The Political Egalitarian's Dilemma

Introduction

As many have observed, democratic theory has become deliberative (Bohman 1998, Dryzek 2000). This means that democracy is now widely perceived not simply as a mechanism to aggregate pre-politically fixed individual interests, but as a process of public reasoning in which conflicting interests are scrutinized and transformed. For deliberative democrats, the main focus is thus not on what happens at the ballot box, but on the scope of public discussion in democratic decision-making. They explore how deliberative processes can resolve controversial policy issues in pluralist societies.[1]

This shift in the interpretation of what democracy is all about has normative implications. It is thus not surprising that the emergence of the paradigm of deliberative democracy has revived the debate about democratic legitimacy – about the normative conditions that democratic processes need to satisfy. Many factors may contribute to democratic legitimacy, and what exactly is required for legitimacy is an issue that remains unsettled.[2] There cannot be much dispute, however, that some condition of political equality is a necessary ingredient of democratic legitimacy. Charles Beitz, in what is probably still the most important book on this topic, distinguishes between "the role or function of the egalitarian ideal in democratic theory and its content" (Beitz 1989: 17). According to Beitz, the role of political equality is the following. It "serves as the chief regulative principle of democratic political competition by defining fair terms of participation in it" (Beitz *ibid*). Specifying the content of political equality is to spell out what this regulative principle requires. There can be many specifications: "Its

[1] A prime example is the theory of deliberative democracy put forward by Gutmann and Thompson (1996, 2004).

[2] I discuss this debate in Peter (2006).

content admits of a variety of interpretations, each corresponding to a particular understanding of 'fair terms of participation.' Thus, we might say that the main philosophical task of a theory of political equality is to identify the best interpretation of the content of this idea" (Beitz *ibid*).

Beitz's book was written before the recent literature on deliberative democracy really took off, but his book nevertheless has paved the ground for addressing the requirement of political equality within theories of deliberative democracy. In deliberative democracy, political equality has to ensure that people can participate in the deliberative process as equals. The interpretation of political equality in deliberative democracy thus differs significantly from its counterpart in aggregative democracy. Whereas the latter relies on the "one person one vote" formula, legitimacy in deliberative democracy demands access to the institutions of public deliberation. In deliberative democracy, political equality is thus clearly a substantive ideal, not just a procedural one.[3]

In this paper, I shall discuss a conceptual problem that affects the interpretation of the content of political equality in deliberative democracy. I shall argue that the attempt to spell out the requirement of political equality as a condition for democratic legitimacy leads into a dilemma. By focusing on political equality, I am not claiming that it is the only relevant consideration for democratic legitimacy in the theory of deliberative democracy.[4] Nor do I intend to imply that the difficulty with political equality is the only difficulty that affects the ideal of deliberative democracy. But since

[3] Many deliberative democrats emphasize this, see e.g. Bohman (1996, 1997), Christiano (1996), Gutmann and Thompson (1996, 2004), Cohen (1997), Knight and Johnson (1997).

[4] Estlund (2000), for example, argues that there is generally too much emphasis on political equality and too little on what he calls "political quality". I discuss this issue elsewhere (Peter 2006) and want to bracket it in this paper.

most theorists agree that political equality is at least a necessary condition for legitimacy, a dilemma that affects this condition affects deliberative democracy at its core.

The dilemma arises from the tension between the following two desiderata. On the one hand, one might want to argue that political equality must mean that people can effectively participate in the deliberative process as equals. The idea is to avoid a situation where differences in people's effective ability to participate in the deliberative process undermine the legitimacy of democratic decisions. From this perspective, one will want to ensure that the process of deliberative decision-making satisfies an extensive set of conditions relating to political equality. To give a few examples, these conditions might refer to the availability of education, regulate the influence of differences in income and wealth on the political process, or speak to access to the media. This first desideratum suggests a strong criterion of political equality. I call a criterion of political equality strong if it is formulated with regard to people's abilities to make effective use of political resources. On the other hand, one might want to argue that the purpose of deliberation is to reach a decision on contested issues under conditions of pervasive pluralism. Deliberative democrats take as their starting-point the lack of a prior consensus on substantive judgments. From this perspective, one will want to ensure that substantive judgments are left as much as possible to the scrutiny of public deliberation. Accordingly, political equality is a means to ensure deliberation over potentially controversial issues, but should not, itself, rely on potentially contested substantive value judgments. The second desideratum is thus to keep as minimal as possible the set of substantive conditions that is imposed on the deliberative process. It

suggests a weak criterion of political equality. I call a criterion of political equality weak if it is formulated with regard to a set of all-purpose means.[5]

