

Political Theory

<http://ptx.sagepub.com>

Deliberation before the Revolution: Toward an Ethics of Deliberative Democracy in an Unjust World

Archon Fung

Political Theory 2005; 33; 397

DOI: 10.1177/0090591704271990

The online version of this article can be found at:

<http://ptx.sagepub.com/cgi/content/abstract/33/3/397>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Political Theory* can be found at:

Email Alerts: <http://ptx.sagepub.com/cgi/alerts>

Subscriptions: <http://ptx.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

DELIBERATION BEFORE THE REVOLUTION

Toward an Ethics of Deliberative Democracy in an Unjust World

ARCHON FUNG
Harvard University

Deliberative democracy is a revolutionary political ideal that requires fundamental changes in political institutions, bases of collective decision making, and the distribution of resources. Perhaps because of its revolutionary character, accounts of deliberation in political theory thus far have offered little guidance for actors in actually-existing democratic circumstances. This article develops an ethical account of deliberative democratic action under imperfectly just conditions characterized by material and political inequality and failures of reciprocity. Under such conditions, appropriate principles of action can resolve the tension between deliberation and confrontational political activism. The logic of this account parallels the justification for civil disobedience: the extent of permissible deviation from deliberative norms increases according to the adversity of political circumstances. This ethical account is composed of principles of deliberative activism, applications of those principles to four kinds of increasing unfavorable circumstances, and a menu of institutional and political strategies that increase deliberative inclusion and equality.

Keywords: *deliberative democracy; participation; civil disobedience; political activism*

1. INTRODUCTION

Deliberative democracy is a revolutionary political ideal. It calls for fundamental changes in the bases of political decision making, scope of those included in decision-making processes, institutions that house these processes, and thus the very character of politics itself.¹ Deliberative democracy is also revolutionary in a second sense. It has been thought to require dramati-

AUTHOR'S NOTE: I am grateful to Iris Marion Young and Kenneth Winston for extensive suggestions on previous versions of this article. Participants, especially Stephen Macedo, George Kateb, and Philip Petit, in the Seminar on Ethics and Public Affairs sponsored by the Princeton University Center for Human Values and the Woodrow Wilson School offered critically illuminating remarks on an early draft of this article.

POLITICAL THEORY, Vol. 33 No. 2, June 2005 397-419
DOI: 10.1177/0090591704271990
© 2005 Sage Publications

cally more egalitarian political, social, and economic conditions than exist in any contemporary society. Background inequities in resources, status, and other forms of privilege upset the communicative equality that deliberation requires. Many political theorists have made this point, and many criticisms of deliberation turn on the threats posed by various kinds of background inequality.

Consider two clear and prominent statements about the importance of background equality, and the revolution that such equality would require, for deliberative democracy. Jürgen Habermas writes,

The informal public sphere must, for its part, enjoy the support of a societal basis in which equal rights of citizenship have become socially effective. Only in an egalitarian public of citizens that has emerged from the confines of class and thrown off millennia-old shackles of social stratification and exploitation can the potential of an unleashed cultural pluralism fully develop.²

Jack Knight and James Johnson argue that background equality is even more important for deliberative democracy than for other conceptions of democratic governance:

Government intervention aimed at developing effective participation must disproportionately favor socially disadvantaged groups . . . we do not here propose the redistribution of income and wealth primarily as a remedy for problems posed by the efforts of advantaged actors to exploit resource asymmetries. . . . Rather, we endorse such redistribution as a remedy for the more fundamental difficulty that citizens must possess a certain level of income and resources if they are to develop the basic capacities necessary to be effective participants in democratic deliberation.³

As attractive as they are, the very revolutionary nature of these accounts renders them incomplete. In particular, they offer little guidance regarding the responsibilities of deliberative democrats in the decidedly nonideal circumstances that characterize contemporary politics. Furthermore, they lack an account of how existing institutions and practices might become more deliberative. These omissions have led some critics of deliberative democracy to misunderstand the claims of its proponents. In particular, many claims of deliberative democratic theory relate to the obligations of political actors and institutions under highly favorable conditions. Under such conditions, political actors should settle their differences through deliberation, and they should refrain from using nonpersuasive methods. Does that theory have anything to say about how political actors should behave here and now?⁴

Political circumstances where ordinary force, and not just the force of the better argument, prevails create tension between persuasive methods and

more forceful strategies. Iris Marion Young makes this tension explicit in her recent article "Activist Challenges to Deliberative Democracy":

The deliberative democrat claims that parties to political conflict ought to deliberate with one another and through reasonable agreement try to come to an agreement on policy satisfactory to all. The activist is suspicious of exhortations to deliberate because he believes that in the real world of politics, where structural inequalities influence both procedures and outcomes, democratic processes that appear to conform to the norms of deliberation are usually biased toward more powerful agents. The activist thus recommends that those who care about promoting greater justice should engage primarily in critical oppositional activity, rather than attempt to come to agreement with those who support or benefit from existing power structures.⁵

I contend that there is less opposition between deliberation and activism than this passage suggests. In particular, the most sensible stance for a deliberative democrat who lives and acts in circumstances characterized by inequality is to advance deliberation through persuasion when possible, but not to limit his means to persuasion only. I call this perspective deliberative activism because it holds that widespread inequality and failures of reciprocity can justify nonpersuasive, even coercive, methods for the sake of deliberative goals.

This account of deliberative activism is addressed to those who find deliberative democracy attractive as a political ideal—as an *end* toward which our political institutions and practices should aspire.⁶ To what extent should those who are so inclined also be committed to persuasion, discussion, and reason giving as principal *means* of settling disagreements and arriving at collectively binding decisions even under circumstances that are unfavorable to fair deliberation?

We can dispense quickly with two polar positions. The first position holds that deliberative democrats should limit themselves to communicative methods even under highly adverse conditions such as extreme inequality, pervasive disregard for deliberative norms, and systematic domination. No sensible political ethic can require unilateral political disarmament. Furthermore, this position fails to advance the value that justifies it. When no one else is willing to engage in fair deliberation, those who limit themselves solely to deliberative methods in politics do not thereby succeed in subjecting any collective decisions to the rule of reason. They play the part of wishful-thinking political fools who act in the world as they would like it to be, rather than the world that they actually inhabit.

