of both liberalism and communitarianism. Liberalism centers on the freedom of the individual, and Pettit believes that its focus is similar to that of freedom as non-interference.[58] The aim of liberalism is to reach consensus on principles of justice under conditions of value pluralism. Liberalism is the dominant line of thought in democratic societies, which assumes a market economy, and in which all people are thought of as free, equal and having basic rights, including an equal right to participate in politics. Communitarianism,

[57] For now, we shall put to the side the question of whether egalitarianism is a worthwhile goal.
[58] Pettit, *Republicanism: A Theory of Freedom and Government*, 120.

on the other hand, shapes the state around community values at the expense of neutrality. In contrast with liberalism, a communitarian conception of justice is contextualized within the traditions of the society, and the good of individual liberty is offset by an emphasis on the life of the community through social connections and relationships that promote social responsibility. Republicanism favors liberalism's emphasis on individual freedom and a state that does not enforce a particular conception of the good over communitarianism's aim at mimicking the community's values. However, according to Pettit, freedom as non-domination is also a communitarian ideal, despite its commitment to neutrality, because it embodies the two features of an ideal communitarian good: it is social and it is common. Social goods are realized through an interacting, intentionally acting body of people. Thus, freedom as non-domination is a social good because it can only occur in a social setting with the right legal and social conditions. Common goods are shared equally by all, and the distribution of these goods cannot favor some while excluding others, since non-domination is not something that one can enjoy while others do not. All those who are vulnerable in the same sorts of ways will be protected against arbitrary interference in the same way, such that all will enjoy non-domination to the same extent. Non-domination would thus be a partially common good overall, and a common good to each class of vulnerable people it protected. To the extent that all people in a society are vulnerable to the same degree, non-domination could become a perfect common good, since, as non-domination is implemented, previous separate classes of vulnerability will become less significant and less distinct.

6. Republican Policy

Pettit then looks to the policies that would define freedom as non-domination. Adherents of freedom as non-domination are likely to be less hostile toward state intervention and more socially progressive.[59] In matters of external defense, Pettit advocates "multinational cooperation and institutionalization."[60] With respect to internal protection and the criminal law, criminality should be reserved for those instances in which it would promote non-domination and should be applied exceedingly sparingly, due to the nature of punishment, and the possibility of corruption and error. Those acts that deny the victim's free status, reduce her non-dominated choices, and upset non-domination in that society should be criminalized.[61] In order to rectify the damage caused by the perpetrator's actions, the sentence should provide "*recognition* by the offender of the status of the victim as non-dominated and free; *recompense*—restitution, compensation or at least reparation—from the offender for the harm done to the victim and/or the victim's family; and a *reassurance* for the victim and the community at large that the offender will not continue to be a threat."[62] Pettit defines personal independence in terms of socioeconomic independence. If personal or financial resources are unavailable to me, to the degree that I do not have them I will not be able to enjoy undominated choice. Moreover, if I am incapable of operating in society due to lack of resources, others may more easily take advantage of me and interfere with my will.

[59] Ibid., 149.

[60] Ibid., 153.

[61] Ibid., 156.

[62] Ibid., 156 - 157.

Public or community life is also important to the success of freedom as non-domination. The absence of domination should be an established and commonly recognized feature of public life. To the extent that citizens are aware that they are protected, that shared awareness will have a reinforcing effect on the strength and stability of the community.

However, the state must be guarded against *imperium*. Although Pettit defines the state as necessarily coercive and interfering, he wishes to keep the interference from being arbitrary. If respecting citizens and their interests is left to government officials' discretion, their ability to choose whether to interfere necessarily means that they dominate their citizenry. In order to create a form of government that cannot dominate, the ability for individuals within the government to exercise their arbitrary power must be negated as much as possible. As such, Pettit suggests that instruments of government should be non-manipulable, and offers three guiding principles to ensure such is the case to the maximum extent possible.

First, Pettit addresses the place and content of law: the system should rely on laws, rather than on persons. In this sense, laws should act as restraints that apply to all and are general in nature. Also, if rule of law is to be instituted, an effort must be made to make the laws known to citizens in advance. The laws should also be consistent and reasonable. When the government acts, it should always act on the basis of laws, rather than making decisions in an ad hoc or *ex post* fashion, to reduce the ability of government officials to insert their arbitrary will into the lives of others.

Second, power should not be concentrated in the hands of a few, but rather spread among as many different parties as is prudent. This condition bears on the how the law

operates. We are familiar with different branches of government: those who make the law, those who administer it, and those adjudicate difficult cases of application. Tyranny puts legislative, executive, and judiciary power in the same hands. Power should be dispersed for the betterment of the laws themselves, as well as to perform as a safeguard against manipulation of the law. Pettit also suggests that republicanism is amenable to a bicameral arrangement in parliament. In fact, he encourages the further division of power beyond these branches.

Finally, laws should not be easily bent or changed by majority will.[63] These tenets are representative of constitutionalism, which espouses the importance of legally grounded ways to restrain the powerful from exerting their will or influence. While the laws must be able to be amended, fundamental laws regarding non-domination should require more than a majority support in parliament or the population in order to be changed. Since a simple majority is not difficult to form and significant minorities may oppose the majority will, it seems inadvisable to have so many persons potentially living under conditions to which they object.

Contestability is an important way of fighting the arbitrary will of decision-making authority figures and the *imperium* of government. Freedom as non-domination should provide a way of ensuring that public decisions reflect the interests of citizens. Since individual explicit consent seems impractical, contestability may be used as a way of regulating arbitrariness. If it is an effective policy, policy makers will make decisions aware of the possibility of contestability, which should have an additional self-regulating

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[63] Ibid., 173.

effect to policies being in the interest of citizens.[64] Pettit suggests that the character of the government will be democratic, and "will represent a form of rule that is controlled by the people, to the extent that people individually and collectively enjoy a permanent possibility of contesting what government decides."[65] Pettit then lists three conditions necessary for contestable public decision-making. First, it must be made in such a manner that it is possible to contest in the first place. Pettit prefers a system in which decisions are made via debate, with different parties offering relevant reasons and considerations about the nature of the policy. Second, there must be an established way of contesting those policies. Here we may think of an inclusive legislature in which all groups within a society are represented through direct election. Statistical representations of groups in the administrative and judiciary branches is also desirable Third, a forum that decides whether those claims are valid should be available.[66]

7. Feasibility of Republicanism

Pettit admits that the republican state he has described would be next to impossible to attain. That said, he argues that citizens should be relatively motivated by the threat of punishment to follow the laws, given that they have a small degree of civic virtue. However, the more important issue is whether authorities in the republican state are capable of acting in the ways that are laid out for them, without self-interest or arbitrariness. Two issues arise in this regard: whether we can trust those who

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[64] Ibid., 185.

[65] Ibid., 185.

[66] Ibid., 187.

wholeheartedly embrace republicanism, and whether we can trust those who are not fully convinced. The first is an issue of moral feasibility, while the second questions the psychological feasibility of republicanism.[67]

With respect to psychological feasibility, Pettit turns first to regulation. He assumes that while persons who are in power are not necessarily corrupt, they can be corrupted without regulations that check the possible abuse of power. Two sorts of regulation, sanctions and screens, could be put in place to immunize institutions to corruption.[68] Sanctions affect the agent's incentives, and can take the form of punishment or reward by making certain options or choices less or more desirable to the agent. Screens, on the other hand, affect the agent's opportunities. Screens will filter which choices are made available to agents, and can also be negative or positive in nature. Agents who were previously unexposed or uninvolved may be able to enjoy an expanded set of choices, while others' options may be curtailed. Options themselves may also be subject to screens, which in practice function as sanctions.

Sanctions and screens may be deployed through either deviant-centered or complier-centered strategies.[69] Pettit rejects deviant-centered strategy, which attempts to motivate self-interested people into compliance with institutions, in favor of complier-centered regulation. If deviant-centered strategies focus on the self-interested or corrupt person, complier-centered strategies focuses on those who are disposed to act toward the public good. This strategy has three parts. First, we must screen before sanctioning. We

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[67] Ibid., 207.

[68] Ibid., 212.

[69] Ibid., 215.

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may screen for those individuals who are less self-interested to avoid future problems of interference from those who are. Second, we should sanction in such a way that compliers are supported. Our sanctions should keep those who are disposed to the follow the rules interested in the public good. However, the third principle is that we must structure sanction to cope with self-interested agents.[70] In other words, we must assume that in every society there are those who will take advantage if at all possible. For those persons, we must make sure that the sanctions would effectively motivate the wicked to comply.

For the government to be successful, Pettit believes that citizens must identify with republican ideals. While we all are conscious of our personal identity over time and are personal selves, Pettit argues that we also have different, larger identities. Identification, in which an agent takes on a larger identity, is an important part to maintaining civility in the republic. If citizens identify as members of the state, then civility is no longer a denial of the self. It is acting in accordance with a larger identity. These norms of acting for the greater good are internalized and become part of who each citizen is a person, rather than as an imposition that must be obeyed. Norms are established when applicable parties behave in the way expected, others will approve of them for acting in that way or disapprove if they fail to do so, and that approval or disapproval is effective in securing that parties will generally comply with those norms. Pettit equates norms with the civility of a society—in order for a society to survive, its citizens must be virtuous with respect to the republic.

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[70] Ibid., 229.

Pettit's first reason for insisting on civility is that freedom as non-domination will be maximized when norms support the laws. Laws supported by norms are more likely to be viewed as fair, and citizens' compliance will be more reliable. Second, laws must keep track of the changing ideas and interests of its citizens. In this way, laws can be changed to reflect increased recognition of needs among minorities and oppressed parties. Third, norms help with applying legal sanctions. If citizens identify with the laws and disapprove when they are not followed, offenders are more likely to be reported. Persons will enjoy a greater level of freedom as non-domination if the threat of sanctions is taken seriously and acts as a deterrent. The more likely it is for an offender to be identified for her illegal actions, the more likely she is to refrain from them.[71]

Laws must also be thought of as legitimate in order for their restrictions to be accepted by the populace. Civil norms will ensure the legitimacy necessary to keep citizens from being indifferent or hostile toward the state.[72] In order to accomplish the task of ensuring legitimacy, the state should posit freedom as non-domination as a "commanding good and as a good that its laws are designed to further."[73] Second, the state should be a forum in which citizens can contest domination by others and in which they enjoy a life without domination. The laws, therefore, must be capable of standing up to scrutiny.

While seemingly there are several obstacles to widespread trust in Pettit's republic, he believes that the society he has outlined still may foster trust on many levels.

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[71] Ibid., 248 – 249.

[72] Ibid., 252.

[73] Ibid.

When civility is practiced, citizens also exercise personal trust toward others to behave in a certain way. However, trust seems at odds with vigilance, which must also be observed in order to keep arbitrary interference at bay. Trust is also thought to indicate reliance, dependence, and vulnerability, in a way that is inconsistent with non-domination. In order to resolve this problem, Pettit says that there is a difference between having and expressing trust.[74] Having trust involves reliance in a way that expressing trust does not. Expressing personal trust gives the opportunity for the trustee to prove herself worthy of that trust. If the trustee violates that trust, then the trustee loses her reputation among her peers.

8. Conclusion

Several themes run through Pettit's theory of republicanism, most notably consequentialism, publicity, balance, and compromise. Pettit's conception of how to achieve freedom as non-domination relies on systems of checks and balances, and makes sacrifices at an individual level for the sake of the greater good. Publicity is emphasized because it will keep those who might otherwise engage in domination and arbitrary interference from doing so. His policy choices are made largely on the basis of the outcome. Some individual freedoms are surrendered to maintain non-domination at large. Pettit's result is both interesting and troubling: it is interesting insofar as Pettit has graphed out how a republican state could try to maintain freedom as non-domination, and troubling to see how little republicanism values individual autonomy.

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[74] Ibid., 263.

While Pettit's notion of freedom as non-domination is insightful, his subsequent explication lapses at several points. Pettit's equation of coercion and interference, along with his superfluous distinction between arbitrary and non-arbitrary interference, are significant problems in his argument for realizing freedom as non-domination. These types of errors occur repeatedly in Pettit's theory—he makes the same kind of mistake in his theory of public freedom as he does in his conception of personal freedom. By focusing on the outward limitations that are imposed on agents instead of on the agents themselves and their autonomy, Pettit comes to the incorrect conclusion that arbitrary interference is unacceptable. While Pettit accepts non-arbitrary interference, such as the interference imposed by government, because it manifests similarly to the interference brought about by natural causes, he rejects arbitrary interference because he believes it is a different kind of interference altogether, and objectionable because of the way in which it limits an agent's options. However, in practice, both types of interference have the exact same impact on an agent as the curtailment of options inflicted by natural causes.

If arbitrary interference is not a special kind of interference and manifests limitations in the same way as natural causes, then Pettit's definition of domination is untenable, and his treatment of freedom as non-domination cannot be salvaged. Due to the fact that Pettit's definition of freedom as non-domination hangs on his specious distinction of arbitrary interference from interference generally, in practice his idea of domination collapses back into interference. While freedom as non-domination may be a worthwhile concept of freedom to pursue, Pettit's definition of it needs to be seriously revised. Further, Pettit's focus on freedom as non-domination, which he defines as

freedom from arbitrary interference, seems to have little connection with his conception of personal freedom as discursive control. Discursive control emphasizes the importance of interpersonal interaction and being able to achieve autonomy through dialogue. While freedom from arbitrary interference may aid those activities, it is not sufficient for discursive control.