The dilemma is the following. If, on the one hand, the substantive constraints on the deliberative process are kept to a minimum, only a weak criterion of political equality can be imposed on the deliberative process. This criterion may fail to ensure the effective equality of participants in the deliberative process, which undermines the legitimacy of the outcomes of such a process. If, on the other hand, political equality is interpreted comprehensively, many substantive judgments will be packed into the conditions imposed on the deliberative process. They will be treated as exempt from deliberative evaluation. The stronger the criterion of political equality, the more emphasis is placed not just on general political resources, but on people's abilities to make effective use of these resources, the narrower the scope for democratic scrutiny. This, again, jeopardizes democratic legitimacy. Thus, a strong criterion of political equality, which focuses on people's possibilities to participate in the deliberative process as effectively equals, will fail to ensure democratic legitimacy because it will exempt too many value judgments from deliberative democratic scrutiny. A weak criterion of political equality will fail to ensure democratic legitimacy because many will not have been able to participate in the deliberative process as effectively equals. In other words, the political egalitarian's dilemma reveals a clash between the attempt to ensure equal possibilities to participate in the democratic process and the requirement of subjecting substantive judgments to deliberative evaluation.

To substantiate the political egalitarian's dilemma, it will be helpful to draw on the well-known "equality of what?" debate. This debate is concerned with the appropriate informational framework for conceptions of social justice. I shall show that

[5] The distinction between a weak and a strong criterion of political equality echoes Sen's distinction between "means" and "freedoms (Sen 1990).

there is an analogous "political equality of what?" question for democratic legitimacy. The dilemma political egalitarians face can be exemplified by a hypothetical choice between two alternative informational frameworks – between interpreting political equality in terms of John Rawls' primary goods framework (Rawls 1982) and in terms of Amartya Sen's capability approach (Sen 1985). Primary goods are features of basic social institutions that everyone should have access to. The primary goods framework lends itself to the specification of a weak criterion of political equality. The capability approach, meanwhile, focuses not on institutions, but on the effective positive freedoms a person has. It lends itself to the specification of a strong criterion of political equality. Indeed, several deliberative democrats have been drawn to the capability approach to spell out the requirement that people be able to participate in the deliberative process as equals (Bohman 1996, 1997; Knight and Johnson 1997). The political egalitarian's dilemma shows that in spite of the initial attractiveness of the capability approach, there are reasons to be cautious and even to favor a weak criterion of political equality based on Rawlsian primary goods.

The political egalitarian's dilemma and the issues raised by the contrast between the two informational frameworks are a result of the tension between "procedures" and "substance" that is well recognized in democratic theory. It has sometimes been argued, most prominently by Joshua Cohen (1997), that deliberative democracy is able to overcome this tension.[6] According to Cohen, the procedure vs. substance dilemma does not arise in deliberative democracy – it only affects aggregative democracy. The reason is that deliberative democracy, unlike aggregative democracy, entails a certain set of substantive commitments. As such, it is able to create harmony between considerations

[6] I shall focus on Cohen, but many deliberative democrats have written on how deliberative democracy combines considerations of procedure and substance, indeed on how this is a key feature of deliberative democracy. See also Gutmann and Thompson (1996, 2004), for example.

of procedure and of substance. I shall argue that there is a problem with this argument. The political egalitarian's dilemma reveals that the tension between procedure and substance continues *within* deliberative democracy.

Cohen's Procedure vs. Substance Dilemma

In his justly famous essay "Procedure and Substance in Deliberative Democracy", Cohen (1997) argues that deliberative democracy offers a solution to a well-known dilemma in the theory of democratic legitimacy. The problem is the following. On the one hand, democrats will maintain that substantive judgments are legitimate only if they have been made through democratic procedures. On the other, however, it is easy to think of examples for how substantive judgments that have been made through democratic procedures sometimes fail to be legitimate because of their conflict with fundamental (political) values. The well-known problem of the tyranny of the majority illustrates the dilemma. The tyranny exerted by the majority is compatible with political equality and democratic procedures, but it can generate oppression like any other form of government. John Stuart Mill characterizes this problem well (1869: 8f):

> Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression … Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling … There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism.