The other polar position holds that all bets are off "before the revolution." This view recognizes that unfavorable conditions commonly undercut deliberation to the extent that even a highly committed deliberative democrat

should not commit herself exclusively to communicative methods under most contemporary political circumstances. On this view, abiding by such norms undermines the values—political equality, justice, and self-government—that ultimately motivate deliberative democrats. Those ends might be better served by normal, nondeliberative political methods. At the limit, this second position holds that the circumstances of politics let deliberative democrats off the hook. Here and now, they need act no differently than other political actors. They can, and should, deploy all of the means of politics that are ordinarily permissible and available—political power from money, mobilization, status, and the like—according to the existing nondeliberative rules of the political games that are normally played.

While this position is more sensible than the first alternative of bidding farewell to arms, it draws a version of deliberative democracy that is unattractively overidealized in two ways. First, it offers no political ethics; the commitment to an ideal of deliberative democracy does not guide actual political choices. If deliberative democracy really has nothing to say about allowable and desirable courses of action under current political conditions, it lacks relevance and interest. Second, the view offers no guidance regarding how existing circumstances might be transformed to more closely approximate a deliberative ideal. If even proponents of deliberative democracy behave just like everyone else in politics and the public sphere, it is difficult to see how the world in which we live can become more like the one they desire.

An ethical account of deliberative democracy ought to include principles of action that steer between these two extremes by respecting the political sensibilities that motivate the second position while nevertheless contending that deliberative democracy is a demanding ideal that holds its adherents to a higher standard of political behavior. Beyond ethical guidance, such principles would generate an account of how the conditions for deliberation might be improved in incremental, nonrevolutionary steps that occur, in the phrase of Amy Gutmann and Dennis Thompson, in the “middle ground of democracy.”⁷

This middle-level account of deliberative activism proceeds in four parts. The next section develops principles to guide the political actions of deliberative democrats who act in a wide range of suboptimal circumstances. These principles follow a line of reasoning that is analogous to accounts of civil disobedience in liberal societies. Section 3 illustrates how these principles apply to concrete political situations by describing four categories of increasingly hostile circumstances and arguing that the scope of permissible nonpersuasive action grows as the conditions for deliberation deteriorate.⁸ The fourth section describes characteristic kinds of political intervention through which

activists can make institutions and situations more hospitable to deliberative decision making.

2. PRINCIPLES OF DELIBERATIVE ACTIVISM AND THE ANALOGY TO CIVIL DISOBEDIENCE

Though there are as many variants of deliberative democracy as there are theorists of it, the family of views shares enough in common to make possible some generalizations. Fundamentally, deliberative democrats favor governance arrangements in which political decisions are decided according to the exchange of reasons and arguments (broadly conceived and defined) that appeal to shared objectives (e.g., economic growth) or values (e.g., individual liberty or fairness). Theorists have contended that decisions resulting from deliberation will be more informed and rational, that they will reflect a more equal consideration of interests, that they will be less likely to infringe on individual rights, and that such decisions will be more legitimate. Others have argued that deliberation broadens the interests and perspectives of participants, that the self-reflection induced by public deliberation or the participation that it can require deepens individual autonomy.⁹ Deliberation, then, is not typically a justified end in itself but rather a political-institutional method that is desirable because it advances other, commonly agreed upon political values.¹⁰ Deliberative democrats distinctively believe that the method of deliberation secures these values.

Most deliberative democrats, however, acknowledge one objection that critics have put to this contention: deliberative methods of decision making can fail to advance these political values under unfavorable conditions such as economic inequality, cultural difference, or the absence of a reciprocal willingness to engage in the practice of deliberation.¹¹ Taking deliberative democracy seriously as a relevant and practical political theory, therefore, requires a certain faith. The first component of that faith is that deliberation can produce good results not only under circumstances of perfect equality and deep mutual deliberative commitment but also under more realistic conditions. Its second component is that circumstances that are hostile to deliberation can sometimes be made more congenial. These two parts connect when deliberation is ingredient in improving its own background conditions. But practical people are not foolhardy idealists, and so a hard-nosed deliberative democrat does not limit himself solely to persuasive methods of politics. Sometimes, forces more compelling than the better argument are necessary to establish fair and inclusive deliberation or the conditions that support such

deliberation. When circumstances justify the use of such force for deliberative democrats, they become deliberative activists.

Deliberative activists face situations that are, in broad outline, not unlike those who use the tactics of civil disobedience to rectify substantial injustice. While those who practice civil disobedience are committed to certain political goals—such as civil rights, funding for AIDS research, reduction of nuclear weapons, or prohibition of abortion—that they believe to be just and in the common interest, deliberative activists seek the spread of deliberative institutions and the underlying political values that justify those institutions. Like the civilly disobedient, deliberative activists operate in a world whose reality is at large variance with their ideals. Those who practice civil disobedience typically do so with moral trepidation or at least equivocation, for they seek a justice and a peace that is surely governed by laws, yet they violate the law for the sake of those ends. Similarly, the deliberative activist forsakes the use of reason and persuasion for the more common weapons of the political arena only with hesitation and only for compelling reasons. Finally, and most significantly, both the deliberative activist and the practitioner of civil obedience regulate their actions according to a difficult internal calculus that weighs the ethical costs of taking action that violates norms to which they deeply adhere—legal norms for one and deliberative norms for the other—against uncertain gains for justice and deliberative democracy. Since these calculations are complex, internal, and difficult to explain, skeptical outsiders will inevitably accuse those who practice civil disobedience and deliberative activists of hypocrisy.

Many writers have offered principles and assessments of the moral calculus of civil disobedience, and their accounts provide a useful starting point for generating principles to guide deliberative action under unfavorable circumstances.¹² Four such principles should govern the deliberative democrats' choice of political action: fidelity, charity, exhaustion, and proportionality.

The principle of *fidelity* states the normative and empirical commitments of the deliberative activist. He has two principle loyalties, and takes both as falsifiable propositions. The first loyalty goes to the method of deliberation. He believes that deliberative decision making can improve the quality of democratic governance in many situations. This loyalty requires the deliberative activist to tolerate substantial imperfections in deliberative governance processes and outcomes. No democratic procedure is perfectly just in its implementation or results, and fidelity means the deliberative activist believes that many shortcomings of actual deliberations will be outweighed by their other benefits. The second loyalty goes to the integrity of the liberal society in which he lives. The deliberative activist is not a revolutionary.