Pettit's explanation of how coercion and interference interact is also unacceptable in its current form. Pettit's mistake with respect to interference and autonomy transposes itself onto his treatment of coercion, which he equates with interference. Pettit's belief that the wrongness of coercion lies in the diminishment of responsibility through another's restriction of available options causes him to mistakenly label all kinds of interference coercive, which, as we have seen in the first chapter, is simply not the case. Pettit views coercion as any outside restriction imposed on an agent's action, when in fact coercion is characterized by its violation of an agent's autonomy. Due to Pettit's interpretations of coercion and interference, his conception of what is necessary to realize freedom as non-domination is ultimately flawed. Freedom is fundamentally a matter of autonomy, not interference, and Pettit's insistence on tying freedom as non-domination to arbitrary interference, rather than the autonomy of citizens, compromises his conception of public freedom. While minimizing interference is important, its absence is not the root of freedom.

As a result of Pettit's conception of freedom as non-domination turning on his notion of interference to the agent, republicanism is not best suited to maximize freedom as non-domination. I will suggest that a state organized around respect for individual

autonomy should be implemented instead. Citizens need to be given a more direct line to protecting their autonomy. To this end, citizens must participate in the state in a more immediate fashion than Pettit allows. Pettit's state is set up in opposition to citizens. Instead, if citizens are active members of the state, rather than just represented to it through proxies, the coercive interference of the state will be significantly diminished. Due to sacrifices Pettit believes are necessary in order to achieve non-domination as a result of his portrayal of coercion, his state does not truly seem to maximize non-domination. If we conceive of coercion differently, then we may understand non-domination in a way that maximizes autonomy in the state. As Pettit's state stands, persons must give up too much in order to enjoy a lesser form of freedom as non-domination.

Chapter 3

Deliberative Democracy

1. Introduction

Due to Pettit's view of coercion as limiting personal responsibility, it is difficult to see how he can find a place for responsibility in a republican state that must, at least at times, be coercive. A developed notion of coercion is essential to political theory as it may be thought to exist in a political context between the state and its citizens, and more generally, between majorities and minorities. At issue is the legitimacy of demands and sanctions from justified authorities on individual freedom. A social contract model of freedom, for example, defines coercion based on the rights of the individual established in civil society. According to this account, coercion is, by definition, illicit. Demands that come from a justified or legitimate authority cannot be coercive. In order to be coerced, an agent must be threatened in a way that violates his rights. Political legitimacy is derived from citizens' consent to be members of the state and the resulting power of the social contract. However, a natural liberty account of freedom would take an entirely different tack with respect to coercion. As an economically conservative position of laissez-faire capitalism focused on efficiency, natural liberty assumes the equal right of all citizens to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all. Natural liberty also enforces formal equal opportunity, under which all have the same legal rights and equal access to positions. While any

justified restriction with the threat of sanction placed upon an agent is coercive according to a natural liberty account of freedom, it is agreed to be a legitimate form of coercion.

Pettit's republicanism and the deliberative conception of democracy I favor both emphasize the relationship between discourse and responsibility. However, the two theories come to significantly different conclusions about what kind of society is necessary to best realize these values. In order to examine the alternative of deliberative democracy, I shall begin with an examination of the theory, as well as its perceived shortcomings. I will then compare deliberative democracy to Pettit's notion of republicanism. I shall argue that the emphasis on rights and entitlements in liberal democratic theories like Pettit's is not the best method of securing freedom and autonomy in a democratic society. Indeed, rights and entitlements have overtaken responsibility as the focal point of conceptions of autonomous agency in theories of liberal democracy, and the focus should be shifted back to the important connection between agency and responsibility. Jürgen Habermas's elaboration of deliberative democracy is groundbreaking in this respect because it connects discourse to responsibility. We may understand Habermas's theory as an attempt to retrieve conceptions of autonomy and responsibility, which he suggests have dropped out of democratic discourse. The lesson to be learned from Habermas is that freedom is not something that dispensed by a government in the form of rights and entitlements. Rather, freedom is best realized in a context in which citizens are participants in democracy, and are the crafters of their own democratic institutions and policies.

2. Models of Democracy

In order to understand what form of democratic governance best realizes individual and collective autonomy, we must first define "democracy." Seyla Benhabib characterizes democracy as a "model for organizing the collective and public exercise of power in the major institutions of a society on the basis of the principle that decisions affecting the well-being of a collectivity can be viewed as the outcome of a procedure of free and reasoned deliberation among individuals considered as moral and political equals."[75] This definition captures a number of essential features of democracy: its emphasis on individual equality, political freedom, and collective welfare, as well as the central role that reason plays in the democratic process.

As Benhabib's definition suggests, citizens in a democracy should have freedom at an individual level, as well as the right of political participation. Thus, modern democracy requires that citizens possess both private autonomy and public autonomy. Private autonomy implies/involves individual self-determination for autonomy whereas citizens enjoy public autonomy in virtue of their participation in a public discourse that has the power to influence the formal legislative bodies of government and results in the achievement of legitimate laws. The realization of each type of autonomy depends upon the presence of the other, insofar as private free citizens are necessary to fully exercise

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[75] Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," in *Democracy and Difference*, ed. Seyla Benhabib, 68 (Princeton, NJ: Princeton UP, 1996).

public autonomy, and only through public autonomy can citizens define their individual freedoms.[76]

One desired result of the collaborative nature of public autonomy is a shared sense of communal well-being. Furthermore, shared awareness of the central role of reason in the production of laws and political decisions of citizens and legislators will aid in the perception of outcomes of democracy as fair. Free public deliberation and public discussion of matters of common concern will also allow citizens a forum to voice their concerns and make their needs apparent, provide a system of checks and balances and increase the accountability of the government, and give members a sense of belonging to a group. All of these elements are crucial to ensuring the goals of modern democratic society: legitimacy, economic welfare, and collective identity.

The question is, then: what model of democracy best embodies the features of democracy just mentioned and best realizes citizens' public and private autonomy? Jürgen Habermas addresses this exact issue, and his insightful analysis of democratic models demonstrates why deliberative democracy is best suited to this task. In his essay, "Three Normative Models of Democracy," two traditional conceptions of democracy, a liberal model and a republican model, are compared to a theory of deliberative democracy.[77] Habermas focuses on five different issues to measure the strengths and weaknesses of the liberal and republican models, as well as to demonstrate how deliberative democracy resolves the limitations of the two traditional theories: the nature

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[76] Jürgen Habermas, "Three Normative Models of Democracy," in *The Inclusion of the Other: Studies in Political Theory*, ed. C. Cronin and P. DeGreiff, (Cambridge, MA: MIT Press, 1998), 239-252.

[77] Ibid.

of the democratic process, the concept of citizen, the role of law, undergoing the political process, and, to a lesser extent, legitimation and popular sovereignty. I will discuss each of the three theories in turn, as well as Habermas's argument for the merits of deliberative democracy and the shortcomings of republicanism and liberalism.

According to Habermas, the most fundamental precept of republicanism is that the state should reflect the political self-conception of society. A republican democracy's society organizes the political sphere such that it embodies/instantiates the society's own conception of what the good or ethical life should be. On this view, the state is not merely a regulatory apparatus, but plays a substantial role in constituting the whole of society. Thus, political discussion takes on an ethical dimension insofar as it helps determine and realize citizens' understandings of what constitutes a meaningful life. In order to reach a unified, or at least, common conception of ethical life within the state, a sense of communal solidarity becomes essential to society. Solidarity can be seen as citizens' recognition of each other as autonomous, equal, and free under the law, so that all can come together to discuss and mutually determine the set of social norms by which society defines itself. [78]

Under the republican conception, citizens, as such, have positive rights. That is to say, citizens' liberties are defined as "freedom to…" pursue specific ends, most notably the freedom to participate in "common practices" and in public discussion, with the implication that citizens' interest in society is expected to go beyond their own private

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[78] This 'civic self-determination' should be insulated from market forces so that political and ethical communication can be achieved freely, unhampered by the concerns of the other spheres of the state. The public will is formed through ethical discussion aimed at establishing background consensus made possible through the self-understanding of its constituents; thus, self-determination is a product of dialogue, not the market.

interests into the public will-formation of the state. This means that as equal and free citizens, individuals must discuss and reach a unified conception of the aims and norms of society that can be said to equally express the interests of all. Because citizens are guaranteed the right to participate in this ethical-political discourse, citizens do not have a set of "inalienable rights" beyond that to participate in the discussion and to remain equal and autonomous; there is no guarantee against external compulsion. The conception of a citizen and citizens' entitlements may change through the process of public discourse. This set of subjective rights is secured against abuse by the legal system, which protects the integrity of individuals' autonomous lives in perspective of what is best for the community. As such, rights under the republican model are little more than what has been determined as maintained by the prevailing political will.

The liberal view, conversely, understands the state as a mediating administrative apparatus for a wash of pluralistic, separate, and competing private interests. This pluralism means that the public discourse of the state and the goals set as a result are born out of compromise between struggling private interests; consequently, the public sphere takes on the character of a market in which competing interests struggle for recognition and dominance.[79]

Guaranteed individual rights, consisting of negative and formal liberties, define a citizen's status in a liberal democracy. In other words, liberalism forms rights through the negative conception of "freedom from…" infringements on autonomy and private interest. A person living in a liberally conceived state can pursue whatever private ends

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[79] Habermas, "Three Normative Models of Democracy," 240 – 241.

she desires and she is protected by the state as long as she does not infringe on the rights of others, or violate the laws of the state. Citizens also have political rights that allow them to participate in elections in order to express both their individual private interests and the aggregate political will of citizens. Unlike republicanism, both private and political rights are grounded in a higher law that transcends individual administrations and current political trends. Owing to citizens' wide assortment of interests, forming the public will in the liberal public sphere is an ongoing competition between different collectives, and politics is a struggle between individuals and/or collectives to attain positions of political power. Success is measured by citizens' approval through the voting process, which also takes on a market structure.[80]

There are immediately visible advantages and shortcomings of both republican and liberal democratic theories, according to Habermas. The republican conception, for example, espouses and adheres to the original idea of democracy in that society is united and controlled through the communication and consensus of its citizens, something that the liberal model dismisses in favor of a market-based society that promotes profitable and materially advantageous compromises and deals between disconnected private wills and interests. However, republicanism's reliance on the communicative consensus of its citizens—to the point where democracy is equated with society's self-organization— makes it practically unrealizable.[81] The dependence of the republican conception upon the active involvement of entire citizenry in the political and public realms is a demand

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[80] Ibid., 242 – 243.

[81] Ibid., 247.

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that rests upon the improbable assumption of reasoned, mass participation and consequent expectations of a fully committed and citizenry in agreement about legislation and governance.

Republicanism is also not adequately equipped to handle the inherent and irresolvable differences that can arise in a polarized society. This problem becomes especially relevant when applied to the ethical sphere. Because republicanism is committed to constructing a cohesive notion of what it means to have a meaningful life through society, no room is left to accommodate a pluralistic society. Irreconcilable ethical differences will result from the conflation of the political and ethical realms. Furthermore, according to Habermas, politics should not be concerned with ethical issues. If ethical issues constrain political theory, then political discourse is not free to function as a corrective or complement to society's self-understanding. If discourse is not able to operate solely through reason, but instead has notions of the good imposed on and limiting its outcomes, no higher, principled notion of justice can be arrived at through discursive procedures. Because republicanism does not include a substantive system of justice to appeal to in these circumstances, it must be rejected on the grounds that principles must be able to claim general validity beyond a specific social trend or set of judgments about what values correspond to the good life.[82]

Liberalism, however, poses a more difficult problem. While Habermas rejects republicanism for its conflation of private and public realms, he argues that liberalism's rigid separation of state and society is actually undemocratic in spirit and effect. On the

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[82] Ibid., 244 – 247.

other hand, liberalism does have two crucial advantages: it does not require either that citizens should act collectively, or that they should come to consensus. Habermas believes that his framing of deliberative democracy and discourse theory will preserve these advantages, as well as the advantages of republicanism, while avoiding the deficiencies of both. In addition, he argues the deliberative democracy best realizes the democratic ideal.

Habermas wants to retain the republican process of political will formation through discourse while still respecting the liberal concern with the separation of the state from society. To this end, Habermas places the utmost importance on the conditions and procedures of communication, so that deliberative discourse may be institutionalized and operate at all levels of society.[83] With this theoretical move, Habermas hopes to retain the original idea of democracy—that society should be united and controlled through the communication and consensus of its citizens—while still grounding rights in higher principles. By involving the state in public discourse, he relieves citizens of the burden of regulating will-formation and fortifies the separation of state and society while simultaneously allowing the democratic end of communication to constitute a bridge between them.

Habermas addresses issues of both ethical self-understanding and justice through his conception of the Ideal Speech Situation, in which practical reason is isolated from contemporary ethical and political circumstances.[84] By submitting themselves to the rules

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[83] Ibid., 245.

[84] Ibid., 246.

of an idealized discourse, citizens demonstrate and profess willingness to reason and argue with the goal of reaching understanding. This act reinforces the normative aspect of having the status of citizen and connects the ethical and political realms without conflating them. Further, the primacy of discourse in a deliberative democracy importantly acknowledges the fact that, in a pluralistic society, ethical understanding and agreement may not always be possible.

So, rather than putting weight on ethical conclusions themselves, Habermas emphasizes the act of engaging with others and having faith in their good intentions. The role of ethics in Habermas's conception of society does not require complete consensus as an ultimate end, and because he upholds the separation of the state and society, citizens are not normatively required to participate in discursive discussion. Separation of social and legal spheres means that it is possible for communication to be the groundwork of a society, but it also assures that such communication is not the only component of society, it is instead only part of the legal system. Moreover, the political system is not posited as the most important aspect of society, but is rather only part of a complex society and larger "lifeworld."[85] Finally, citizens in a deliberative democracy have both negative and positive rights, and can regard themselves as the authors of law while still possessing a body of inalienable rights that are not contingent upon temporary political conditions.

The legitimacy of a deliberative democracy is neither based solely in its capacity to exercise political power, nor in the participation of its citizens. Rather, a legitimately

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[85] Ibid., 252.

governing authority employs public discourse as a way for society and state to exchange discursive reasons, which gives the governmental structure more normative weight than a mere system of negative rights, and also avoids the dangers of majority rule political power.[86] In a deliberative democracy, the legitimacy of a law is determined by whether it protects all citizens' autonomy equally.[87] Autonomy can only come about when those to whom the law is addressed can see themselves as its authors, and engage as participants in the legislative process. Citizens can participate in legislation only to the extent that legislative deliberation takes place in forms of communication that are conducive to rationality and rational assent.