Mill's tyranny of the majority addresses the tension between "prevailing opinion" and "individual independence". A related case of the dilemma arises as a result of the tension between majority and minority cultures. The dilemma manifests itself, for example, when a democratic collective, through regular procedure, sanctions a policy that infringes on the rights of minority groups, e.g. a policy that is racist. While the substantive judgment has been made through democratic procedure, and as such should qualify as legitimate, the judgment nevertheless appears illegitimate because of its content.

Here is a rough outline of Cohen's account of the dilemma and of his argument of how it can be solved. The dilemma can be characterized as a clash between the following two claims:

(i) Democratic procedures are necessary and sufficient for legitimacy.

(ii) Democratic procedures are not sufficient for legitimacy.

If one relies exclusively on procedures, the resulting outcomes may fail to be legitimate because they conflict with certain fundamental values. If, however, substantive value judgments are made through other avenues than democratic procedures, these judgments do not have a legitimate basis.

How does deliberative democracy solve this dilemma? Cohen argues that, compared to aggregative democracy, deliberative democracy imposes more substantive constraints on the democratic process. The aggregative conception only demands that the procedures give equal consideration to individual preferences. These preferences can be of any content. Deliberative democracy requires that the procedures ensure that reasons are given that are acceptable to everyone; not all substantive judgments will pass this test. Policies that discriminate on the basis of race or gender, for example, will prove not to be justifiable. Cohen argues that because it brings considerations of procedures and substance into harmony, deliberative democracy suggests a way for how

the dilemma can be solved. According to this view, substantive judgments are legitimate if and only if they are compatible with the constraints deliberative democracy imposes on the democratic process.[7]

Cohen's solution involves the following steps. On the basis of the difference between aggregative and deliberative democracy he argues, first, that claim (i) needs to be modified. Democratic procedures are necessary for legitimacy but, without further qualification, they are not sufficient.

(i') Democratic procedures are necessary for legitimacy.

This removes the tension and (trivially) yields

(iii) Democratic procedures are necessary, but not sufficient for legitimacy.

The next step consists in answering the question of how legitimacy can be guaranteed. To argue that deliberative democracy has an answer to this question, Cohen defends two further claims. The first concerns the constraints deliberative democracy imposes on the democratic process.

(iv) Deliberative democratic procedures are a subset of democratic procedures that fulfill a certain set of substantive criteria.

Cohen lists three principles which summarize the requirements of deliberative democracy: the principles of (1) deliberative inclusion; (2) orientation towards the common good; and (3) participation. The first principle requires that one need to justify one's views to others.[8] The second specifies that justification should refer to a common good, not to private interests. The principle of participation, finally, refers specifically

[7] Many deliberative democrats would argue something similar. Gutmann and Thompson (2004), for example, also argue that deliberative democracy combines procedural and substantive principles. Their focus is not so much on the relationship between the two, however. Instead, they argue that judgments on both will always be contestable and thus necessarily provisional. I will come back to this strategy below.

[8] This condition seems to correspond to what Gutmann and Thompson (1996, 2004) call reciprocity.

to political equality. Cohen spells out its demands in the following way (1997: 422): the deliberative process

> "must ensure equal rights of participation, including rights of voting, association, and political expression, with a strong presumption against restrictions on the content or viewpoint of expression; rights to hold office; a strong presumption in favor of equally weighted votes; and a more general requirement of equal opportunities for effective influence."

The principles taken together demand that people be able to effectively participate in the democratic process as equals, that justification is owed to everyone, and that acceptable justifications invoke the common good (not just particular interests). These criteria, Cohen argues, should ensure that the outcomes of the democratic process will be acceptable to everyone. The claim is thus the following.

(v) The substantive criteria are necessary to ensure that the outcomes of democratic procedures are acceptable to everyone.

Finally, the last step in Cohen's argument is to defend the claim that because a deliberative process, properly constrained, yields outcomes that everyone finds acceptable, deliberative democracy is not only necessary, but also sufficient for democratic legitimacy.

(ii') Deliberative democratic procedures are sufficient for legitimacy.