Like those who practice *civil* disobedience, he views contemporary institutions and political practices as flawed but improvable. He aims, therefore, not at institutional rupture but at incremental improvement in a deliberative direction.

Charity is the second principle of deliberative action. Though political waters in liberal democracies are filled with sharks, the principle of charity requires the deliberative activist to act as if his would-be interlocutors are willing to engage in good faith deliberation, until they prove themselves unwilling to comply with the norm of reciprocity.¹³

The third principle of *exhaustion* explains how the second principle is to be applied. The deliberative activist should refrain from using nondeliberative political methods until reasonable efforts to persuade and institute fair, open, and inclusive deliberations fail. Just as it is morally incumbent upon the civilly disobedient to make their cases through legal means before violating the law, so those committed to deliberation should exhaust deliberative means before resorting to noncommunicative forms of power.

The fourth principle of *proportionality* governs the range of action that follows when deliberative means have been exhausted. When others are simply unwilling to engage in the give-and-take of persuasive communication, the deliberative democrat can, and should, use an array of nonpersuasive means to change their attitudes. However, the choice of means should be scaled according to the extent to which political adversaries and opponents reject the procedural norms of deliberation and the substantive values that ground it. The greater their rejection, the more the deliberative activist is at liberty to conduct politics by noncommunicative means. However, the object of these efforts is always to advance deliberation by ultimately persuading adversaries or by raising the costs of rejecting reason.

Consider a minor violation of deliberative norms in which disadvantaged parties are underrepresented because of self-selection and resource constraints, but not because of intentional efforts to exclude them. In a measured noncommunicative response, the deliberative activist might try to mobilize the relevant disadvantaged population to participate or to develop the persuasive skills and capacities of particularly promising "leaders" from the disadvantaged population. A more serious deliberative violation occurs when some parties claim to be committed to deliberation, but in the course of discussion refuse to consider certain positions or to abide by decisions reached through deliberation. The deliberative activist might seek to generate political pressure that moves such parties to be true to their espoused commitment to deliberation. Pressure might come by expanding the circle of participants in the conversation (e.g., by releasing the proceedings of a closed committee) or by mobilizing popular demonstrations or media attention. Ideally, such

pressure would aim to change the opinions of recalcitrant actors rather than simply obtaining their compliance by coercively increasing the costs of antideliberative behavior.¹⁴

In a still more serious rejection of deliberation, actors might use their status or position to simply dictate that some area of public life should not be open to deliberation because "them's the rules," "it's not up to me (and especially to you)," or "that's not how we do things around here." This class of cases, in which public action is decided through nondeliberative, bureaucratic, or adversarial pluralist processes, constitutes a central institutional challenge for the deliberative activist. He seeks to pry open such institutions and inject deliberative methods into them. Persuasion will seldom be sufficient to effect deep institutional transformation. Such institutional changes have resulted mainly from the efforts of social movements and political parties that employed nonpersuasive means but were committed to the ideals of deliberation and participation.¹⁵ Such means are open to the practical advocate of deliberative democracy (when the principles of charity and exhaustion have been satisfied) because defense of the existing nondeliberative status quo institutions is noncommunicative.

These examples illustrate how a range of increasingly coercive, nonpersuasive action can nevertheless aim to deepen public deliberation. In many cases, however, the hostility of powerful actors can be so deep (extreme failure of the will to reciprocity) and their power so compelling (very unfavorable circumstances of inequality) that deliberation is not a tenable goal. Deliberative activists should nevertheless continue to seek a range of substantive objectives using the full range of otherwise permissible political tactics. In doing so, however, there is nothing distinctively *deliberative* about their actions or moral calculus. In this degenerative category in which deliberation is *ex hypothesi* impossible to advance, the deliberative activist becomes an activist *simpliciter*.

3. DELIBERATIVE FAILURES AND ACTIVIST RESPONSES

To illuminate how these principles guide deliberative activism, consider four categories of situation that impose increasingly demanding strains on deliberative commitments. These categories are defined in Figure 1 according to two dimensions: the extent of background inequality and the presence of reciprocal will to deliberate.

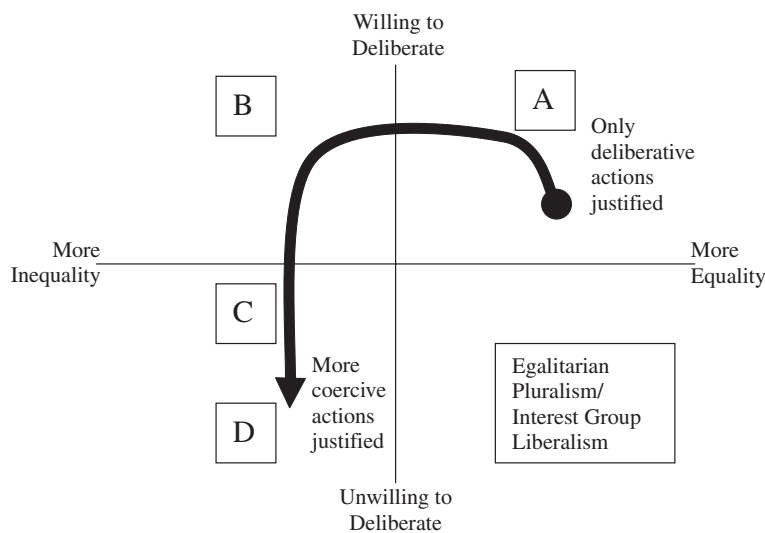


Figure 1: Proportionality Principle

A. Failures of Reason under Favorable Circumstances

Deliberation under circumstances in which participants are eager to take each other's arguments seriously, when all possess roughly equal capacities to deliberate, and everyone agrees to abide by the collective group choice is rare and enviable. Even then, however, it is an imperfect procedure whose results can depart from the substance of justice or effectiveness. Such failures can stem from informational constraints, lack of foresight regarding the consequences of various proposals, or the inability of arguments that lie on the side of justice or wisdom to command appropriate support.¹⁶

Imagine a public school in a wealthy neighborhood where parents, teachers, administrators, and other community members jointly deliberate about how the school should be run. They genuinely aim to establish a rich educational environment for all of the children there. Doing so requires making fair and effective choices regarding curriculum, pedagogy, extracurricular activities, personnel, physical plant, and interactions between school and community. Suppose further that those involved accept many of the arguments that inclusive deliberative governance of their school will generate more fair and effective decisions than other ways of running the local institution. Parents

and other residents are professionals, and so they possess skills and self-confidence to interact with educators on an equal footing.