Through a well-communicating public sphere that focuses on self-understanding, a deliberative democracy can allow citizens to pursue different cultural ways of living without the need for additional principles of democratic organization. While an inclusive political culture may be necessary for democratic discourse, assimilation to the dominant type of cultural life in the state is not necessary.[88] Liberalism's mistake is to posit citizens' autonomy in terms of what rights are afforded to them, and define rights as citizens' entitlements from the government. Habermas's theory responds that we must emphasize citizenship rather than a citizen's client relation to the government, and see autonomy as possible only through joint, deliberative decision-making, rather than through claims of entitlement.

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[86] Ibid., 250.

[87] Ibid., 121.

[88] Ibid., 139.

3. Deliberative Democracy

Habermas's theory of deliberative democracy is important because it can be seen as uniquely suited to achieving the goals of democracy. For example, deliberation is an ideal model for formulating norms and laws in a democracy because the process of deliberation emphasizes the importance of equal participation, and the rules of discourse or topics of discussion may be questioned by all. Political justification in a deliberative democracy is also normative, because legitimacy can be conferred only when all citizens are equal, and each citizen's reasons are given equal consideration. I will now consider the views of several philosophers who have made valuable contributions to the discussion of deliberative democracy and who have addressed the question of which aspects of democratic society must be altered so as to change citizens' perspective on their rights and responsibilities as members of a democracy.

Joshua Cohen takes up Habermas's notion of the ideal deliberative procedure, which is the centerpiece of the theory of deliberative democracy. Cohen sets out what specific set of conditions is necessary for ideal deliberation to occur.[89] The first condition of the ideal deliberative procedure is deliberation itself, in which an agenda is specified, alternative solutions to problems identified and supported with reasons, and a deliberative conclusion drawn from among those solutions. Whether there is freedom of deliberation in a society depends on whether its members believe themselves to be able to act on the results of deliberation, and to be bound only by those results. It is necessary for deliberation to be rational because deliberation is the exchange of reasons in favor or

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[89] Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy*, ed. James Bohman and William Rehg, 72 – 75 (Cambridge, MA: MIT Press, 1997).

against the proposals under discussion. Equality among the parties who engage in deliberation is also essential. Deliberators must be equal in two ways: they must be formally free such that the rules of the deliberative procedure do not favor or disadvantage any individual or group, and they must be substantively free such that the balance of power between participants does not favor one participant's chances of contributing to deliberation, or unfairly sway the outcome of their deliberation. Finally, ideal deliberation is focused on achieving the outcome of rational consensus among its citizens on the basis of persuasive reasons. If the outcome of deliberation could be agreed upon by free and reasonable equal citizens, then that outcome is democratically legitimate.[90]

Habermas's ideal deliberative procedure works in concert with other forms of public life, such as social activities or casual public forums, to form the deliberative ideal. The deliberative ideal also encompasses public debate about the nature of the deliberative procedure itself and its efficacy with respect to equality and legitimacy, among other issues. The ideal deliberative procedure, which is rooted in rationality and determines the laws of the state, illustrates deliberative democracy's embodiment of practical reason. Although the presence of the deliberative procedure is not sufficient for practical rationality in a deliberative society, due to its possible misuse, the primacy of practical reason in a deliberative democracy is a testament to its commitment to the equality and freedom of its citizens.

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[90] Ibid., 73 – 75.

To meet deliberation's requirement of participation and to fully realize citizenship, a deliberative democracy must be a pluralistic, ongoing association of citizens who are committed to public deliberation and to the agreements and norms that result from deliberation. Citizens' participation in politics and discourse is essential to each citizen's freedom in a deliberative democracy, and ultimately to the success of democracy itself. A central role for political participation is vital because the democratic process is a fundamental goal of a deliberative democracy, rather than a means to achieve equality or fairness.[91] To achieve democratic process as a goal, citizens in a deliberative democracy must recognize other members' capacity for discourse, thereby acknowledging their autonomy. This dedication to the outcomes of deliberation and the deliberative process demonstrates the institutionalized, procedural approach to governance that deliberative democracy takes. Procedures in a deliberative democracy should also be transparent to make legitimacy manifest to its citizens.[92]

Deliberative democracy must also accommodate the pluralism of modern society. As such, the function of law in a deliberative democracy is to secure citizens' private autonomy and allow the pursuit of individual interests within the boundaries of the law. Laws must minimally secure the freedom of every individual by guaranteeing equal citizenship and basic rights for all citizens. The discursive nature of deliberative democracy stipulates that in order for laws to be valid, or morally binding, they must

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[91] Ibid., 67.

[92] Ibid., 68 – 69.

have been able to be agreed upon by all whom they affect. These measures will promote an inclusive society, while allowing citizens to maintain their cultural independence.

Protecting agents' autonomy is also of paramount importance in a deliberative democracy. When an agent's decisions are based on preferences that are not determined by her, she is not acting in an autonomous fashion.[93] Acting without autonomy may occur in one of two main ways. First, agents may adapt their preferences to more accurately match their circumstances, without having given any deliberative thought to that change. For example, someone who always adopts a centrist political opinion, regardless of where the political extremes lie in their society would be adapting to their climate, but without reason. Second, autonomy is compromised in situations of subordination, in which the subordinated agent's preferences change to accommodate their subjugated status. In a case like this, the agent's acceptance of, and desire for, her non-autonomous status indicates that her preferences were imposed on her by circumstantial pressures. Deliberative democracy protects against these assaults on autonomy in two ways. First, it favors conditions that lead to reflective preference-formation. Second, autonomy is a precondition for engaging in deliberative discourse, so citizens who are autonomous must also be capable of deliberation.

The aim of promoting the common good is a core feature of the theory of deliberative democracy. Because all claims made in public deliberation must conform to reason, attempts to misrepresent personal or group advantage as common advantage would be problematic to attempt or maintain. Since personal preference will not count as

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[93] Ibid., 77 – 78.

a compelling reason in public discourse, the proposals and aims that withstand the deliberative process will contribute to the common good. Emphasizing the common good will reinforce participation in joint decision-making, and posit citizens as crafters of their own autonomy. Moreover, it reverses liberalism's pervasive system of rights and entitlements and citizens' client relationship to the government.

To encourage citizens' participation in deliberation, discursive structures must be instituted that organize discussion at all levels and in different settings within society. If successful, these institutions will engage free and equal citizens in making reasoned agreements among themselves that are in the common interest. To the extent that government institutions and discursive structures are successful in facilitating public deliberation and allowing citizens to participate in discourse, they will be legitimate. [94]

Justice is achieved in a deliberative democracy through the publicity of deliberation. Since reasons offered and accepted in deliberation must be convincing to all, they are more likely to be rational, as are the decisions reached through deliberation. The procedures of deliberation also make decisions more likely to be rational and legitimate. It is easiest to ascertain the results of deliberation through a majority rule vote.

Citizens' political equality is necessary for successful deliberation and must be ensured in a deliberative democracy, which means that special attention must be paid to the procedures governing deliberation in society. For example, voting on the outcomes of deliberation requires that ballots be cast in secret, to avoid coercive tactics from

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[94] James Bohman, "Deliberative Democracy and Effective Social Freedom: Capabilities, Resources and Opportunities," in *Deliberative Democracy*, ed. James Bohman and William Rehg, 321 (Cambridge, MA: MIT Press, 1997).

impairing the legitimacy of the vote. All citizens must also have the same amount of power so those who have special access to resources or privileged social positions cannot unduly influence deliberation.[95] Also, all citizens must be equally recognized by their peers, and given respect in deliberation. Significant differences in social class, such as the caste system, or differences in political advantages, like public speaking skills, would hamper political equality. The earlier-mentioned problem of adaptive preferences demonstrates that preference satisfaction is not a sufficient or reliable way to measure the scope of citizens' freedom.

Instead of these measures for citizens' equality, James Bohman suggests that the "freedom to achieve" is a better indicator of how well a deliberative democracy protects the freedom of its citizens.[96] Freedom to achieve involves both the ability to live without a significant threat to one's health or life as well as the freedom to engage in deliberation and achieve ends. For example, a happy slave may achieve many things insofar as she has satisfied her adaptive preferences, but she will not be free to achieve any ends she may set for herself if they conflict with the wishes of her master. Freedom, construed as the capability to make choices that affect an individual's course in life, correctly captures the importance of social agency and public participation. A rich conception of equal citizenship, such as the freedom to achieve, is necessary to combat the inequality and injustice that may otherwise persist under less rigorous conceptions of equality.

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[95] Ibid., 325.

[96] Ibid., 327.

One threat against which deliberative democracy must guard is "political poverty," which occurs when some citizens are not able to contribute to the democratic process due to inequality.[97] Although the politically impoverished are politically *included* insofar as they are subject to government decisions, they cannot effectively participate in deliberation, and are thus *excluded* from public deliberation. Those citizens who are politically impoverished do not have the capability to initiate or influence public deliberation. One practical problem for deliberative democracy is ascertaining what percentage of society is politically impoverished, since politically impoverished citizens are legally bound to follow legislation made as a result of public deliberation, regardless of their ability to make their preferences known.

However, even if citizens are not politically impoverished, their participation in deliberation does not guarantee a particular outcome. In contributing to deliberation, citizens aim at cooperation and the civic well-being that results from cooperation. In a deliberative democracy, social freedom is measured by the extent to which citizens participate effectively in public decision-making, rather than by reference to individual achievement or capabilities.[98] Economic freedom should also be evaluated in terms of capabilities, rather than resources. Although it is customary to view economic freedom in terms of access to resources, we should instead look at how citizens' ability to develop their capabilities is affected by economic differences.

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[97] Ibid., 333.

[98] Ibid., 334.

In thinking about the realization of deliberative democracy, practical questions about issues like feasibility or implementation arise. For example, we may ask about the material nature of equality in a deliberative democracy: What kinds of social inequalities exist, and at what point do such inequalities challenge the deliberative ideal? From this perspective, a minimal Rousseauian picture of equality, under which equality is measured only by the stability of society and the presence of civil liberties, may be insufficient. Rousseau argued that as long as citizens could not be bought or sold, parity between economic equality and political equality was not necessary to maintain democratic stability. Provided that disparities between citizens fell within the rule of law, conditions of equality would have been met, according to Rousseau.[99] However, deliberative democracy would reject this standard because more is needed for equality in a deliberative democracy than merely the omission of tyranny. Citizens must be able to fully participate in decision-making, and the disparate conditions that Rousseau's theory allows would not effectively support all citizens' involvement in the deliberative process. Instead, equality should be measured by the level of social freedom citizens possess. To address the pluralistic nature of modern society, citizens are equal to the extent to which they are equally capable of deliberation. However, it should be noted that this stance also puts pressure on citizens to publicly express their opinion and assess others' opinions, a task in which some may not willingly engage, for a number of reasons.

The above discussion demonstrates how a deliberative democracy realizes the autonomy of its citizens by connecting participation in deliberation to responsibility for

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[99] Jacques Rousseau, "Discourse on the Origin of Inequality." In *The Basic Political Writings*, trans. Donald A. Cress (Indianapolis: Hackett Press, 1987), 25 – 82.

one's own freedom. As participants in discourse, citizens are the authors of the laws that govern them, and this process is facilitated by the structure of a deliberative democracy. Citizens' involvement in crafting their own rights gives their freedom meaning because they are responsible for their own autonomy. In other words, deliberative democracy enables citizens to be free through the exercise of their own agency. This connection between responsibility and autonomy is essential to meeting the goals of democracy mentioned earlier.

4. Difficulties for a Deliberative View

One of the most common criticisms of deliberative democracy stems from the liberal concern that the deliberative model does not give sufficient respect to individual rights and freedoms, and undermines commitments to the binding nature and authority of the laws. Additionally, feminists see deliberative democracy as sectarian, reading a certain exclusionary notion of the good life into fundamental precepts of the theory. Finally, the discourse model has been criticized as naïve in emphasizing the power of the individual vote and voice, as well as the masses' capacity for self-determination, and, as such, the view is sometimes regarded simply irrelevant to modern political conditions.[100] In this section, I will consider each of these criticisms in turn.

The deliberative model of democracy differs from a liberal view insofar as it does not separate the public and private spheres. Public discourse is not limited to the state and legal institutions, but rather exists in civil society. Deliberative democracy also views

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[100] Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," 74.

political power in a different manner than liberalism. The state's power is more coercive in a liberal society, while deliberative democracy presents a non-coercive and non-restrictive model for opinion formation and determination of state policy.

Liberalism's main disagreement with deliberative democracy, however, rests in the latter's emphasis on unanimity in public matters and its supposed consequent lack of countermeasure against the tyranny of a majority and lack of sufficient protections for individual rights. However, this objection makes two assumptions about the nature of deliberative democracy: it assumes (i) that a majority consensus is possible only through restricting minority views and quashing dissent, and (ii) that a deliberative model does not protect its minority citizens and groups from the oppressive domination of the majority. Both of these assumptions are erroneous. Deliberative democracy emerges from a set of moral principles that gives all citizens the right to universal respect and the right to reciprocity in discourse. It is a condition of this discourse that all participants must respect each other's moral standing and autonomy. The discourse model also stipulates that all citizens must freely agree that a deliberative consensus has been reached.