This establishes:

(vi) Deliberative democratic procedures are necessary and sufficient for legitimacy.

Deliberative democracy, in this view, can reconcile considerations of procedure and substance. The substantive constraints imposed on the democratic process limit the range of possible outcomes and guarantee the legitimacy of the decisions made. The problem of the tyranny of the majority, for example, does not occur because outcomes

have to be justifiable to everyone. In other words, the line of argument concludes that the legitimacy requirements specific to deliberative democracy are more robust than those underlying aggregative democracy.

I believe that this line of argument – of which I have only given the barebones – characterizes not just Cohen's view but is quite widely held by deliberative democrats.[9] Moreover, precisely the way in which it solves the tension between procedure and substance is generally believed to be one of the appeals of deliberative democracy. I shall argue, however, that there is a problem with this argument. It hides a further dilemma for democratic legitimacy. This dilemma relates to the interpretation of political equality. Deliberative democracy, as interpreted by Cohen and others, provides no solution to what I call the political egalitarian's dilemma. In fact, because of the greater demands that deliberative democracy imposes on the democratic process, the dilemma affects deliberative democracy to a greater degree than it affects aggregative democracy.

The Political Egalitarian's Dilemma

If deliberative democracy is to resolve the tension between considerations of procedure and of substance in the way that the previous argument suggests, it should be possible to specify the set of constraints imposed on the democratic process without theoretical ambivalence. This is to say, the ideal of deliberative democracy should determine, at least in principle, how the substantive criteria mentioned in claim (iv) should be interpreted. The point is perhaps best made by analogy to Rawls' idea of a four-stage sequence through which the ideas expressed in the principles of justice are rendered practicable. (Rawls 1971: 195ff). In Rawls' sequence, the first stage is the one in which the principles of justice get selected. The next three stages are the constitutional, the

[9] For an excellent overview over the recent literature on deliberative democracy, see Freeman (2000).

legislative, and, finally, the juristic and administrative stage, in that order. The point of this sequence is that what is decided at one stage restrains the range of possibilities in the next stage; there is thus no need for the principles of justice identified in the first stage to take account of all institutional details and special cases. A similar construction should be applicable to the ideal of deliberative democracy. A first stage would identify the ideal of deliberative democracy. This ideal should offer sufficient guidance for how to spell out the set of substantive criteria in subsequent stages. For Cohen's argument to work, it has to be ruled out that the specification of the substantive criteria for deliberative democratic processes conflicts with other premises of his argument. Unfortunately, I will argue, this is not the case. Focusing on one criterion – that of political equality – I will show that there is an ambivalence in the ideal of deliberative democracy about how it should be specified and that alternative specifications lead into clashes with other premises of Cohen's argument. This situation creates the political egalitarian's dilemma.

I focus on political equality because I regard this as the most fundamental principle in Cohen's list. What the other two principles (inclusion and orientation towards the common good) require will depend on how the requirement of political equality is interpreted. Now, if the requirement of political equality cannot be given a clear meaning, then the claim that deliberative democratic procedures are necessary and sufficient for democratic legitimacy stands on shaky ground. Political equality is a key requirement for democratic legitimacy and a dilemma that affects its specification will affect deliberative democracy at its core.

I want to introduce the problem by comparing alternative ways of interpreting political equality. The "Equality of What?" debate, which is concerned with the appropriate informational framework for a theory of justice, can be fruitfully applied to the issue of political equality as well. The debate originated in the early 1980ies with an

article by Sen with that title (Sen 1980) and continues until today (e.g. Fleurbaey 2002; Pogge 2002; Vallentyne 2005). Three main alternatives are discussed in this debate: welfare and opportunities for welfare, resources – including primary goods – and capabilities.[10] I shall concentrate on the comparison between capabilities and primary goods. Sen very influentially objected that the primary goods framework fails to be responsive to individual differences in the ability to make use of resources (Sen 1980). He proposes his capability approach as an alternative.[11] Many deliberative democrats have been drawn to the capability approach to interpret the requirements of political equality and have defended it over alternative informational frameworks, in particular over the primary goods framework (Bohman 1996, 1997; Knight and Johnson 1997). Let me start with an interpretation of political equality in terms of the latter.