Despite these reserves of goodwill and conditions of equality, deliberators will no doubt make some poor choices and mistakes, and children will suffer. Under such circumstances, however, the deliberative activist is committed to using only communicative methods to improve the quality and justice of decision making. The principle of fidelity requires participants to suffer some bad decisions as an inevitable consequence of deliberative governance. The rebuttable faith of the deliberative activist includes the belief that deliberation will nevertheless generate superior social choices compared with other methods of making decisions in this arena and that the procedures can be improved by increasing the quality of information or the capacities of participants.

In time, however, the case against deliberation in school governance can become compelling. Evidence might show that nondeliberative methods—hierarchical administration based on educational expertise or new public management methods based on standards and accountability measures—generate more just and effective outcomes. One who accepts this case simply stops being a deliberative activist in the realm of school governance because he rejects the faith that grounds fidelity to deliberation in this area of public life.¹⁷ The tools of social science and policy analysis are sufficiently crude, however, that honest proponents of particular institutional choices—whether market based, hierarchical, or deeply democratic—must confess to no small amount of guesswork and faith in their organizational commitments.

B. Reciprocity without Equality

More commonly, participants to deliberation are willing to engage in the reciprocal exchange of reasons, but they encounter one another from very unequal professional, economic, political, or cultural positions. Many common but poorly organized mechanisms for public participation—public hearings, advisory boards, and the notice-and-comment provisions of administrative rule making—fit this pattern. Even with mutual respect and goodwill, the effect of such inequalities may be that certain groups or points of view are underrepresented, some perspectives are silenced, or particular styles of communication are favored.¹⁸ Under such circumstances, the principles of fidelity, charity, and exhaustion lead the deliberative activist to pursue two general strategies that are not purely persuasive but do not violate the norms of deliberative politics.

First, he should attempt to *bracket the effect of these inequalities upon deliberation* by appealing to the goodwill and normative commitments of

participants.¹⁹ Earnest dedication to fair deliberation should lead more powerful parties, when pressed, to reject the fiction of equality by acknowledging that they derive advantages from their relative economic, cultural, and status positions. This admission, in turn, should lead them to accept, perhaps endorse, measures to mitigate these advantages in public deliberations. Such a program of deliberative affirmative action might include structured facilitation to ensure open and fair communication and provisions that allow weaker parties to move first in setting agendas or offering proposals.²⁰

To illustrate, consider Oregon's public deliberations regarding the expansion of medical care for poor residents. In the early 1990s, the state legislature moved to expand public health coverage to all residents whose income fell below the official poverty line.²¹ To satisfy budget constraints, however, the public health care plan would be limited to cover some conditions and provide some treatments but eliminate others. The Oregon Basic Health Care Act established an expert Health Services Commission of eleven members that would determine which conditions and treatments would be included and which ones excluded. Distinctively, the act also required the commission to make these decisions based on values that emerged from a participatory community process.

In early 1990, 1,003 residents met in a series of forty-six community meetings throughout the state to "build consensus on the values to be used to guide health service allocation decisions."²² By all accounts, the deliberations were well structured and facilitated. Participants received informational materials, watched a slide show to orient them, and received individual questionnaires concerning health care priorities. Participants then discussed their individual rankings of health care priorities with one another and attempted to reach group consensus on the relative importance of various health care values. The groups ranked prevention and quality of life very highly, followed by cost-effectiveness, ability to function, and equity. Somewhat lower in importance were mental health and chemical dependency, personal choice, community compassion, impact on society, length of life, and personal responsibility.²³ The eventual rankings of the Health Services Commission members reflected the values expressed in this process fairly well.²⁴

The main shortcoming of these deliberations, however, lay in who participated. Sixty-seven percent were college graduates and 34 percent had household incomes greater than \$50,000. Seventy percent (!) of the participants were health care or mental health workers. By contrast, the medically uninsured composed just 9.4 percent of participants.²⁵ This extreme participation bias reflected two kinds of underlying inequality. Socioeconomic inequalities allowed wealthier, more educated individuals to participate more easily than poor and less well-educated ones. Inequalities of expertise and profes-

sionalism enabled medical professionals to participate more easily than nonprofessionals.

This participation bias, however, was not a necessary feature of the deliberative process. Even without leveling the underlying inequalities, steps might have been taken to recruit a more demographically representative set of participants. Jack Nagel, for example, suggests that a random selection process similar to that used in James Fishkin's deliberative polls might have eliminated the participation bias.²⁶ Other groups faced with similar situations have targeted their outreach and recruitment efforts to disadvantaged communities—in this case, the poor, undereducated, and uninsured—to mitigate such biases. The extreme participation biases in the Oregon public health plan deliberations were almost certainly unforeseen (though certainly foreseeable). Legislators and civic groups would likely have been receptive to a persuasive case for measures such as random participant selection and affirmative-action recruiting to enhance the quality of the deliberative process.

C. Failures of Reciprocity and Equality

Some skeptics might object that powerful actors seldom engage weak ones with a willingness to constrain themselves according to the norms of deliberation. Our third, still less favorable, category of cases are those in which parties encounter one another from positions of substantial inequality and more powerful actors are unwilling to deliberate. One important stipulation that defines this category, however, is that these initially antideliberative actors could be brought feasibly to embrace a more deliberative disposition through persuasion, through public shame, or by altering the balance of political or economic power.

The deliberative activist seeks to establish communicative decision-making processes even under such difficult conditions. According to the principle of exhaustion, he first attempts to persuade unwilling parties to engage in deliberation on public issues. In many cases, these appeals will not be received warmly. Once persuasive appeals have been exhausted, the principle of proportionality allows nondeliberative forms of action to coerce unwilling parties to deliberate. Temperately, the deliberative activist might attempt to generate political pressure by mobilizing money, popular support, media attention, or legal and administrative pressure. Since many powerful actors in contemporary democracies publicly endorse deliberation even when they do not accept its demands in practice, some may be moved by these pressures and by their own embarrassment to take deliberation seri-

ously. When these methods fail because resistance to deliberation runs deep and resulting injustices are substantial, he might resort to civil disobedience.