Even allowing that deliberative democracy acknowledges the essential pluralism of society, the prominence of consensus may seem to overshadow any concessions afforded to pluralism. In a pluralistic society, it seems highly unlikely that the degree of consensus Habermas wishes to achieve would be possible without coercing and even silencing minority and dissenting views. Although he specifically denies that deliberative democracy requires complete agreement, that unanimity nevertheless plays the role of a structure-determining ideal makes it hard to see how such a system can provide any

guarantee against "majority rule." Indeed, Habermas's deliberative conception of democracy may actually seem to encourage majority rule in the absence of complete consensus. This concern is heightened in light of the fact that Habermas does not explicitly offset unjust domination through a series of balancing measures, like constitutional rights, to safeguard minority views. As such, individual liberties are still contingent upon the judgments and norms of a majority, because complete consensus is an unrealistic aim.

Deliberative democracy's tendency to promote homogeneity not only extends itself to privileging a certain view over others, but the very way in which a deliberative democratic society is constructed favors a certain mode of discourse that excludes supposedly different ways of thinking. Discourse theory requires that we engage in discussion in a certain way, and so, enforces a "rationalist, male, univocal, hegemonic discourse of a transparent polity that disregards the emotions, polyvocity, multiplicity and differences in the articulation of the voice of the public."[101] In other words, Habermas has constructed a sectarian democracy because discourse theory favors certain modes of communication and thought over others. Habermas will fall prey to this objection as long as his theory promotes any particular ideal. So, the sectarian objection attacks deliberative democracy from a different angle than the liberal objection, although they might be said to share a certain intuition. While liberals argue that the structuring principles of deliberative democracy have the undemocratic effect of privileging consensus over the preservation of personal liberties, feminists and others argue that

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[101] Ibid.

those same principles are, in themselves, insufficiently inclusive. In the former case, the problem is that Habermas' method of discourse has a certain exclusionary consequence toward those who happen to be in the minority; but in the latter case, the problem is that to insist on such a method categorically excludes others.

Both of these objections can be seen as a part of a debate about how to separate the public and private spheres of life. While deliberative democracy does not characterize the divide in terms of the difference between that which may be universalized in society and that which is particular to specific individuals or groups, as liberalism does, the deliberative democratic gap is still too wide for those voicing the sectarian objection, most notably feminists. The latter objection would urge that the principled distinction between public and private renders all but a specific set of prized methodological attributes inappropriate to the public sphere; the effect is the relegation of all but a single form of discourse and thinking to the private sphere. Feminists argue that we should instead revise our conception of private and public to extend beyond the dualities of reason and desire, universal and particular.[102] In this way, we may embrace a more authentic pluralism—a pluralism not only of desire, but also, it seems, of reason.

Another, more broad criticism, the "institutionalist" or "realist" objection, attacks deliberative democracy at its most fundamental level, with the charge of irrelevance. This charge has its ground in two main assumptions: 1) complex modern societies have highly variegated spheres of cultural, economic and social life, both in and between societies;[103]

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[102] Iris Young, "Impartiality and the Civic Public," in *Feminism as Critique*, ed. Seyla Benhabib and Drucilla Cornell, 73 (London: Polity Press, 1987).
[103] Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," 84.

and 2) to institutionalize a deliberative democracy we must have a direct democracy that gathers citizens in legislative assemblies.[104] Direct democracy would be necessary to meet the supposed requirement that every citizen should be able, if he or she so desires, to participate in the process by which society organizes itself politically. The claim is then that the institutionalization of deliberative democracy is impossible, for the kind of pluralism that actually obtains in real societies makes direct democracy impossible. Consequently, deliberative democracy is not a model for the democratic organization of *our* pluralistic societies—it is not a model of democracy *for us*. This means that the idea of deliberative democracy is irrelevant to *our* social and political concerns, themselves necessarily relative to our actual social and political situation.

There seem to be two ways to construe the irrelevance objection, each of which draws from the relative "complexity" of modern societies. On the first construal, the irrelevance objection is just a development of the sectarian objection along the following lines: deliberative democracy is in the first place objectionable because it is methodologically exclusionary *in principle*; but to make matters worse, it so happens that there actually *is* a pluralism of discourses that will not neatly organize itself around a "neutral" discourse; consequently, there is no chance for direct democracy, for that would seem to require a form of discourse indifferently applicable across society. It follows that, if a democratic theory is to help us understand how to organize real, pluralistic societies, then the theory of deliberative democracy is grossly inadequate, as will be the case with

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[104] Cohen, "Deliberation and Democratic Legitimacy," 84.

any theory whose vision of pluralism does not encompass more than a plurality of desires.

On the second construal, the irrelevance objection does not rely on the fact of a variety of incommensurable discourses to support the claim that direct democracy is impossible, but on the idea that modern societies are systems of such complexity that direct democracy—which requires some kind of minimal and reliable underlying homogeneous social commonality that gives citizens a shared cultural understanding—becomes an impossible ideal. In the first case, what is impossible is that incommensurable discourses should be commensurable; in the second case, what is impossible is the institution or discovery of a minimal social order that would provide for the possibility of a direct democratic mechanism that, by definition, must find application across society. But whether the irrelevance objection as such has any force depends on whether deliberative democracy actually requires direct democracy. And as Cohen himself notes, it is by no means clear why it should.[105] If Cohen is right, then the irrelevance objection seems to collapse, on the first construal, back into the sectarian objection, and on the second construal, into a claim about the difficulty of instituting a deliberative democratic system in complex societies. But you don't need to be a "realist" to recognize that democracy is difficult to realize.

What prospects are there for a deliberative democratic response to the idea that deliberative democracy's will to unanimity actually cannot but constitute a will to majority rule? And what of the typically feminist idea that deliberative democracy would

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[105] Ibid.

not be able to embrace modes of discourse incompatible with the communicative ideals embodied by the Ideal Speech Situation? In both cases, I think, the burden of proof is on the objector. In the first case, the liberal theorist must show that any threat of a tyranny of the majority is a reason to call a view inauthentically democratic. It seems that any conception of democracy that preserves the original idea of democracy—that society should be united and controlled through the communication and consensus of its citizens—will bring with it the threat of majority rule. Perhaps democracy simply has its constitutive dangers. In fact, why not rather take the liberal's willingness to reject this idea of democracy and claim that the only unity appropriate to democratic society is one that negative rights might constitute to be the result, on the one hand, of an unreasonable cynicism about human ethical concern for others, and, on the other hand, of a reactionary utopianism that would strive to eliminate, at whatever cost, the "dangers" of governance? In the second case, the sectarian objector must give a clear sense to the idea of a plurality of incommensurable methods and modes of discourse. It is by no means *prima facie* clear what such incommensurability might amount to. And how does this supposed plurality of incommensurable discourses come into view if not by means of a discourse that embraces them all, and so, renders them commensurable? Is it possible to state the sectarian objection without undercutting it? Of course, the sectarian objector may be able to overcome these problems, but the point is just that deliberative democracy is not vulnerable simply because it insists on a particular vision of discourse.

A more significant and engaged criticism comes from Thomas McCarthy, who takes issue the procedural approach of Habermas's theory. McCarthy argues that the

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account fails to give sufficient weight to the localized nature of discourse and the fact that conceptions of justice are internal to collectivities. While agreement about procedures may exist, the substantive ethical content that the procedures must regulate may be a matter of irreconcilable difference. Although Habermas attempts to solve this problem through the presence of temporary majority rule, the idea that the disagreement is in principle resolvable is fundamental to Habermas's theory. However, it seems possible that culturally entrenched moral norms may not be able to be easily rationally resolved, with the result that majority rule is less of a temporary agreement between parties, but rather a provisional outcome in the face of disagreement.[106] Amy Gutmann and Dennis Thompson present a similar, extended criticism of Habermas's view, which will be discussed in Chapter Four.

5. Taylor's Contribution to Discourse Theory

In "The Politics of Recognition," Charles Taylor suggests that minorities' demand for the correct recognition of their identities is necessary both to individuals' personal identities and to the functioning of society. Taylor points to Rousseau, among others, as having given moral significance to individual identity and to the ability to remain authentic to that identity. In contrast to Rousseau, Taylor stresses the crucially dialogical character of human life. [107] We define our identity through an ongoing dialogue with

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[106] Thomas McCarthy, "Practical Discourse: On the Relation of Morality to Politics," in *Habermas and the Public Sphere*, ed. C. Calhoun, 51 – 72 (Cambridge, MA: MIT Press, 1992).
[107] Charles Taylor, "The Politics of Recognition," 32.

others. Without dialogical relations, our identities could not be developed, as personal and social beings.

For Taylor, the discourse of recognition, in which we shape our identity through our interactions with others, occurs on two levels: the intimate, in which we define ourselves through and against significant persons in our lives, and the public, which demands equal political recognition, such that withholding recognition from others may be oppressive.[108] Liberal democracies guarantee the universal rights and equality of citizens. Yet, the politics of difference claims that this universality imposes a false homogeneity and takes the "white male" as standard.[109] According to the politics of difference, groups or individuals demand to be regarded as unique and distinct from others. Taylor thinks that to the extent that liberalism assumes equal dignity and the possibility of difference-blind principles, its results may be inadequate. It may be impossible to implement principles that are not biased toward a particular.[110] The principle of equal respect requires that we are blind to difference, while the politics of difference requires we recognize individual, unique identity. The further consequence is that minority groups are forced into the role of "other," which results in discrimination by the majority. He cautions that, in a pluralistic society, collective goals may require restricting citizens in ways that violate some of the entitlements to which they have laid claim. Even within groups, projecting certain goals on its behalf may be inherently

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[108] Ibid., 36.

[109] Ibid., 44.

[110] Ibid., 44.

discriminatory, owing to the pluralism of the larger society and the different treatment of non-favored groups. [111]

At the heart of the politics of recognition is not acknowledgement of equal value, but of equal worth.[112] Taylor objects to the presumption of equal worth because it is incoherent to demand a judgment of equal worth as a matter of right. The judgment of equal worth also has a homogenizing effect because it presupposes that standards are already in place to make such judgments.[113] Taylor suggests that instead it may not be possible, at this time, to accurately judge the worth of different cultures.[114]

As a response to Taylor, Habermas questions whether a constitution primarily conceived through individual rights can deal with the recognition of collective identities. As Habermas notes, the need for collective rights is in conflict with individual rights and the liberal conception of the state. The demand for respect is a demand for the preservation of forms of life in which minorities may recognize themselves. Habermas takes Taylor to task for falsely construing an opposition between the political necessities of recognizing cultural difference and universalized individual rights.[115] He believes that Taylor's first reading of liberalism fails to fully acknowledge the importance of autonomy, and that properly understood, liberalism should not be divided into the two separate accounts that Taylor lays out.

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[111] Ibid., 55.

[112] Ibid., 64.

[113] Ibid., 71.

[114] Ibid., 73.

[115] Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State," in *Multiculturalism*, ed. Amy Gutmann, 111 (Princeton: Princeton University Press, 1994).

6. Deliberative Democracy and Pettit's Republicanism

Looking back to Pettit's theory of republicanism in Chapter Two, we may see how it differs from Habermas's theory of deliberative democracy with respect to the interplay between government legitimacy, individual autonomy and freedom in a democratic state. Pettit's form of republicanism views individual freedom as non-domination, which is the absence of mastery by others. Domination, according to Pettit, is arbitrary interference. Freedom is a negative value for this form of republicanism: an agent is free to the extent that she avoids interference from others. Freedom is a condition of living in society, created by law and enjoyed by citizens. On Pettit's republican conception, the state is theoretically incapable of arbitrary interference, and thus, cannot coerce, dominate, or otherwise interfere with its citizens. Republicanism attempts to balance the restrictions imposed by government with the freedom of its citizens, only regulating to the extent necessary to ensure freedom as non-domination. In this sense, freedom is tied to the rights of citizens. Government restrictions are a curtailment of individual freedom, although they may be necessary to secure freedom as non-domination.

Pettit's account of republicanism fails to secure freedom as non-domination for several reasons. The notion of freedom as non-domination, as Pettit has constructed it, falls back into a negative account of non-interference due to his insistence on linking freedom to interference. Even further, the general distinction between non-domination and non-interference collapses as a result of a specious argument that distinguishes

between arbitrary and non-arbitrary interference. Most fundamentally, Pettit's mistakes about the nature of coercion and its wrong-making features follow from serious errors in his conceptions of personal autonomy and responsibility.

How can deliberative democracy avoid these faults and offer a superior account of personal autonomy and political freedom? A fundamental problem of republicanism is its focus on rights without a corresponding discussion of responsibility. Citizens are necessarily involved with other citizens, resulting in norms of interaction. As such, we must think of responsibility in terms of discourse. This conception of political responsibility falls in line with the notion of personal responsibility and coercion discussed above. Citizens' responsibility does not depend on whether they are coerced. Whether they are subject to coercive sanctions has no effect on whether they will be considered responsible agents. Habermas offers a solution to the question of responsible agency and free will in a deliberative democracy. He argues that free will is a necessary component to holding others responsible, which is illustrated in legal ideas of punishment and responsibility. Moreover, free will is necessary for an agent to fully see herself as a participant in deliberation and as a crafter of the laws that govern her.

The question is not *whether* equality and respect for difference are compatible, but rather, *how* they are compatible. Habermas's reply on behalf of deliberative democracy returns us to Pettit's notion of discursive control. Habermas's theory of deliberative democracy argues that democratic countries must reverse the client relationship that has replaced citizenship. Instead of freedom, political theory is now concerned with rights and entitlements. Individuals in a democracy are no longer

regarded as the crafters of and participants in government. As such, they are no longer citizens, but clients of a corporation. Rather than being workers, they are consumers. The primary virtues of democracy have come to be efficiency and stability, not its subjects' capacity for autonomy. Questions of what we have a right to do have been disconnected from the concerted decision-making through which states derive their authority to govern. In short, conceptions of autonomy and responsibility have dropped out of democratic discourse. The legitimacy of the democratic state is compatible with autonomy, on Habermas's view, because he does not conceive of democracy in terms of rights, or individuals' claims against the government, but rather views citizens as the autonomous, active creators of the government. Government power is legitimated not by its legal form, but by legitimately enacted law, and only those laws that could be accepted by all citizens in a discursive process of will-formation count as legitimate. Individual self-determination may be institutionalized, for example, through opinion formation in the public sphere, participation in political parties, general elections, and parliamentary decision-making.