According to Rawls (1982: 163), "primary goods are certain features of institutions or of the situation of citizens in relation to them. … We are not required to examine citizens' psychological attitudes or their comparative levels of well-being; and the relevant features of institutions … are open to public view." Primary goods include "basic rights and liberties", "freedom of movement and free choice of occupation", "powers and prerogatives of offices and positions of responsibility", "income and wealth", and "the social bases of self-respect" (Rawls 1993: 181). While Rawls uses primary goods to specify the requirements of justice, the framework can also be used to specify the more restricted requirements of political equality. This is so because, in Rawls's account, there is a common basis between justice and democratic legitimacy. Legitimacy is weaker than justice. The requirements of democratic legitimacy are covered by the first principle of justice as fairness. This principle guarantees the

[10] For an early assessment of the debate, see Daniels (1990).

[11] Sen's criticism of the primary goods framework proved so forceful that in *Political Liberalism*, Rawls acknowledged the possibility of incorporating basic capabilities into his framework (Rawls 1993: 178*ff*).

citizens' equality with respect to a list of basic liberties and rights. These basic liberties and rights are the following: political liberties (i.e. the right to vote and to be eligible for public office) and freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person and the right to hold personal property, and the freedom from arbitrary arrest and seizure. In the restatement of the principles of justice in *Political Liberalism*, Rawls added to the first principle the requirement that the political liberties, and only those liberties, are to be guaranteed their "fair value". The fair value of the political liberties requires that "citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class" (Rawls 1993: 358). The second principle of justice as fairness, which is composed of the principle of fair equality of opportunity and the difference principle, is not invoked for legitimacy. Because the first principle guarantees the fair value of the political values, however, it is not satisfied with formal equality of basic rights and liberties. Instead, it makes demands on the distribution of the other primary goods as well. To achieve a fair value of the political liberties, equality of basic rights and liberties will not be enough. A social minimum of all primary goods must be guaranteed.[12]

[12] Rawls specifies the requirement of democratic legitimacy through what he calls "constitutional essentials". The constitutional essentials are necessary for legitimacy and describe a framework in which democratic decision-making is to be embedded that respects the first principle of justice. The second principle of justice need not be satisfied for democratic legitimacy: "A principle specifying the basic rights and liberties covers the second kind of constitutional essentials. But while some principle of opportunity is surely such an essential, for example, a principle requiring at least freedom of movement and free choice of occupation, fair equality of opportunity (as I have specified it) goes beyond that and is not such an essential. Similarly, though a social minimum providing for the basic needs of all citizens is also an essential, what I have called the 'difference principle' is more demanding and is not" (Rawls 1993: 228f).

This defines Rawls' idea of political equality.[13] In sum, primary goods represent those aspects of the basic institutional structure of society that relate to the demands of legitimacy and justice. Because it is concerned with features of basic social institutions, the primary goods framework thus has an inbuilt "domain restriction" that makes it suitable for a weak criterion of political equality.

Sen developed the capability approach as an alternative to Rawls' primary goods and to individual utility – the informational basis favored by economists. In contrast to the former, the capability approach is sensitive to individual differences in the ability to make effective use of their resources in the pursuit of their respective ends. Sen (1992) defends the capability approach as a more adequate informational basis for the evaluation of justice and the specification of equality.

What characterizes the capability approach? A person's capabilities are determined by the functionings she can achieve. Functionings are a description of the various things an individual can do or be in a particular state, such as being well-nourished, being able to read, etc., and they are treated as objectively valuable. The identification of relevant functionings is the first step in any evaluatory exercise based on the capability approach. Capabilities are then defined over the space of functionings. They reflect "the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection" (Sen, 1993: 31). This split between functionings and capabilities is the distinctive feature of the capability approach. The basic idea is that the individuals need to have access to (objectively valuable) functionings, in order to pursue their different (subjective) aims and interests.

As an alternative to utility, the capability approach applies to the evaluation of individual well-being, but it is not limited to it. While Sen regards well-being as important, he argues that it is not, contrary to standard economic approaches, enough to

[13] For a critique, see Brighouse (1997).

describe all the aims of an individual. Individuals give importance to a whole variety of goals and interests, and the pursuit of well-being is only one out of these. Sen thus argues that individual agency, i.e. the capacity to formulate ends for one's life and to seek to achieve them (Sen 1985), is another value-generating category. A person's capability represents the set of n-tuples of well-being and / or agency related functionings from which the individual is free to choose. As such, it focuses on the actual freedom individuals have to achieve valuable functionings.