To illustrate this variety of deliberative activism, consider the twenty-one-day occupation of Harvard University's administrative offices in 2001 by students and workers demanding that the institution pay all of its workers a "living wage." To many, this action was the antithesis of deliberation: a straightforward exercise in power politics between organized students and workers on one side and management on the other. This seemed to be the view of Harvard's president at the time, Neil Rudenstine, who wrote,

This past year . . . I have met numerous times with student advocates of a mandatory wage floor, as have several other members of the administration. . . . The students now inside Massachusetts Hall continue to disagree with the University's approach, and that is their right. It is also their right to express their views, with vigor and passion. But it is not their right to occupy a University building, to interfere with the conduct of work inside it, and to disrupt the lives of nearby student residents, in an effort to force a different decision. *The view that efforts at coercion and disruptions, as opposed to discussion and persuasion, represent a proper means to achieve a desired result is a mistake, and inconsistent with the fundamental principles of a university.*²⁷ [emphasis added]

Joseph Nye, then dean of the John F. Kennedy School of Government, expressed similar sentiments in an electronic mail message to students and staff of the school, stating,

I was already on record last year that I would like to see higher wages for those who are least well paid in the university. . . . *I disagree, however, about the physical occupation of Mass Hall. A university is a community where reason is uniquely privileged. Once we breach that principle, we have given up one of our most fundamental moral tenets. We become just another political arena.* Civil disobedience has a place in democratic politics, but it raises serious moral problems in a university.

The ethics of means are as important as the ethics of ends. . . . *What happens to the basic value of reasoned discourse when "a right to disrupt" becomes the norm?*²⁸ [emphasis added]

President Rudenstine and Dean Nye claimed that (1) the university is governed according to deliberative procedures (and so is described by circumstances favorable to deliberation described in 3.A. earlier). Therefore, (2) nonpersuasive political acts such as the students' forceful occupation of a building are not justified. This reasoning is valid according to the principles of deliberative action offered earlier. Its premise, however, has a certain *prima facie* implausibility. In universities and other corporations, decisions regarding employee wage scales are not determined according to an inclusive

process of democratic deliberation. They are set by human resources staff, market forces, and administrative hierarchies.

In the specific case of Harvard's employment policies, the claim to deliberation does enjoy some support. In response to student and community advocacy efforts, the president and provost of the university convened an "Ad Hoc Committee on Employment Policies" to study the issue of a living wage in March 1999. The committee's members were chosen by the president and consisted of three university administrators and five faculty members. In May 2000, the Mills Committee, as it came to be known, issued a final report finding that the university "meets and exceeds its stated goal of providing fair and competitive compensation. Harvard provides very generous compensation and benefit packages and a favorable work environment."²⁹ The report did recommend, however, that the university expand its education benefits, include more workers in its subsidized health insurance program, and more carefully scrutinize the employment policies of its outside contractors.

This advisory committee process fell short of ideal deliberation in several respects. The committee excluded important voices and perspectives in its membership, in particular hourly workers and students. However, the committee did accept testimony from these groups. According to accounts from the Harvard Living Wage Campaign, university administrators regarded the committee's report as the terminal point of deliberation.³⁰ Finally, the administration was evidently quite slow in implementing the report's modest recommendations. These failings, combined with the large manifest inequality of decision-making power between administrators on one hand and wage workers and students on the other, falsify the premise that inclusive deliberation produced the university's decisions regarding low wage employment. Its refusal to engage in such deliberation opens the moral avenue for nondeliberative forms of engagement for workers and students, according to the principle of proportionality.

The Harvard Living Wage Campaign was not composed of purposeful deliberative activists. They principally sought the substantive end of a living wage floor—which they defined as \$10.25 per hour—for all workers at Harvard, not to create fair deliberation. However, they figured in a kind of deliberative activism in their public self-justification, their actions, and the concessions that they eventually won from the administration. In their manifesto, "Why We Are Sitting In," the protestors claim to have followed the principles of charity and exhaustion when they write that "we have exhausted every avenue of dialogue with the administration that could lead to a living wage." They detail the dozens of meetings with administrators who considered the living wage to be outside of the acceptable agenda of discussion, and then their failure to obtain an audience with the Harvard Corporation.

Second, the disruption and coercion caused by the sit-in was proportional to the extent of the obstacles to deliberation. The protesters adhered closely to the logic of civil disobedience in attempting to minimize disturbances to public order. There is no doubt that the sit-in disrupted the day-to-day operation of the university directly by forcing the university to relocate some of its administrative operations. The indirect disturbance, however, was much larger. Harvard's employment policies received substantial scrutiny from city and national media as a result of the sit-in. Senator Edward Kennedy and other national figures visited the protestors and endorsed their cause.

This broader public attention generated (nonargumentative) force—perhaps from embarrassment or from the desire to appear and be magnanimous—that compelled the administration to constitute a more fair and inclusive deliberative process. In response to the protestors, Harvard administrators agreed to convene a new committee to examine the issue of low wage employment and issue policy recommendations. The committee, which came to be known as the Katz committee, named after its chairman Lawrence Katz, was composed of ten faculty members, four students, three union members, and two senior administrators. In contrast to the Mills report, the Katz committee found that “wage and contracting practices for lower-paid workers fall short of meeting the University’s goal of being a good employer.” It recommended that the university negotiate new collective bargains with its unions to raise the minimum hourly wage from \$10.83 to \$11.30 and, more importantly, that outside contractors treat their employees comparably.

In the early days of the sit-in, President Neil Rudenstine said that he would be pleased “to continue to exchange views, in appropriate settings, *once an environment of genuinely free discussion has been restored*” [emphasis added].³¹ He saw the disruptive and coercive sit-in as antithetical to deliberation. Given the failure of deliberative reciprocity on the part of the administration and the large structural inequality between the university’s administration on one hand and hourly workers and students on the other, a degree of coercive pressure was likely necessary to create fair and inclusive deliberation.