Habermas describes modern law as formal, because it is assumed that anything that is not forbidden is permitted, and as individualistic, because it gives primacy persons as particulars and accords them all a set of rights. It is also coercive because it is state sanctioned and only applicable to legal behavior. Finally, it is positive and procedurally enacted, because it comes about through democratic process. Habermas's account of the legitimacy of a political order and its exercise is insightful because he argues that the question is not when coercion can be justified as legitimate, but why it is legitimate.

Habermas frames the legitimacy of government coercion in terms of its citizens' autonomy. The legitimacy of the state is compatible with autonomy because he does not conceive of democracy in terms of rights, or individuals' claims against the government. Rather, citizens are the autonomous, active creators of the government. As an executive power, the state is necessary to enforce rights, maintain organized judicial power, and implement political will-formation. Government power is legitimated not by its legal form, but rather by legitimately enacted law. Only those laws that could be accepted by all citizens in a discursive process of will-formation count as legitimate. Individual self-determination may be institutionalized through opinion formation in the public sphere, participation in political parties, general elections, and parliamentary decision-making, for example. Civil sovereignty can therefore be maintained in the face of decisions by democratic legislative bodies. Through communication, popular sovereignty ties the administrative state to the will of its citizens. Thus Habermas adds to the conditions that subjects must satisfy in order to count as consenting individuals for the legitimacy of government.

The issue of majority rule and the legitimacy of authority in the civil state may also be reconciled in a deliberative democracy. Habermas views decisions reached through a majority, not consensus, as an "interim result of a discursive opinion-forming process."[116] A majority rule decision, as long as it conforms to communicative procedures, can be seen as temporary and made for institutional reasons, but can be

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[116] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), 179.

resumed in the future. By understanding majority decisions as revisable, majority decisions will not coerce the minority because public discourse will eventually arrive at consensus.[117]

7. Conclusion

Deliberative democracy offers a superior conception of political freedom and personal autonomy to republicanism. Instead of placing the government in opposition to citizens' freedom, deliberative democracy gives power to citizens to become the authors of the laws that govern them. Pettit's theory of republicanism must make a specious distinction with regard to the nature of interference in order to portray the government as non-interfering. However, laws in a deliberative democracy do not have to be viewed as interfering, even non-arbitrarily, with citizens' freedom. In this sense, the government does not mitigate freedom, as it does in a republican state. By not focusing on interference, deliberative democracy can provide a fuller account of freedom, as well as give a more accurate measure of the extent of individual and social freedom. Interference is a simplistic method for understanding autonomy and freedom in society. The capability approach, in which autonomy is measured by an individual's capability to be held responsible for her actions as a result of her ability to make free, autonomous decisions, is clearly superior because it looks at how well citizens are able to utilize the resources given to them. By defining the extent of freedom in these terms, deliberative democracy goes beyond republicanism's negative liberty.

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[117] Ibid., 186.

Deliberative democracy is also better-equipped to realize personal freedom as discursive control. If having freedom as discursive control is having discursive relationships that grant control and access to freedom to participants in discourse, then a deliberative democracy, as opposed to republicanism, seems like its natural political realization. Freedom as discursive control's important consequence is that freedom is no longer solely an individual matter, but rather depends on an agent's relationship to others. Republicanism, which ties freedom to the avoidance of arbitrary interference, does not significantly employ the notions of discursive engagement or freedom as necessarily involving the other. Deliberative democracy, which is rooted in public discourse and measures freedom through individual capabilities and effectiveness in public interaction, is clearly better at capturing the ideals of freedom as discursive control.

Deliberative democracy also provides a more complex and relevant account of personal responsibility than republicanism. Pettit's treatment of coercion makes clear that his account of responsibility is insufficiently nuanced. As a result, mistakes are made about the nature of agency and the best means to achieve social freedom. Habermas incorporates responsibility as an important element of freedom in deliberative democracy. Instead of the client relationship that republicanism has cultivated for its citizens, deliberative democracy gives citizens the responsibility to craft their own freedom. In this way, deliberative democracy gives primacy to and recognizes the importance of autonomous agency in a way that republicanism cannot acknowledge in its conception of citizenship as a collection of rights and entitlements.

This description of deliberative democracy contrasts with the governing tenets of republicanism because it emphasizes the importance of social cooperation through participation in public discourse. Citizens' freedom is given meaning in a deliberative democracy because their involvement in deliberation makes them the authors of the laws that govern them and define their rights. Participation in public discourse also necessitates each citizen recognizing their peers' equality, autonomy, and the validity of their claims. In this way, deliberative democracy makes citizens responsible for their freedom and their government, through the employment of their own agency. Republicanism does not involve or engage its citizens in such a meaningful exercise, and instead stakes freedom on the extent to which arbitrary interference from others is avoided. Republicanism, as such, does not give citizens sufficient opportunity to actively define the terms of their freedom and craft the rules by which they are governed. Citizens in a republican society are objectified insofar as their freedom is not a product of their own choices and self-set parameters. Freedom is merely a condition that exists in the absence of interference, not something to be achieved through personal responsibility and participation in democracy. This view of freedom seems to ignore the most fundamental aspect of, and reason for our freedom: our agency. As autonomous agents, we must take part in, and be responsible for our freedom.

Chapter 4

Deliberative Democracy, Moral Disagreement, and Responsibility

1. Introduction

Amy Gutmann and Dennis Thompson present an alternative theory of deliberative democracy in *Democracy and Disagreement*, which in many ways stands as a reaction to Habermas's theory of deliberative democracy. Gutmann and Thompson believe that the problem of moral disagreement is the most pressing issue facing modern democracy, and one that Habermas fails to address sufficiently. In particular, Gutmann and Thompson take issue with Habermas's claim that deliberation should be the primary method for adjudicating moral disagreement in politics, which they believe fails to adequately recognize the substantive role that morality plays in politics. Gutmann and Thompson take the presence of non-deliberative, moral disagreements to be permanent obstacles to deliberation. They claim that since moral agreement between citizens may be impossible to achieve, even after participating in deliberation, deliberative theory must be amended to accommodate moral disagreement and reach provisional agreement. For Gutmann and Thompson, the question is how deliberative theory must be constructed so that it acknowledges moral disagreement and provides a structure for the resolution of moral disagreement that is most acceptable to citizens.

Gutmann and Thompson believe that deliberation cannot create justifiable provisional policy pertaining to moral issues, and attempt to solve the problem by introducing three principles to guide the process of deliberation: reciprocity,

accountability, and publicity. The moral legitimacy of the results of deliberation should also be evaluated according to whether they conform to a set of constitutional principles that guarantee basic rights like basic liberty and fair opportunity.[118] Habermas, conversely, excludes extra-deliberative principles from influencing deliberation and posits basic rights only as necessary conditions for deliberation. Gutmann and Thompson reject Habermas's presupposition of rights such as liberty and opportunity, for deliberation, contending that full-bodied deliberation can only be assured if basic rights are guaranteed to citizens through the establishment of constitutional principles.[119]

In this chapter, I will assess Gutmann and Thompson's proposed theory of deliberative democracy, especially as an improvement upon Habermas's more procedural theory. I will argue that the two issues that Gutmann and Thompson claim are insufficiently acknowledged in deliberative theory, moral deliberation and provisional agreement, are actually afforded very important roles and resolved in a preferable fashion by Habermas. More importantly, in trying to rectify what they view as flaws in Habermas's theory, Gutmann and Thompson have abandoned the core of deliberative theory by introducing constitutional principles into their theory of democracy, thus divorcing individual responsibility from deliberation and instead relying on rights and entitlements as the foundation of freedom in society. I will argue that Habermas's theory is superior because a procedural approach crucially connects responsibility and freedom through participatory discourse, giving ownership and autonomy to citizens.

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[118] Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Belknap Press, 1996), 17.

[119] Ibid., 12.

2. Constitutional Democracy and Procedural Democracy

While Habermas and Gutmann and Thompson all claim to offer theories of deliberative democracy, the democratic underpinnings of each are radically different. Both theories aim at political equality through the employment of deliberation; however, Habermas's embraces a procedural model of democracy for the successful realization of deliberation, in contrast to Gutmann and Thompson's constitutional approach. The primary goals of procedural democracy are to establish a fair decision-making process, and to equally respect all moral claims and the individuals who make them. In most cases, proceduralism upholds majority rule as the most straightforward realization of popular rule, and the fairest way to resolve disagreement. Any other formulation would go against the democratic value of political equality and imply that a lesser number of citizens' moral beliefs are worth more than the views of their counterparts.[120] In order to properly respect differing moral claims in the face of majority rule, procedural democracy constrains majoritarianism by establishing and enforcing two kinds of rights for all citizens that create standards of fairness in democracy: those that are integral to the democratic process, like voting equality, and those that are necessary for its fair functioning, such as the right to subsistence.

Gutmann and Thompson argue that a more constitutional theory of democracy is necessary to protect minority moral beliefs and guarantee political equality to all citizens.[121] Constitutional democracy advances rights that are unnecessary for and

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[120] Although the majority may a hold morally wrong belief, proceduralism emphasizes that in order to respect citizens' autonomy, we must engage process of changing those beliefs fairly through deliberation.

[121] Gutmann and Thompson, *Democracy and Disagreement*, 28.

external to the functioning of the democratic process, but which protect the interests of its citizens and help produce justifiable outcomes.[122] Constitutional democracy only accepts the conclusions drawn by fair procedures as justified if citizens' rights and liberties are respected. Thus, Gutmann and Thompson argue that constitutional democracy is preferable to procedural democracy because it safeguards basic individual rights, and they worry that a society governed by majority rule will fail to offer the same kinds of protections. The weakness of constitutional democracy, however, is that further disagreement may result from varying interpretations of the expanded range of values introduced to resolve moral disagreement.

Gutmann and Thompson suggest that a deliberative model of constitutional democracy can address the problems created by adhering to a more traditional form of constitutional democracy, while retaining its fundamental aims. By conceiving of citizens as autonomous, moral persons who deserve rights in virtue of that status, deliberative democracy may preserve constitutional democracy's goals of ensuring equal political liberty and basic freedoms, while incorporating procedural democracy's interest in political participation and equal respect.

However, Gutmann and Thompson do not sufficiently support their criticism of Habermas's procedural theory with regard to individual rights and liberties. Habermas would certainly agree that individuals' rights must be respected, which is why he makes participants' full-bodied autonomy a condition of discourse. According to Habermas, when genuine deliberation occurs, citizens recognize each other's autonomy and see each

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[122] Ibid., 33.

other as equals, in which case all outcomes of deliberation are legitimate and respect liberty and opportunity. In order to engage in deliberative discourse, citizens must be free and equal. More than a formal equality, however, citizens must regard and respect each other as equal, autonomous agents, and no citizen who is competent to engage in discourse may be excluded from it. Beyond the negative requirement that citizens be provided with fair opportunity to participate in deliberation, all citizens must be able to participate fully in discourse by meaningfully interacting with one another and viewing each other as worthwhile co-contributors in the discussion. This requirement allows all citizens to introduce issues, question claims, and express opinions, although only impartial reasons may be offered and allowed to influence decision-making processes. In this way, deliberation requires that citizens regard others as ends in themselves, or as agents whose autonomy must be respected. In the absence of individual rights, any discussion in which citizens engaged would fail the test for discursive interaction, and would instead be some other non-sanctioned form of discussion that could not inform policy and legislation. Further, it would be impossible for any citizen to be stripped of his or her liberties as a result of discourse because discrimination and disrespect cannot be arrived at nor defended through discourse.

In order for Habermas to fully answer Gutmann and Thompson's criticisms regarding the extent to which his theory relies on the process of deliberation, he must demonstrate how society-wide deliberative discourse may feasibly be enacted in order to make deliberation a necessary condition for citizens' autonomy and for the legitimacy of legislation. Traditional theories of democracy assume that citizens can effect change

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through the legislature. By influencing the laws, which in turn influence the application of law, citizens supposedly receive the advantages and regulations to which they themselves agreed upon and which are enacted through the administrative and judiciary branches of the government. However, this assumption is only plausible under the condition that an entire society can be accurately represented through an organized, self-governing association of individuals. Habermas argues that the level of structure and organization needed to successfully enact self-prescribed laws and regulations is much more complex than what is suggested by classic democratic theory.

Instead, Habermas suggests that we must draw a distinction between communicatively generated power and administratively employed power, which changes our understanding of the democratic organization of citizens.[123] Communicative power results from autonomous deliberation in the public sphere, while administrative power comes from an organized drive to demand loyalty from citizens. Habermas believes that communicative power may significantly affect the political system by providing the normative reasons from which rationalizations of policy may be made. The exercise of communicative power through the giving of normative reasons has considerable effect because government and administrative systems cannot directly process normative reasons. The government must transform normative information into data that can be employed in policy formation. While the internal decisions about legislation made by the administrative power of government may be completely rational, the effective implementation of those laws requires normative reasons be provided to citizens.

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[123] Jürgen Habermas, "Popular Sovereignty as Procedure," in *Deliberative Democracy Essays on Reason and Politics*, ed. James Bohman and William Rehg, 55 (Cambridge: MIT Press, 1997).

Normative reasons are thus essential to communicative power because they are necessary for citizens' deliberation and understanding of policy. The discursive nature of communicative power will limit the acceptable kinds of rationalizations administrators may make for legislation and policy.

To the extent that communicative power has not been institutionalized by democratic procedure, it may affect political deliberation. To ensure the autonomy of communication necessary for political will-formation, the legitimizing framework that structures this communication should be subject to discursive scrutiny. Moreover, informal public opinion-formation, which significantly contributes to will-formation, must also be autonomous and unstructured by the government.