The capability approach can be used to substantiate the demands of political equality in the context of democratic legitimacy. To apply it to this context, some list of relevant functionings needs to be provided. The guiding principle for coming up with such a list will not be human flourishing as in Martha Nussbaum's interpretation of the capability approach (Nussbaum 2000), but equal opportunities to participate in the deliberative process.[14] While Sen himself has not applied the capability approach to the specification of political equality, this is indeed the approach defended by Bohman (1996, 1997) and Knight and Johnson (1997). The latter speak of "equality of opportunity of political influence" and they define it as follows (1997: 293):

> "In one sense, equal opportunity of influence requires that asymmetries not give unfair advantage to participants. Equality entails that participation and decision making be voluntary and uncoerced. … In a second sense, equal opportunity of influence requires that asymmetries not place anyone in a position of unfair disadvantage. … This highlights the need for a distribution of power and resources in the society such that each individual citizen will have the personal resources to participate effectively in that process."

[14] Nussbaum (2000, 2003) pushes the capability approach towards a full-fledged theory of justice. I shall only refer to Sen's interpretation of the capability approach.

Bohman speaks of "effective social freedom" and has a similar interpretation.[15] Their defenses of the capability approach echo the arguments put forward in the "equality of what?" debate. Both stress the importance of taking into account the effectiveness with which people translate resources into political weight and criticize the primary goods framework for neglecting the possibility of differential effectiveness. For Bohman (1997: 322) it is a strength of the capability approach that "it not only elaborates a conception of equal standing in deliberation, it also makes central the fundamental diversity of human beings with regard to their public functioning." On this point, Knight and Johnson (1997: 298) agree with Bohman. Sen's argument that the primary goods framework – in contrast to the capability approach – neglects differences in people's worth of their freedom is, in their view, of particular importance in the domain of political equality. They also point out, however, that to make the capability approach workable in this context is not an easy task.

Identifying capabilities relevant to political equality and to democratic legitimacy requires, on the one hand, an understanding of the functionings that are essential for people to participate as equals in deliberative decision-making. On the other, due to the focus of the capability approach on actual freedom, it also requires an understanding of the impediments that hinder people from being effective participants in democratic decision-making. For a start, Bohman (1996, 1997) offers two helpful principles to guide the selection of relevant functionings and the determination of those factors that impede individual participation. The first principle is that no one should be systematically *excluded* from democratic decision-making processes. The second

[15] According to Bohman (1997: 343): "Freedom is, on this account, the capability to live as one would choose. It includes the capability for effective social agency, the ability to participate in joint activities and achieve one's goals in them. For political liberties, the issue is effective use of public freedoms, which may not be possible even in the absence of direct coercion or prohibitions."

principle is that no one should be *included* in a political decision – assumed to consent – if he or she has not had an opportunity to voice dissent.[16] Whereas a resourcist perspective would have little problems with the first principle, the latter principle brings to bear the emphasis of the capability approach on effective freedoms. It draws attention to a potentially wide range of impediments that hinder different people from voicing their dissent. The two principles together point to a comprehensive interpretation of the demands of political equality.

While Bohman himself remains relatively vague about specific capabilities, Knight and Johnson (1997: 298 – 299) propose a list. They identify the following capabilities as particularly relevant for political equality: the "capacity to formulate authentic preferences", "the effective use of cultural resources", and, most importantly in their view, "basic cognitive abilities and skills". Even this short list is sufficient to generate a strong criterion of political equality because of the linkages between inequalities in the political sphere and inequalities in other spheres. Knight and Johnson argue that economic and social inequalities undermine, first, the capacity to formulate authentic preferences because of the problem of adaptive preferences – the tendency to adapt to adverse circumstances. Second, they argue, due to cultural imperialism, social hierarchies put minority groups at a disadvantage in voicing their concerns effectively. Access to education can then be a means to give people from minority groups the effective opportunities to articulate their concerns (Knight and Johnson 1997: 307). Finally, capabilities related to "basic cognitive abilities and skills", too, are linked to economic and social inequalities. One of Knight and Johnson's examples is a study that shows how childhood poverty may lead to diminished intellectual capacities in adults

[16] Bohman (1997: 333) writes: "Political poverty consists of the inability of groups of citizens to participate effectively in the democratic process. The consequences of such poverty are two-sided: public exclusion and political inclusion."