D. Incurable Hostility

The case of the Harvard Living Wage Campaign was distinguished by the possibility of establishing fair and inclusive deliberation. In other cases, however, obstacles are so high—perhaps because systems of decision making in that arena are highly entrenched and bureaucratized or because the inequality of power is so great—that there is no feasible path to advance deliberation. Such circumstances release the deliberative activist from his

particular ethics. Because it is impossible to join such would-be interlocutors in fair deliberation, he is at liberty to engage with them using the full array of bargaining, negotiating, purchasing, protesting, and more militant confrontational tactics that are regulated by the ordinary nondeliberative political ethics of pluralist regimes.

The space to act on deliberative faith in such encounters is severely cramped. One might, for example, act in confrontational ways in the hope that, in the long arc of history, those that seem now incorrigible will embrace deliberation eventually. More commonly, activists might view participatory and deliberative democracy as an appropriate way to organize their own ranks. They can favor such nonhierarchical group structures because they are more efficacious or because they wish to model in miniature the politics they seek to create in the larger world. Francesca Polletta, for example, has argued that some of the major social movements in American history have embraced deliberative methods on efficacy grounds and shows how some antiglobalization groups have perfected the techniques of internal deliberation.³² Francis Dupuis-Deri argues more broadly that the internal deliberative practices of many of the organizations in the antiglobalization movements in Seattle, Montreal, Genoa, and elsewhere justify their militant confrontational actions as part of a larger scheme of deliberative democratic governance.³³

While the actions of these groups may or may not be justified, their behavior is more properly couched in the frame of pluralist politics rather than deliberation. The governance arrangements that set the terms of world trade and international finance among states are not now, nor will they become in the foreseeable future, fair and inclusive deliberations. Activists in social movements who view the decisions of these bodies as unjust seek primarily to influence them through coercive pressures that increase the costs to these bodies. These activists, even if they are themselves deliberative democrats, have no particular moral obligations to organize themselves in internally deliberative or democratic ways.

4. TOWARD DELIBERATIVE INCLUSION

The principles of exhaustion and proportionality suppose a range of measures that can successfully mitigate the effects of inequality upon deliberation and moderate the reluctance of powerful parties to act with deliberative reciprocity. Consider now a framework to conceptualize the kinds of measures and strategies available to deliberative activists to address failures of reciprocity and political, economic, social, and cultural inequality.

A. The Deep Structure of Deliberative Failure

Much of the commentary regarding the steps necessary to create the conditions conducive to deliberation follows the passages provided earlier from Habermas and Knight and Johnson in that they contemplate far-reaching changes to politics and culture that would simply eliminate the salient inequalities. Economic inequalities, for example, enable wealthier parties to improperly displace communicative power by mounting threats, purchasing compliance, drowning out other perspectives, mobilizing many forms of support, or simply privatizing some area of concern out of the domain of public deliberation. Another effect of such inequality is that individuals encounter each other with very different capacities to deliberate. Political and administrative inequalities allow officials to restrict and eliminate domains of deliberative governance and to substitute canonical expertise for argument when they do engage with citizens. Finally, cultural inequalities may favor hegemonic discourses or styles of communication in deliberative decision making.

While the political theory of deliberative democracy correctly requires much more equality of society than presently exists, this revolutionary recommendation is not very helpful for deliberative activists. In normal times (by definition), activists lack the wherewithal to alter these deep structures of inequality. If improving deliberation required altering these deep structures, then the concept of a deliberative activist would be an ideal without a practice. But, there are many steps that can be taken to improve the quality of deliberation short of revolutionizing its circumstances. The outcomes of any particular deliberation do depend in part on the extent of background inequalities, but the effects of those inequalities are mediated by the character of the deliberative encounter, the institutions regulating that encounter, and the larger balance of external political forces.

B. Microregulation: The Face-to-Face Encounter

At the opposite end of the spectrum of political action, deliberative activists have developed a range of measures at the level of face-to-face interaction that work to bracket substantial inequalities of knowledge, influence, and communicative capacity. Indeed, there are armies of consultants who purport to improve the quality of intergroup discussion and decision making. Their techniques long ago surpassed the antiquated parliamentarianism still common in many public meetings such as the New England town meetings documented so ably by Jane Mansbridge³⁴ and Frank Bryan.³⁵

The most common such measure is facilitation. Nearly all professionally organized deliberative encounters, including Jim Fishkin's deliberative polls, citizen juries, meetings organized by AmericaSpeaks, National Issues Forums, and study circles, provide facilitators means to regulate discussion. It is no secret that neutral and well-trained facilitators often make deliberations proceed more smoothly and ensure that particular individuals do not dominate conversations. While facilitation cannot completely compensate for various kinds of inequality, skilled facilitation does mitigate against some of the better-known pathologies of deliberation such as issue polarization.³⁶

Deliberative practitioners also commonly provide salient materials and issue training to enhance the competence of individuals prior to engaging with one another in decision-making conversations. All of the organizations just mentioned also provide briefing books or other background materials so that participants will possess a minimum common level of knowledge on some issue. In more situated deliberations such as parental engagement in school governance, neighborhood safety, or public budgeting, citizens often undergo training programs that better enable them to analyze complex issues and engage with public officials.

C. Institutional Reforms

While face-to-face interventions might mitigate some of the inequalities that can distort deliberative exchange, such interventions are fundamentally limited by the goodwill of more powerful parties and in particular by their willingness to refrain from translating their superior positions and capabilities to deliberative advantage. A third strategy of deliberative activism is to alter the political and administrative institutions in which participation and deliberation occur to make these rules of the game more conducive to fair deliberation. Such institutional transformations can level some of the consequences of background inequalities upon deliberation and increase the disposition of parties to deliberate.

Activists can, for instance, press for new rules that impose requirements on officials to deliberate with one another or, more commonly, with citizens. The most modest of such devices include notice and comment provisions of federal rule making that require administrative agencies to entertain and respond to comments from any member of the public. Similarly, public hearings, open meetings requirements, and advisory councils commonly compel officials to listen to the concerns of citizens and civic associations on almost every imaginable public issue. Such mechanisms are limited because they generate consultation rather than equal deliberation as such.