Rather than an embodied popular sovereignty, Habermas advocates that communicative power will be wielded through democratic procedure that requires a high level of discursive communication. To the extent that political culture, cultural traditions, and citizens' attitudes are conducive to rationality and political freedom, proceduralized popular sovereignty will be successful. In order to flourish, procedural democracy must have an autonomous public sphere in which opinions that influence legislative bodies are formed.

3. Liberty, Opportunity, and Democracy

Gutmann and Thompson's and Habermas's theories also diverge sharply with regard to the framework of deliberative democracy, namely, how to conceive of the ideals of liberty and opportunity, and what role they should be given in deliberative

democratic theory. Broadly speaking, their disagreement with respect to liberty and opportunity can be understood in terms of the differences between classical libertarian theory and egalitarian theory. Libertarianism embraces a negative conception of liberty, which defines liberty as the absence of interference or external impediment. Personal liberty, on a libertarian view, may be threatened only in cases of fraud or force. Accordingly, libertarianism does not perceive welfare as a necessary condition for liberty, and does not believe that society must extend social welfare to its citizens. The only constitutional principle in a libertarian society is to protect individual liberty.

Egalitarianism contends that arbitrary moral factors should not determine a citizen's opportunity. Egalitarians reject the idea that the natural lottery, in which some citizens are given more opportunities due to unearned wealth, citizenship, race, or other factors beyond their control, should determine one's ability to thrive. Each citizen should have the same prospects for success regardless of social class or origin, so that all who possess similar talent and motivation may have equal opportunity to prosper.

Gutmann and Thompson consider libertarianism to be too expansive with respect to the dominance of liberty, and, while an egalitarian government constitutionally guarantees certain liberties and curtails the libertarian conception of liberty through the important consideration of equal opportunity, they disagree with the significance an egalitarian model gives to opportunity. Accordingly, they suggest that principles beyond Habermas's conditions of deliberation are necessary for democratic rule and the production of legitimate public policy. As a compromise between libertarianism and egalitarianism, they append liberty and opportunity to their theory as constitutional

principles that constrain the *content* of deliberation for the good of the deliberative process.[124] As constitutional principles, liberty and opportunity must not be compromised in public policy, and policies that do so cannot be justified, even if they have been arrived at through deliberation.

While Habermas acknowledges the importance of the constitutional state, which brings with it democracy, the universalization of human rights, and the institution of equal liberties, he disagrees with Gutmann and Thompson's assessment of what is necessary for the realization of full-bodied deliberation.[125] In contrast to Gutmann and Thompson's more libertarian theory of democracy, Habermas favors a modified egalitarian theory of democracy. Liberalism gives normative priority to human rights over democratic procedure and, as a result, institutionalizes individual rights and equal liberties, while egalitarianism sees human rights as the result of the will of the people. Habermas argues that egalitarianism unifies practical reason and sovereign will, as well as human rights and democracy, in a way that liberalism cannot, and is, for that reason, a superior account.[126]

Traditional egalitarian theory believes that if the autonomy of legislative practice is predicated upon reason, then the will of the people will be sufficient to secure human rights. Reason produces a set of abstract laws and regulations that enforce equal liberty, devoid of bias and individual interests. Popular sovereignty will ensure human rights because equal liberty is a product of reason. The common liberal objection to this

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[124] Gutmann and Thompson, 199.

[125] Habermas, "Popular Sovereignty as Procedure," 37.

[126] Ibid., 45.

egalitarian view is that the idea of a unified popular will can only exist in theory and can only be realized by repressing heterogeneous, individual wills. Egalitarian theory can easily accommodate this criticism by redefining popular sovereignty to include the presence of discursive conditions to properly legitimize popular sovereignty. Requiring the presence of discourse will ensure the mutual understanding and agreement of all citizens.

Another issue that egalitarianism must address is the tension that exists between the claim that the legitimacy of a law is determined by the assent of all citizens, and the fact that democratic governments determine legislation through majority rule. Egalitarianism may resolve this potential problem by viewing majority rule decisions as a purely conditional consensus. The minority party or parties may not currently agree with the legislative decision in question, but they may agree to maintain the practice of making legislation conform to the will of the majority. Those in favor of a minority position may always continue to argue their case and further develop their reasons to gain a majority opinion, thereby reversing the previous decision.[127] By basing the legitimacy of popular sovereignty in a procedural process of will-formation, rather than practical reason, egalitarianism may properly recognize and accommodate the significance of pluralism. Moreover, the acknowledgment of pluralism de-embodies sovereign power. Rather than a unified, singular citizenry, the government is only a process for opinion-formation and the determination of legislation. In a procedural democracy, the presence of human rights is a necessary condition for public discourse and will formation, and, as such, will no

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[127] Ibid., 47.

longer compete with popular sovereignty or need protection from the potential encroachment of popular opinion.

Gutmann and Thompson attempt to retain the deliberative core of their theory while also incorporating elements of other systems of governance. However, they significantly break with traditional ideals of deliberative democracy by introducing the constitutional principles of liberty and opportunity. On the one hand, they try to distance their theory from theories like egalitarianism, utilitarianism, or libertarianism by claiming that their theory does not assume that a correct answer, such as the maximization of utility, exists above and beyond the results of deliberation. On the other hand, they also admit their willingness to limit the results of deliberation as a consequence of their model of deliberative democracy's constitutional principles. These two conflicting statements on the role of deliberation are supposedly reconciled by Gutmann and Thompson's explanation that deliberation is limited by constitutional principles, which are in turn shaped by deliberation.[128] It is ultimately untenable to maintain both the primacy of the outcomes of deliberation and institute constitutional principles into the political structure. While their theory certainly retains aspects of a deliberative theory of democracy, it falls short of actual deliberative theory. By giving constitutional principles precedence over deliberation, Gutmann and Thompson have abandoned the heart of deliberative theory.

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[128] Gutmann and Thompson, *Democracy and Disagreement*, 229.

4. Reason and Reciprocity, Consensus and Compromise

Gutmann and Thompson and Habermas also seem to fundamentally disagree about the nature of morality, a point of contention that significantly affects their resulting political theories. According to Habermas's discourse ethics, judgments about the truth of moral claims are based on their performance in an ideal conversation.[129] If a claim is morally correct, our reasons for holding that position should withstand the scrutiny of our peers, and, given ideal circumstances, all interlocutors in a conversation would come to the same conclusion. Moral rightness is a matter of impartial and reasoned consensus between parties in an ideal conversation.

It has been suggested repeatedly that the open-ended nature of deliberation entails a reduced chance of reaching consensus, and, thus, that discourse often may be an inappropriate method of decision-making in politics because the political arena demands timely results. However, if it is agreed that consensus is the goal of political legislation and institutional governance, it is less likely to be brought about by strategic negotiation than by impartial deliberation. Discourse is the ideal procedure for achieving universal agreement, and it does so through reasoned argument that gives participants time to fully digest and critically analyze the issues being discussed. Rational considerations should be the only constraints on discourse. The imposition of a time frame or other restricting factors will introduce strategic argumentation to the discourse because these new factors will create incentives to engage in such strategizing, which are at odds with the goals of discourse. The presence and force of strategic negotiation in the conversation will grow

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[129] Simone Chambers, "Discourse and Democratic Practices," in *The Cambridge Companion to Habermas*, ed. Stephen K. White, 233 (Cambridge: Cambridge University Press, 1995).

as the deadline draws nearer. Freedom from limitation, on the other hand, allows participants to fully engage in public reason.[130]

Habermas derives democratic legitimacy in a deliberative democracy by placing the ideal conversation regarding ethical matters in a political context: legitimacy comes from citizens' collective participation in, and evaluation of, institutions and ethical norms through discursive procedure. The discursive procedure is crafted to guarantee reason and fairness in deliberation, and the incentives to think strategically rather than impartially mentioned above inhibit the rationality and fairness of deliberation. To the extent that citizens embrace their role as communicative actors rather than as strategic actors, and public discussion adheres to discursive ideals, the practice of discourse will be realized and be an effective tool of democracy. Although citizens and public officials may not always reach agreement through the process of deliberation, all parties share and recognize in other citizens the aim of reaching agreement, and a willingness to engage in deliberation to arrive at provisional policies in the interim that all can acknowledge and accept as justifiable. It is, however, unlikely that the provisional agreements resulting from moral deliberation will be convincing outside of the context of a particular society. The agreement one community may reach may result from a shared understanding of what counts as acceptable or justifiable that does not necessarily translate across cultures.

Although democratic legitimacy previously was based in the mutual understanding that resulted from a shared sense of community and tradition, modern pluralistic society must forge another path to stability. A political system based on the

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[130] Chambers, 237.

authority of a singular tradition cannot survive in the face of pluralism. Instead, the tools of reason and democracy must create justification for legitimacy by constructing the consensus previously achieved through homogeneity. To the extent that deliberative discourse deals with issues of justice and legitimacy, it is important to reach rational deliberative consensus. However, achieving consensus is not necessarily a measure of rationality in discourse. Through the process of deliberation, citizens become more informed and better able to think critically. Citizens' mere participation in deliberation makes them more reasoned because they are engaging in a process of reasoning, thereby training themselves to offer and evaluate claims in terms of reason.

Gutmann and Thompson believe that the nature of many moral disagreements is beyond the scope of reason, and they conclude that the use of reason and deliberation to resolve moral issues is unreliable. Instead, they suggest that each deliberator adopt a stance of reciprocity, which splits the difference between a standard of impartiality that draws on reason and would require citizens to be altruistic in many cases, and a standard of prudence, which is a developed form of self-interest. Instead of arriving at democratic legitimacy and public consensus about moral issues through deliberation, Gutmann and Thompson introduce the principle of reciprocity for controlling the process of politics.[131] Reciprocity advocates fairness in social cooperation for its own sake, and attempts to find mutually acceptable ways to resolve moral disagreements. Reciprocity, along with two other principles, publicity and accountability, comprise Gutmann and Thompson's process of seeking deliberative moral agreement in deliberative society. Gutmann and

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[131] Gutmann and Thompson, *Democracy and Disagreement*, 14 – 15.

Thompson argue that publicity is a necessary condition for deliberative democracy because they believe it is essential that moral disagreements take place in public forums so that all may contribute to and amend the arguments offered. Accountability, the third principle, is also required in a deliberative democracy because all agents who offer reasons, as well as those agents to whom reasons are offered, must be able to hold each other accountable to ensure sincere participation in politics and deliberation.

The principle of reciprocity defines how citizens and politicians should interact while participating in public and political life. Reciprocity emphasizes the importance of fair, mutually justifiable decision-making and reasoning. In the context of deliberation, the principle of reciprocity requires two conditions be met. First, with respect to moral deliberation, citizens must offer reasons that can be accepted by those citizens who are also interested in acting from the principle of reciprocity and respecting others' moral agency. For example, citing fairness as justification for a claim or assertion during moral deliberation offers a widely recognized principle that everyone could accept as a valid reason. The utilization of mutually acceptable reasons in deliberation will further the aim of citizens reaching agreement on moral issues. Second, reciprocity requires that citizens regularly appeal to reliable empirical evidence in order to support their moral claims within deliberation.[132]

Gutmann and Thompson's principle of reciprocity demands more than a principle of prudence, in which the justification for decisions is based on what is mutually advantageous to those involved. However, the principle of reciprocity does not extend to

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[132] Ibid., 55 – 56.

altruism, like the principle of impartiality, which measures the justification of decisions according to what may be universally justified. If reciprocity attempts to resolve moral disagreement through the employment of mutually acceptable moral reasons, prudence suggests that the use of moral reasons is unnecessary, instead using bargaining to reach agreement. While impartiality affirms the necessity of moral content in political deliberation, it does not require mutual acceptability or deliberative agreement about moral claims. As long as a moral claim is correct, it needs no further justification, even to parties who may disagree with it.

Because prudence is motivated by self-interest rather than by moral reasoning, Gutmann and Thompson believe it cannot be the primary principle that governs a deliberative democracy. Prudence, as the maximization of one's own well-being, potentially at others' expense, does not give sufficient weight to what citizens owe to one another as co-contributors to a society. A moral standard is necessary in order to give less powerful citizens the treatment they deserve and to ensure respect for their rights. However, Gutmann and Thompson also disagree with the principle of impartiality, according to which all moral claims can be resolved through reason. The implication of the principle of impartiality is that there is one correct comprehensive view of morality that can be discovered through reason, whereas the standard of reciprocity is only committed to the idea that there may be multiple, equally correct, but potentially conflicting moral views.

Gutmann and Thompson argue that reciprocity combines the virtues of the principle of impartiality and the principle of prudence. While they acknowledge that

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prudence may provide an avenue for resolving conflict in politics, they believe that it should not be the primary tool used to mediate moral disagreement. Similarly, they admit that the all-encompassing view of morality sought by impartiality is in some respects preferable, but they believe it is unlikely to be realized in a pluralistic modern society with citizens who hold opposing moral ideals, and, as such, must be rejected. Thus, Gutmann and Thompson feel they have created balance through the principle of reciprocity by advocating a standard of mutual acceptability and respect, which has moral substance like a standard of impartiality, but also emphasizing the importance of mutual exchange, in line with the principle of prudence.