(Knight and Johnson 1997: 306). To ensure effective opportunities to participate in the deliberative process as an equal, they conclude, it is necessary to limit social and economics inequalities.

They are quite obviously right to point out how social and economic inequalities translate into political inequalities and that political inequalities are likely to be multidimensional.[17] I also agree with them that democratic legitimacy will be threatened if political equality is merely formal and people's effective abilities to participate in the deliberative process are undermined by unchecked social and economic inequalities. For these reasons, the capability approach is certainly well-suited to push the case for a strong criterion of political equality and to highlight the potential brittleness of democratic legitimacy.

The strong criterion of political equality based on the capability approach gives rise to a problem of its own, however. The problem is that it packs much of what would appear to be a subject for deliberation into the conditions that have to be met prior to deliberation. As described above, political equality is a condition for democratic legitimacy. As such, it is not itself the subject of deliberation. Now, the more extensively the requirements of political equality are interpreted, the more substantive judgments are exempted from democratic deliberation. If, to take one of Knight and Johnson's examples, a certain educational program is seen as necessary for participating as an equal in public deliberation, this makes it more likely that minority criticisms about cultural biases in education, and in the mainstream social and political discourse more generally, will be silenced. Since the conditions that frame the deliberative process are of decisive importance for democratic legitimacy, decision-making on these conditions will be separate from decision-making about issues in the regular course of

[17] See Dworkin (2003) for a discussion of the problem this interlinkage causes for the ideal of political equality.

the deliberative process. If the provision of a certain educational package is treated as a prerequisite for deliberation, it will not, at the same time, be a topic for deliberation. If it has been decided that the provision of education is the right strategy to counter the exclusionary effects of "cultural imperialism", the ways in which the educational system might support cultural biases in values and practices thus become harder to address. The same sort of problems affects the other examples of Knight and Johnson. If certain measures against childhood poverty are imposed on the basis of beliefs about the link between poverty and cognitive abilities, a decision has been made about the needs of poor children which removes this – potentially contested – issue from deliberation.[18] And policies that aim at political empowerment and at breaking the link between adverse economic and social circumstances and adaptive preference formation may inadvertedly limit the expression of "authentic" preferences as a result by taking a stance, in advance of the deliberative process, of what authentic and non-authentic preferences are.

A comprehensive understanding of politically relevant capabilities assumes that it is known what the appropriate distribution of economic and social resources is and what marginalized groups demand. This interpretation of the requirements of political equality inadvertently carries the problem of political inclusion – that Bohman has correctly identified and that Knight and Johnson recognize too – into the definition of the conditions for democratic legitimacy. An interpretation of political equality based on the capability approach may have the unappealing consequence of including marginalized groups into processes of deliberative decision-making on the terms of the

[18] As an unintended consequence, such policies might even produce exclusionary effects of their own. A policy based on the assumption that people who have been poor in their childhood have, on average, fewer cognitive skills than those who have not been poor, may feed into existing discriminatory practices against people from the lowest social classes.

dominant groups. The incentive for thinking about political equality in terms of the capability approach may thus clash with the desideratum of leaving substantive judgments to the deliberative process. The attempt to respect the principle of inclusion by adopting a comprehensive interpretation of the requirements of political equality violates this very principle by narrowing the scope for democratic scrutiny.

In light of the problem a strong criterion of political equality based on the capability approach creates, the primary goods framework suddenly looks attractive again. As Thomas Pogge (2002: 1f) puts it, the main difference between a resourcist approach such as the primary goods framework and the capability approach is the following: "Capability theorists assert, while resourcists deny, that a public criterion of social justice should take account of the individual rates at which persons … can convert resources into valuable functionings." To illustrate the difference consider the example of the relation between political equality and religious diversity.[19] A strong criterion of political equality based on the capability approach will have to factor in how different religious practices may further or hinder participation in political processes. Whereas the list of factors that potentially affects capabilities related to the participation in democratic decision-making may turn out to be endless, an interpretation of the requirements of political equality in terms of the primary goods framework is more restrictive. Primary goods are not about personal states, but about institutions. A criterion of political equality based on primary goods would include rights to participate in the political process regardless of religious affiliation, but it would not cover the full range of factors that may affect the effectiveness of such rights. In light of the problems that arise with a strong criterion of political equality, I count this as an advantage of the primary goods framework even if, obviously, it contains no answer to Sen's charge. The advantage of a weak criterion of political equality based on primary goods is that it

[19] I owe this example to an anonymous referee.

avoids imposing constraints based on controversial substantive judgments on the deliberative process. Rawls's justification of his first principle of justice and of the primary goods framework proceeds on the basis of fundamental political values that he regards as uncontroversial (Rawls 1993: V §§ 3, 4).