A more ambitious kind of institutional reform reallocates authority over some domain of public decision from nondeliberative structures to deliberative ones. In the much-touted and studied case of Porto Alegre, Brazil, for example, political reforms in the early 1990s shifted decision-making power over the capital portion of the city's budget from a closed bureaucratic process to a bottom-up participatory one in which residents and associations articulate their preferences and deliberate with representatives from the municipal agencies about the wisdom and feasibility of various projects.³⁷ In the state of Kerala, India, control over 40 percent of state revenues was shifted from state-level agencies to a newly created system of local deliberative planning bodies that provide for inclusive citizen participation.³⁸ In the North American city of Minneapolis, the Neighborhood Revitalization Project creates a more limited form of participatory budgeting in which neighborhood groups deliberate to develop public projects that are financed by \$400 million in public funds.³⁹ Other institutional measures shift the locus of administrative rather than budgetary decision making. In the city of Chicago, for example, a 1988 law shifted many of the decisions regarding the governance of public schools away from central administrators to site-based councils composed of parents, community members, and school staff.⁴⁰

Such institutional reforms foster the reciprocal will to deliberate by changing the unequal authority relationships that make it possible for officials to resist deliberation in the first place. No longer able to simply dictate budgets, policies, or the details of their implementation, these institutional reforms create incentives for officials to offer persuasive arguments because they confer upon citizens direct and binding authority. Many kinds of inequality—of knowledge, status, and deliberative capability—will no doubt persist between officials and citizens, but changing the allocation of authority narrows these gaps and so increases the prospects for fair deliberation.

D. Political Mobilization

One objection to these suggestions for deliberative institutional reform is that those who wield power in the unreformed versions of these institutions seldom willingly accept deliberative transformations that dilute their authority or weaken their bargaining positions. While this realpolitik objection may underestimate the extent to which some officials are committed to democratic ideals, it accurately describes a large portion of political reality. But the principles of exhaustion and proportionality do not limit the deliberative activist to persuasive methods in pursuit of deliberative governance arrangements. When persuasion fails, muscular political mobilization—by social

movements, political parties, or interest groups—is warranted. Such non-deliberative power can advance deliberative ends in two ways. It can provide the pressure necessary to establish deliberative institutions of the sort just described. Such organized external social and political force can also create more equal external contexts that favor fair deliberation inside these institutions. In both Kerala, India, and Porto Alegre, Brazil, for example, victorious left-wing political parties imposed participatory and deliberative institutional reforms over the strenuous objections of administrators and politicians who wielded much greater authority under the *status quo ante* arrangements.

5. CONCLUSION

We often find ourselves in sociopolitical circumstances that mock our espoused commitments to democracy and equality. When realities strain our political ideals to the breaking point, they challenge us intellectually to imagine how the world we inhabit might come to conform more closely to those ideals. A portion of that challenge is commonly met with critical and constructive social theories that explain what the failings of economic, political, and social structures are and show how those structures can be transformed. The pages of this essay join another, more intimate, face of that challenge by offering a political ethic that connects the ideal of deliberative democracy to action under highly hostile circumstances. In such a world, the distinctive moral challenge is to maintain in thought and action the commitment to higher political ideals despite the widespread violation of those norms. Deliberative activism offers an account of how it is possible to practice deliberative democracy in the face of inequality and hostility without being a political fool.

NOTES

1. But, see the recent trend in liberal constitutionalism, which seeks to reinterpret existing institutional forms and circumstances as embodying the idea of deliberative democracy. John Dryzek observes that work in deliberative democracy has taken a decidedly liberal constitutionalist, as opposed to participatory democratic, turn since the late 1990s. See John Dryzek, "Discursive Democracy vs. Liberal Constitutionalism," in *Democratic Innovation: Deliberation, Representation, and Association*, ed. Michael Saward (London: Routledge, 2000), 78-89.

2. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1998), 308.

3. Jack Knight and James Johnson, "What Sort of Equality Does Deliberative Democracy Require?" in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), 279-320, p. 307.

4. Russell Hardin correctly observes that though "[aside from inequality] there may be no larger literature in recent political philosophy larger than that on deliberative democracy . . . there is little instruction for the neophyte on just how such a theory works on the ground." Part of such a grounded deliberative democratic theory should guide political actors who operate under conditions of substantial injustice. Russell Hardin, "Deliberation: Method, Not Theory," in *Deliberative Politics: Essays on Deliberation and Disagreement*, ed. Stephen Macedo (Princeton, NJ: Princeton University Press, 1999), 103-19.

5. Iris Marion Young, "Activist Challenges to Deliberative Democracy," *Political Theory* 29, no. 5 (2001): 670-90. See also Joshua Cohen and Joel Rogers, "Power and Reason," in *Deepening Democracy: Experiments in Empowered Participatory Governance*, ed. Archon Fung and Erik Olin Wright (London: Verso Press, 2003), 237-55, p. 248.

6. While the commitment to an ideal of deliberation is not universally shared among democrats, the argument that follows is addressed to those who are so committed. Those who reject any ideal of deliberation believe that there is no particular obligation for political actors to limit themselves to communicative and deliberative methods even where everyone else acts in full accordance with these norms by sincerely listening, attempting to understand differing perspectives, assessing and being moved by reasons, and acting to increase political equality in deliberation. In short, they reject any duty to deliberate, even under very favorable circumstances. The following argument supposes, without argument, that there is indeed a duty to deliberate. Its contribution is to explore the implications of that duty in a variety of more and less perfect circumstances. Deliberative activists believe the duty to deliberate is a component of democratic citizenship, and they act to make political institutions and other political actors conform to the requirements of deliberation. Their reasons for favoring the deliberative understanding of democracy over others have been given many times over the past two decades, and we do not rehearse them here.

7. Amy Gutmann and Dennis Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done about It* (Cambridge, MA: Harvard University Press, 1996).

8. For a more general account that deploys similar reasoning in professional ethics, see Arthur Isak Applbaum, *Ethics for Adversaries: The Morality of Roles in Public and Professional Life* (Princeton, NJ: Princeton University Press, 1999).

9. For an excellent overview of these and other justifications for deliberation, see Samuel Freeman, "Deliberative Democracy: A Sympathetic Comment," *Philosophy and Public Affairs* 29, no. 4 (2000): 371-418.