While Gutmann and Thompson criticize Habermas's theory as unable to accommodate moral deliberation because it does not properly acknowledge the fact that moral disagreement persists despite reasoned deliberation aimed at resolving such disagreement, their own position fails to capture the importance and ideological significance of striving for moral truth. The principle of reciprocity carries with it the idea that different, conflicting moral views may be equally correct. As such, the principle of reciprocity seems to exemplify ethical relativism, which affords equal validity to contrary ethical judgments if they are made in different contexts, say, by persons who hold different and conflicting moral beliefs, or by persons who come from different cultures. Ethical relativism is a controversial inclusion into democratic theory because it does not substantively mirror our views about morality. Our moral language demonstrates that our intuitions lie closer to moral objectivity, and ethical relativism seems sufficiently counter-intuitive that we should be concerned about advocating a theory of democracy

that accepts it. Thus, introducing an ethically relativistic principle, like reciprocity, to solve moral disagreement fails to address the root of the problem deliberation encounters when faced with moral disagreement. While reciprocity may seem to function as a cure-all because of its acceptance of conflicting moral belief systems, the solution it offers is in conflict with most citizens' views of morality. If citizens disagree about moral issues, it is because they believe that their own moral views are correct or superior to those of their fellow citizens. Introducing a moral stance that advocates strategic cooperation and compromise seems like another position that those citizens would already be predisposed to reject. Why should citizens accept reciprocity as a valid moral principle when their current views of morality, which cause the moral disagreement Gutmann and Thompson are trying to remedy, all seem so clearly opposed to ethical relativism? It is unlikely that citizens would be willing to accept a political principle with moral implications that fly in the face of their personal moral beliefs. If moral disagreement exists in the first place, then the introduction of yet another moral perspective, reciprocity, seems doomed to fail.

By replacing the goals of mutual understanding and agreement between citizens with the principle of reciprocity, Gutmann and Thompson have abandoned the important ramifications of those ends in favor of strategic compromise. The principle of reciprocity only advocates the use of reason for instrumental purposes. Instead, the aim of deliberation should be reasoned agreement. Finding a compromise that is merely acceptable, and that may not meet the higher standard of being rationally acceptable on non-instrumental grounds, is an unworthy goal for policy formation of any kind. Further, there is a lack of deliberative justification for this amount of concession among

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deliberative parties. For example, while Gutmann and Thompson suggest that co-deliberators must acknowledge and entertain non-deliberative positions that may be intrinsically wrong and unjustifiable, they do not support this position with any argument. If a position cannot be supported through reasons that are intelligible in the cultural context of a community, any further engagement with it would seem to be counter-productive to the purpose of engaging in moral discussion.

Habermas's theory of communicative rationality, on the other hand, clearly illustrates the important difference between policy that aims at eliciting compliance and policy brought about by consensual agreement, as well as the relative worth of both. Compliance with legislation may mean compromising reason, and may be obtained in a number of ways, including coercion and manipulation. Consensual agreement between participants is brought about through mutual understanding and reasoned discourse. The use of reason in discourse is more than just a way to determine the most effective means to achieve a goal, and it is more than a capacity to defend beliefs against others' objections and argue in favor of, or against, claims in discursive interaction. According to Habermas, fully-embodied reason involves putting those claims and beliefs within the context of established norms and justifying action through an explication of appropriate normative expectations in a given situation.[133] As a result, reason is intersubjective because it requires dialogical communication between members of a community. Intersubjectivity is essential to building consensus and understanding between parties,

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[133] Jürgen Habermas, *Theory of Communicative Action*, Vol. I, *Reason and the Rationalization of Society*, trans. Thomas McCarthy (Boston: Beacon Press, 1984), 15.

and creating widespread mutual understanding and shared sense of purpose in society. Strategic reasoning cannot produce the desired result of intersubjectivity because instrumental reason does not aim at mutual understanding.

Gutmann and Thompson's mistake is to oversimplify the nature of moral claims, leading them to the faulty conclusion that continued moral disagreement means that moral agreement is impossible to achieve. Rather than adjust legislative standards to accept compromise instead of reasoned agreement, as Gutmann and Thompson recommend, we must distinguish between different types of claims. A deeper understanding of the many ways in which moral claims may be presented and should subsequently be addressed is necessary to adjudicate moral issues in democratic society. Habermas presents a nuanced and insightful account of the relationship between truth and cultural values, which distinguishes between claims of truth or rightness on the one hand, and expressive self-presentations and evaluations on the other hand.[134] While claims of truth attempt to establish the validity of a norm that is in the general interest and must have been arrived at through the conditions of discourse by free and equal participants, self-presentations and evaluations do not. Self-presentations and evaluations are personal expressions, and can only prove to be valid insofar as they accurately represent cultural values. As claims of personal motivation or action, self-presentations are by nature non-universal, and instead can only be judged to be truthful through an appraisal of the speaker's sincerity, which may be found in the consistency of the speaker's expressed intentions and subsequent actions. Evaluations are similar insofar as their holder's

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[134] Georgia Warnke, "Communicative Rationality and Cultural Values," in *The Cambridge Companion to Habermas*, ed. Stephen K. White, 127 (Cambridge: Cambridge University Press, 1995).

rationality depends on whether she can justify and express her desires through giving intelligible reasons that can be understood and accepted by others in her community. The reasons may not be persuasive to those to whom they are being offered, but they can be understood as having normative force in light of a shared cultural context.

To evaluate norms, we must look beyond cultural values and instead employ practical discourse. Discourse takes norms out of the context in which they are assumed to be valid, and tests them under ideal conditions. In discourse, norms may be applied to hypothetical cases to supplement what may seem an otherwise entirely abstract process. Because the application of norms to specific cases will be assessed through discourse, rather than in a necessarily prejudiced cultural context, the justification of a norm will be impartial. However, in certain cases, the issue may extend beyond how normative principles should be applied, to which normative principles should be applied, and even further to the meaning of the principles themselves.[135] In these situations, cultural values seem impossible to escape because we must evaluate the relevance of various normative principles, as well as our understanding of those principles. Different, rational persons may interpret the same principle in different ways, or apply it to different facets of a single issue. As a result, Habermas suggests that these issues may only be fully resolved through the socio-cultural form of life of a community.

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[135] Ibid., 131.

5. Kantian Theory, Publicity, and Accountability

Gutmann and Thompson argue that, along with reciprocity, two other principles are necessary to successfully guide the process of deliberative politics: publicity and accountability. Publicity requires that the reasons citizens and political officials offer to justify political decisions, as well as the information upon which those decisions were based, be made public. Deliberative theory values publicity because public justification is necessary in a deliberative democracy. Publicity ensures the functionality of a deliberative democracy by allowing citizens to give their consent or voice their dissent for policies and legislation created by public officials. When different moral and political views are made public, citizens will gain a wider understanding of them, and subsequently engage in more thoughtful and informed deliberation. Publicity also aids self-correction in deliberation, bringing to light new reasons and arguments that in turn alters the course of deliberative discourse and the results of public deliberation.[136] Accountability is important to deliberative democracy because deliberation makes each person accountable to every other: all participants must justify their reasons and decisions to those who are affected by them.

Gutmann and Thompson's principles of publicity and accountability reproduce tenets of Habermas's own deliberative theory of democracy. Deliberative discourse, as the centerpiece of Habermas's theory, is a necessarily public undertaking in which all

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[136] Gutmann and Thompson acknowledge that publicity may not be desirable in all cases. Secrecy may be necessary when policies that all citizens wish to succeed could not be effectively implemented without it. Publicity also may be counter-productive to the preservation of core values of democracy. For instance, without checks on publicity, the privacy of officials and citizens may be violated, which in turn impedes their basic liberty and opportunity. These issues notwithstanding, publicity is widely held to be an important and necessary principle for transparency in democratic policy and fair representation.

participants are given equal standing and recognition. The goal of communicative action, mutual understanding, combines the goals of publicity and accountability because it emphasizes the importance of a shared understanding of the community and the inherent worth of other individuals who are autonomous ends in themselves and who must be respected as such. This Kantian concept of human autonomy specifically excludes any attempt to strategically manipulate co-participants. In modern pluralistic society, mutual understanding can only come about through a discursive effort to achieve such understanding, the conditions of which Habermas has set out to ensure discursive freedom and equality.

Habermas's theory of discourse is a dialogical continuation of Kant's monological universalization of the categorical imperative. Whereas as Kant advocated reflection upon the universalization of an action's maxim at the level of the individual, Habermas introduces the consideration of the other when thinking about a world in which everyone followed the same maxim.[137] Rather than individually evaluating the logical consistency of the maxim, we now extend the question to include others, and ask whether everyone would agree to be subject to that maxim.

Within a political context, Habermas's discourse ethics echoes Kant's principle of publicity, which stipulates that actions affecting the rights of others are wrong if the maxim cannot be coherently made public.[138] It is important to note that the principle of publicity highlights the autonomy and reason of individual citizens, while simultaneously

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[137] Chambers, "Discourse and Democratic Practices," 233.
[138] Immanuel Kant, *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett, 1983), 135.

reconciling that autonomy with the authority of the state or, in Kant's case, the sovereign. Kant believed that the sovereign, the champion of public interest, should follow this principle and welcome the publicity of her actions to ensure that they are in the best interest of her citizens.

Kant further incorporates publicity and reason into his political theory by making a distinction between the public and private utilizations of reason. When an individual employs reason to best realize his own personal interests or fulfill her obligations, it is used privately. The public use of reason, in contrast, assesses what is in the best interest of society by ascertaining what would most successfully realize the common good. When citizens are convinced by reason that an institution or legislation is in the public interest, they should be convinced through their use of public reason.

Kant's requirements of reason, autonomy, and publicity in society make their way into Habermas's theory of deliberative democracy. Looking to modern democracy, Habermas applies the principle of publicity as a condition for a deliberative theory of democracy. Key to deliberative theory is the notion of process. If the conditions of discourse are not met and citizens are not give access to information, then their consent is illegitimate. Reason must be employed in citizens' deliberation about what is in the public interest. Citizens should use reason to evaluate and decide on the usefulness of state institutions and norms.

Discourse ethics adapts the idea of public reason to guide democratic procedure and ensure the public use of reason by citizens. Discourse is an idealized form of communicative action. Participants' goal in communicative action is to find mutual

understanding through reasoned argument that can be agreed upon by all parties. Minimally, discourse requires having a grasp on the issues at hand and on your co-participants' positions. In ideal circumstances, shared understanding would be the result of engaging in discourse. The goal of communicative action is very different from that of strategic action, which aims at a particular behavioral response through various methods of influence. Inducing participants to perform good or reasonable actions is not inherent to strategic action, and most strategic action may have little to do with furthering meritorious behavior.[139]

While Gutmann and Thompson insert publicity and accountability into their theory as principles that should be applied to deliberative decisions post-fact, Habermas's procedural account of deliberative democracy integrates accountability and publicity into the act of deliberative discourse itself. Gutmann and Thompson's move toward rights and entitlements, which are exemplified in the democratic principles of a constitutional democracy, are in stark contrast to Habermas's procedural deliberative theory. Habermas's procedural account makes citizens responsible for their freedom. Through the process of participation in discourse, citizens are able to define and shape their autonomy in society. Rather than positing citizens as disparate entities on which governmental institutions impose legislation and norms and who are thus in need of

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[139] For example, citizens in a community may disagree about the acceptability of a coal-mining method that dumps unsafe water into a nearby river. One group may argue for the necessity of the method and the jobs and income it provides to the area. Another group may be concerned for the well-being and health of the wildlife and community members as a result of introducing unsafe water into the surrounding ecosystem. If we were to resolve this disagreement through strategic reason, we would attempt to create agreement among parties through whatever means were necessary to achieve that goal. Communicative action would instead advocate consensus through reason, which does not defer to any party's particular interests or take into account motivating reasons other than those mandated by reason.

protection through rights, a theory of democracy should make citizens the crafters of the laws by which they are governed. Under these circumstances, citizens will own their freedom because they have given it to themselves, and thus are responsible for the conditions of their freedom. Habermas's theory of deliberative democracy gives members of society more freedom than a constitutional model can because citizens formulate their own freedom rather than having it issued to them through a decree of rights. The feeling of entitlement that comes from a rights-based theory, on the other hand, disengages citizens from their government and places them in opposition to it. Instead, citizens should identify themselves *as* their society's government and legislators, which is a result of Habermas's theory.

6. Utilitarianism, Moralism, and Paternalism

Beyond the introduction of constitutional principles to guide the process and content of deliberative politics, Gutmann and Thompson further alter deliberative theory by arguing in favor of the insertion of several extra-deliberative values into public policy, namely, utilitarianism, moralism and paternalism. By introducing ideals that supercede the outcomes of deliberation, Gutmann and Thompson have irreparably broken with the central tenets of deliberative theory. I will discuss the problem with the inclusion of each of these moral values in turn.

a. Utilitarianism

Gutmann and Thompson introduce utilitarianism as a method of resolving moral conflicts and as an effective means of weighing the effects of a policy against the well-

being of members of a society.[140] They believe that utilitarianism may help to rectify their concern with moral disagreement in a deliberative theory of democracy, as long as it is used as a tool for moral argument, rather than as a foundation for morality. The end of utilitarianism, utility, facilitates all citizens' ends because it is defined in terms of well-being, and is achieved through what best satisfies citizens' preferences.[141] Because utilitarianism places moral significance on outcomes or states of affairs, rather than on actions or intentions, it requires policies to be evaluated on their own merits, rather than the motives of the persons who propose them. In support of their argument, Gutmann and Thompson cite utilitarianism's consquentialist outlook as well-suited to the assessment of long-term implications of policy. Further, they feel that utilitarianism provides a straightforward method of weighing the consequences of various moral decisions, as policymakers may calculate the net utility of the consequences of each course of action, and choose whichever maximizes utility. Finally, the maximization of utility addresses the issue of moral disagreement insofar as it may rationally reconcile otherwise incompatible or conflicting moral ends because it presents the single, ultimate goal in light of which all other ends must be evaluated.

Gutmann and Thompson give utilitarianism a place in the theory of deliberative democracy because it recognizes the claims of all citizens and it is attentive to long-term consequences of policies, even though it offers very little in the way of guidance about how to resolve competing claims and the difficult scenarios policymakers inevitably

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[140] Gutmann and Thompson, *Democracy and Disagreement*, 196.

[141] Ibid., 169.

face.[142] Regardless of the significant drawbacks to executing utilitarian theory within a deliberative democracy, they believe that using utilitarian considerations in moral deliberative arguments is a valuable tool that helps define citizens' perspectives in public discourse, and should be given a place within the larger, controlling framework of a deliberative democracy.

However, the nature of utilitarianism is in many ways diametrically opposed to the process of deliberation and deliberative theory. By introducing utilitarianism as a way to secure a place for morality in deliberative theory, Gutmann and Thompson have forsaken the primacy of deliberation. I will discuss several examples below, with the conclusion that Gutmann and Thompson's criticism of Habermas with regard to morality in deliberative theory may not be resolved as they have suggested.

First, determining utility involves analyzing each course of action in a way that may seem hard to quantify to many citizens. With regard to areas of personal significance, such as family, health, or work, considering each in terms of preference satisfaction may seem altogether foreign. By forcing deliberation to be carried out in these terms, utilitarianism imposes an artificial framework onto citizens' discourse that may make deliberation difficult.[143] In many cases, the choice that would best satisfy individual preferences, all other things being equal, may be very different from the feasible options with which we are presented. As a result, utilitarianism conflicts with

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[142] Ibid., 195-196.
[143] Ibid., 184 – 185.

deliberation insofar as it may not allow citizens to express their reasons in terms that are intuitive to them or their co-deliberators.

Another significant concern is whether utilitarianism has the ability to compare the claims of citizens at all. The worth of an external good, state of affairs, cultural value, etc., may vary between citizens to such a degree that it is difficult to make generalizations to which a utilitarian rubric may be applied. While utilitarianism supposedly offers a method for objectively valuing the worth of each citizen's claims, how each person interprets and employs the principle of utility can be controversial and morally loaded. Some utilitarians try to avoid making interpersonal comparisons at all by using a Pareto standard for policies. This approach calculates the worth of policies based on their "independent effects on individuals."[144] Policies are measured according to the positive, negative, or neutral consequences it will produce. If a policy improves the life of one citizen, and affects no citizen negatively, then it is preferable to a policy in which neutrality is maintained. However, measuring policies in this way does not maximize utility because it is unwilling to negatively impact persons, even in the face of greater total utility. The Pareto criterion can also only be used under severely limited circumstances. Attempts to make utilitarianism more palatable, such as the suggestions that utilitarianism is no more guilty of making interpersonal comparison than any other moral theory, or that suffering is an easy thing for individuals to assess because we all are averse to pain, also fall short.

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[144] Ibid., 187.

Additionally, utilitarianism interferes with the transparency of legislative decisions. If citizens do not agree with the methods or solutions offered by utilitarian policymakers, utilitarianism may advocate not informing citizens in order to maximize utility.[145] The nature of utilitarianism is such that any value may be compromised in the name of utility. This principle runs afoul of many people's moral intuitions.

Finally, it is difficult to hold personally accountable officials who follow a utilitarian method because their actions are dictated by abstract theory rather than being informed by the results of public deliberation. Officials would become conduits and enforcers of utilitarian doctrine, rather than acting as representatives and leaders of their constituents. While utilitarians do encourage the spread of information to better inform citizens' decisions and preferences, it does not support a framework for the deliberation of citizens. The sum of several individual decisions may produce a very different conclusion than the results of public, participatory deliberation in which citizens collectively reach conclusions. Utilitarianism also does not give citizens a sufficient say about the nature of the political process itself, insofar as it dictates a fairly rigid set of ideals concerning political operation.

Beyond these specific problems with utilitarianism itself, Gutmann and Thompson's ill-fitting amendment of utilitarianism to deliberative democracy creates the serious problem of undermining the outcomes of deliberation. As a process, deliberation should be led wholly by citizens' use of public reason and no other set of guiding principles. Superimposing a specific, over-arching theory into the deliberative procedure

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[145] Ibid., 178.

seems counter-productive to the aim of deliberation, as it has been defined. Simply because utilitarianism as a theory is capable of addressing all aspects of a citizen's relationship to society does not mean it should be employed in deliberative theory. Focusing citizens' viewpoints through a utilitarian lens is antithetical to the entire exercise of discursive interaction.

b. Moralism and Paternalism

Traditionally, liberty is conceived of as an individual's autonomous control over her person and mind. According to a liberal theory of liberty, the government and fellow citizens cannot encroach upon individual liberty or demand that liberty be sacrificed for any larger societal good. Liberalism denies any theory that privileges individual and societal welfare over claims of personal autonomy, such as moralism or paternalism. As long as an immoral or harmful practice does not inflict injury on other citizens, it cannot be prohibited, according to a liberal perspective, because such regulation would curtail individual choice. Government intervention is only acceptable when a citizen's action definitely causes significant physical or mental injury to others or poses a definite risk of said type of injury to others, and the harm must be entirely other-regarding.

Gutmann and Thompson embrace the principle of individual liberty for their theory of deliberative democracy, but they also believe that the arguments of moralism and paternalism are significant, and wish to make accommodate them in their theory of deliberative democracy, while still prioritizing the principle of liberty. They argue that some self-harming actions and some non-injurious wrongs should be controlled by the state. They attempt to reconcile this compromise of basic liberty by stipulating that the

only kinds of non-injurious wrongs that are open to regulation are those that are so important that their prevention is at least as important as the value of liberty. Further, any state management of self-directed harms must respect personal integrity, which requires the freedom to engage in self-harming or immoral actions as long as those actions do not harm others or violate one's own personal integrity.[146] As such, Gutmann and Thompson's theory of basic liberty breaks with classic libertarian theory by providing safeguards against self-destruction and immoral behavior that are deemed appropriate through deliberation.

While Gutmann and Thompson attempt to mitigate the effects of moralism and paternalism through the process of deliberation, the introduction of moral ideology above and beyond the results of deliberation is a flaw in their theory of deliberative democracy. Valuing moralism and paternalism in their own right poses a serious threat to the primacy of deliberation. Moralistic and paternalistic commitments seriously compromise the integrity of a deliberative government. Gutmann and Thompson fail to explain why these extra-deliberative political structures are necessary or useful in a deliberative democracy. The deliberative process is capable of addressing citizens' concerns with respect to self-harming and immoral actions. A more stringent or permanent set of restrictions on the acceptability of one's actions would fly in the face of the basic ideals of deliberative theory.

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[146] Ibid., 237.

7. Conclusion

While Gutmann and Thompson have offered an alternative theory to Habermas's theory of deliberative democracy that attempts to reconcile what they see as shortcomings, their own theory creates significant problems for the realization of deliberation in a democratic society. By introducing constitutional principles and other policies that supercede deliberation, Gutmann and Thompson have failed on three counts. First, with respect to moral deliberation, in trying to create better policies to reconcile moral disagreement and political legislation, they have disregarded the importance of moral truth and seemingly committed themselves to an implausible relativism. Ethical relativism argues that conflicting moral claims may be equally correct because they are made within different contexts, such as different cultures or by persons who hold different ethical principles. This position does not accurately reflect the way we think about morality, as evidenced in our moral intuitions and moral language, and making it part of democratic theory seems undesirable on several fronts. Most notably, it seems that the existence of moral disagreement entails that citizens would also reject the ethically relativistic moral implications of the principle of reciprocity, which Gutmann and Thompson introduced to solve the problem of moral disagreement. Second, Gutmann and Thompson cite the inadequacy of provisional policy in Habermas's theory as a reason for their own, alternative theory. As we have seen, Habermas discusses provisional policy quite extensively in his own theory as a necessary step in the deliberative formation of policy. Finally, Gutmann and Thompson's theory depends on rights and entitlements to ensure freedom in society. This separation of personal responsibility and freedom sets up

a client relationship between the government and citizens, rather than making citizens the owners of their freedom. For full-bodied autonomy, as Kant argues, we must be the crafters of the laws that we give to ourselves. No other governing body may determine the parameters of our freedom for us or give it to us. To achieve autonomy, we must participate through discourse in the formulation of the laws that govern us.

Conclusion

I began this dissertation with a discussion of the nature of coercion and personal freedom, from which I hoped to gain understanding of what it means to be free as an individual, what it means to be an autonomous agent with free will. From Chapter One, we learned that the nature of coercion reveals much about what it means to be free. Phillip Pettit characterizes freedom as being able to be held responsible for our actions. When we are coerced, he claims, we cannot be held responsible for our actions because coercion limits our available options and makes us unable to do otherwise.

While Pettit labels the limitation of an agent's options as the wrong-making feature of coercion, we must take into account the fact that coercion restricts individual choice in the same way as natural causes, and therefore it cannot be the imposition of restrictions that is objectionable. Instead, coercion is wrong because it is a morally impermissible exercise of authority in which our actions are legislated by another. As a violation of personal autonomy, it is morally objectionable.

While coercion does diminish freedom generally, in the same way as natural causes, Pettit fails to prove that it also reduces freedom as responsibility, as he claims. This oversight is due to the fact that Pettit's conception of responsibility does not distinguish between ideas of attributability and accountability. An agent may have her conduct attributed to her and be held responsible for it when it reflects her judgments about what constitutes a reason to act. Since coercion is consistent with attributability—an agent may have rational control or volitional control over her actions and still be

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coerced—freedom as responsibility is not diminished by coercion. While our responsibility for our actions is not diminished by coercion, our accountability or blameworthiness for those actions would be. Blameworthiness, or accountability, is a social practice in which moral judgment is passed on whether an agent's conduct fell in line with certain normative standards. Because coercion allows one agent to be unjustly dominated by another, and anyone in such circumstances would have acted similarly, coerced agents are not accountable for their actions. By distinguishing the assignment of responsibility from blameworthiness, we realize that the absence of domination is not necessary in order to enjoy freedom as responsibility, counter to Pettit's claim.

In Chapter Two, we began to explore what kind of political system would maximize freedom as responsibility. Pettit advocates a political theory of republicanism built from the idea that political freedom is characterized by non-domination: the absence of arbitrary interference from others. Republicanism, as Pettit defines it, achieves freedom as non-domination through consequentialist policy that places less importance on individual autonomy than legislative outcomes that maximize utility throughout republican society. Pettit's focus on external impediments placed on agents causes him to make the same conceptual error with public freedom as he makes in his theory of personal freedom. He separates two classes of interference: non-arbitrary, and arbitrary, arguing that arbitrary interference is objectionable because it limits agent's options in a way that is distinct from non-arbitrary interference. However, since both kinds of interference curtail an agent's options, Pettit's definition of domination cannot be maintained, and his account lapses into a theory of freedom as non-interference. Defining

political freedom in terms of non-interference does not substantively support our conception of personal freedom as responsibility—it may provide some necessary conditions, but it is not sufficient. Freedom should instead be defined in terms of autonomy, and Pettit's insistence on tying freedom to lack of interference compromises his notion of political freedom.

Instead, political theory must be structured with regard to individual autonomy. Citizens must be active, participatory members of government, rather than posited as in fundamental opposition to government institutions, demanding rights and entitlements. If citizens are authors of the laws that they give themselves, then government will not be a coercive, interfering force and citizens will not need to compromise their autonomy in order to abide by government legislation.

Chapter Three investigated a theory of deliberative democracy as a political alternative to republicanism. While republicanism places the government and personal freedom in opposition, deliberative democracy imbues citizens with the power of government, making them the authors and legislators of the laws by which they are governed. Government in a deliberative democracy does not mitigate or otherwise interfere with citizens' freedoms, because citizens participate in government and define the content of legislation through discourse. The idea of responsibility is key to deliberative democracy's conception of freedom. Citizens' autonomy in a deliberative theory of democracy is measured by their capability to be held responsible for their actions through their respective abilities to make free, autonomous decisions, rather than a negative conception of freedom in which freedom is judged by lack of interference.

Deliberative democracy also more effectively realizes personal freedom as responsibility because it engages citizens in government through public discourse. Deliberative democracy gives citizens the responsibility to craft their own freedom and elevates autonomous agency in a way that the previous theory of republicanism cannot. Deliberative democracy goes beyond the notion of citizenship as a passive set of rights and entitlements granted to individuals and instead makes citizens cooperate and participate in social discourse. Citizens' freedom is thereby given meaning because each citizen must recognize others' autonomy and equality. By focusing freedom in society on the fundamental reason for our freedom, our agency, deliberative democracy delivers a superior conception of freedom in which we must take part and for which we are responsible.

Chapter Four presented Gutmann and Thompson's alternative theory of deliberative democracy, which they pose as a criticism of Habermas's theory. Gutmann and Thompson focus on the problem of moral disagreement as the central issue that democratic theory must address and one that is insufficiently acknowledged by Habermas. Gutmann and Thompson believe that deliberation, the centerpiece of Habermas's theory, cannot handle moral disagreement because many moral disagreements are non-deliberative in nature and deliberation cannot create appropriate policy with regard to moral issues.

Instead, they argue for instituting constitutional principles to guide the process and govern the content of deliberation. These principles would guarantee basic rights and create a common backdrop for all subsequent political legislation and discourse.

Habermas, conversely, believes that constitutional principles undermine the outcomes of deliberation. Instead, he makes basic rights a precondition for engaging in deliberation, ensuring that all who participate in deliberation have a common background.

In assessing the merits of Gutmann and Thompson's theory, it becomes apparent that the introduction of constitutional principles abandons the core of deliberative theory because it disengages personal responsibility from freedom in society, and makes rights and entitlements primary. The procedural approach of Habermas's deliberative theory of democracy is preferable because it links responsibility and freedom in the act of discourse, which gives citizens ownership and autonomy through participatory creation of the legislation by which they are governed. Further, Gutmann and Thompson's theory, which they offer as a more accommodating political theory for dealing with moral disagreement, subjects citizens to a society-wide policy of ethical relativism, which is also unlikely to resolve moral disagreement.

From this dissertation, I believe I have established that personal freedom as responsibility can only be realized in a democracy that allows citizens to own their freedom. Individuals may only have freedom if they craft the laws that they give to themselves, and this characterization of autonomy also holds true at the level of the state. For citizens to substantively participate in government, we must look to a form of democracy that encourages political discourse and gives them the opportunity to significantly influence legislation. As we have seen, a procedural form of deliberative democracy seems to best realize those requirements and give citizens the responsibility necessary for maintaining their own personal freedom.

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