10. But, for an account in which deliberative democracy is an ideal of governance that renders the concept of a self-governing community of free and equal citizens, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), 67-92.

11. On the idea of deliberative reciprocity, see Dennis Thompson and Amy Gutmann, *Democracy and Disagreement*, 52-94.

12. See John Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, 1973), 363-91; and Ronald Dworkin, "Civil Disobedience and Nuclear Protest," in *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), 104-16.

13. Gutmann and Thompson, *Democracy and Disagreement*.

14. In his essay on civil disobedience, Ronald Dworkin (1985) makes this distinction between persuasive and coercive disobedience.

15. See Fung and Wright, eds., *Deepening Democracy*.

16. See Arthur Lupia, "Deliberation Disconnected: What It Takes to Improve Civic Competence," *Law and Contemporary Problems* 65, no. 3 (2002): 133-50.

17. These principles do not justify coercive action to remake every institution into a directly deliberative form. Many institutions that are not themselves organized deliberatively may nevertheless operate as parts of a larger scheme of deliberative democratic governance. A deliberative democracy need not be deliberative in all of its parts. For simple reasons of efficiency, for example, deliberative democratic reorganization may not be appropriate for highly specialized and already effective public bureaucracies such as tax collection authorities. Following Nancy Rosenblum and many others, deliberative democracies should protect the space for members of civic and private associations to choose their own organizational structures to preserve liberty and cultural diversity. Some will predictably favor hierarchical and nondeliberative forms. See Nancy Rosenblum, *Membership and Morals: The Personal Uses of Pluralism in America* (Princeton, NJ: Princeton University Press, 1998).

18. See, for example, Lynn Sanders, "Against Deliberation," *Political Theory* 25, no. 3 (1997): 347-76.

19. See, for example, Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 109-42.

20. For contemporary measures that some groups have taken to enhance equal deliberation in their meetings, see Francesca Polletta, *Freedom Is an Endless Meeting: Democracy in American Social Movements* (Chicago: University of Chicago Press, 2002).

21. Lawrence Jacobs, Theodore Marmor, and Jonathan Oberlander, "The Political Paradox of Rationing: The Case of the Oregon Health Plan" (manuscript, Innovations in American Government Program, John F. Kennedy School of Government, Harvard University, 1998).

22. See Romana Hasnain and Michael Garland, *Health Care in Common: Report of the Oregon Health Decisions Community Meetings Process* (Portland: Oregon Health Decisions, 1990); and Carmen Sirianni and Lewis Friedland, *Civic Innovation in America: Community Empowerment, Public Policy, and the Movement for Civic Renewal* (Berkeley: University of California Press, 2001).

23. Hasnain and Garland, *Health Care in Common*, 5-6.

24. Jack Nagel, "Political Accountability: Combining Deliberation and Fair Representation in Community Health Decisions," *University of Pennsylvania Law Review* (May 1992): 1965-85.

25. Hasnain and Garland, *Health Care in Common*; see also Nagel, "Political Accountability" for criticism and discussion.

26. See Nagel, "Political Accountability"; and James Fishkin, *The Voice of the People* (New Haven, CT: Yale University Press, 1995).

27. Statement of President Neil Rudenstien, April 23, 2001.

28. Electronic message dated May 2, 2001.

29. Report of the Ad Hoc Committee on Employment Policies Report, Executive Summary, p. 9.

30. The students wrote, "Since the committee released its recommendations—rejecting the implementation of any wage standard whatsoever for Harvard workers—administrators have told us that the issue is closed: they will consider no further changes, or even investigations into possible changes." Harvard Living Wage Campaign. "Why We Are Sitting In," September 3, 2003, <http://www.hcs.harvard.edu/pslm/livingwage/why.html>.

31. See Xavier de Souza Briggs and Marshall Ganz, "The Living Wage Debate Comes to Harvard," John F. Kennedy School of Government teaching case (draft, 2001).

32. Francesca Polletta, *Freedom Is an Endless Meeting*.

33. Francis Dupuis-Deri, "Confrontation or Deliberation: Is Confrontational Politics Legitimate in a Deliberative Regime" (manuscript, 2002).

34. Jane Mansbridge, *Beyond Adversary Democracy* (New York: Basic Books, 1980).
35. Frank M. Bryan, "Direct Democracy and Civic Competence: The Case of the Town Meeting," in *Citizen Competence and Democratic Institutions*, ed. Stephen L. Elkin and Karol Edward Soltan (University Park: Pennsylvania State University Press, 1999), 195-224.
36. See Cass Sunstein, "The Law of Group Polarization," *Journal of Political Philosophy*, 10 (2002): 175-95.
37. Gianpaolo Baiocchi, "Participation, Activism, and Politics: The Porto Alegre Experiment," in *Deepening Democracy*, 45-76.
38. T. M. Thomas Isaac and Patrick Heller, "Democracy and Development: Decentralized Planning in Kerala, India," in *Deepening Democracy*, 77-110.
39. Provide complete citation for Minneapolis Revitalization Program design elements; September 22, 2003, <http://www.nrp.org/>.
40. See Archon Fung, *Empowered Participation: Reinventing Urban Governance* (Princeton, NJ: Princeton University Press, 2003).

Archon Fung is an associate professor of public policy at Harvard's John F. Kennedy School of Government. His research examines the impacts of civic participation, public deliberation, and transparency upon public and private governance. His Empowered Participation: Reinventing Urban Democracy (Princeton University Press, 2004) examines two participatory-democratic reform efforts in low-income Chicago neighborhoods. Current projects also examine participatory initiatives in ecosystem management, toxics reduction, endangered species protection, local governance, and international labor standards. His recent books and edited collections include Deepening Democracy: Institutional Innovations in Empowered Participatory Governance (Verso Press, 2003), Can We Eliminate Sweatshops? (Beacon Press, 2001), Working Capital: The Power of Labor's Pensions (Cornell University Press, 2001), and Beyond Backyard Environmentalism (Beacon Press 2000). His articles on regulation, rights, and participation appear in Politics and Society, Journal of Political Philosophy, Governance, Environmental Management, American Behavioral Scientist, the Boston Review, and other journals. He received two SBs and a PhD from the Massachusetts Institute of Technology.