The political egalitarian's dilemma that I have stated in the introduction can now be rephrased in the following way. If political equality is defined weakly in terms of primary goods, significant inequalities in people's abilities to effectively use their political liberties may be neglected. If this is the case, democratic legitimacy may be too readily assumed because contested value judgments remain undetected. If political equality is interpreted in terms of capabilities, the problem of effective inequalities can be avoided. The strong criterion of political equality based on the capability approach leads to legitimacy problems of its own, however. It will specify conditions that depend on an extensive set of evaluations of the value of certain functionings and about the determinants of people's capabilities. Many contested substantive judgments will be bracketed from public deliberation, which undermines the democratic legitimacy of the decisions taken. In sum, either way of specifying political equality creates problems for democratic legitimacy.

The political egalitarian's dilemma shows that the tension between procedure and substance resurfaces within deliberative democracy. The tension manifests itself in the following way. If, on the one hand, political equality is interpreted in the weak sense, claim (ii'), according to which deliberative democratic procedures are sufficient for legitimacy, will not have sufficient bite. For example, without a set of conditions that effectively eliminates limitations on people's participation in the democratic process due to discrimination based on race or gender, it cannot be guaranteed that the outcomes will not be racist or sexist. The weaker the criterion of political equality, the more substantive judgments will unjustifiably pass as legitimate. To avoid that

outcomes which violate fundamental political values are sanctioned, legitimacy requires a strong criterion of political equality. But if political equality is interpreted in the strong sense, claim (i‘), which according to which democratic procedures are necessary for legitimacy, will effectively be circumvented. A great range of potentially contested issues will be exempt from deliberation and have been decided by other means than by democratic process. The stronger the criterion of political equality, the more the range of topics subjected to deliberation will be limited and the greater the reliance on substantive judgments that have not been democratically scrutinized. Thus, with a strong criterion of political equality, there will be insufficient reliance on democratic processes. The result is, again, that legitimacy is undermined.

Because of the ambivalence it exposes, the political egalitarian's dilemma forces us to conclude that:

(vii) Deliberative democratic procedures are not sufficient for legitimacy.

Quite obviously, this claim clashes with the claim that Cohen tries to defend, i.e. that

(vi) Deliberative democratic procedures are necessary and sufficient for legitimacy.

Thus, the dilemma for democratic legitimacy that Cohen has shown to result from the tension between procedure and substance affects deliberative democracy as well. This applies, at least, to the interpretation of deliberative democracy advanced by Cohen and others. Deliberative democracy, thus interpreted, is no less affected from this tension than aggregative democracy.

A final point I want to make concerns a possible objection to the account I have given. Does a dynamic interpretation of deliberative processes offer a way out of the difficulty posed by the political egalitarian's dilemma?[20] Amy Gutmann and Dennis Thompson (2004), for example, argue that all principles governing deliberative

[20] I thank an anonymous referee for asking me to answer that objection.

processes – whether they are substantive or procedural – should be seen as contestable and as provisional.[21] Applied to the conditions framing deliberation, the dynamic interpretation addresses the issue of who is to determine these conditions. It insists on the importance of allowing deliberation over these conditions as well when they become problematic. I think that such an extended view of the scope of deliberation is indeed the only plausible one. For political equality, such deliberation may serve as a correcting force when the conditions are perceived as either too strong or too weak. It may, for example, lead to a demand for policies that increase effective participation for previously excluded groups, or to a demand for a change of policies that rest on controversial assumptions about the needs of the groups they target. Gutmann and Thompson place too much hope on the process of contestation and of revision, however. Allowing for contestation and for all principles to be provisional may be the only way to proceed, but it does not eliminate the threat to democratic legitimacy posed by the political egalitarian's dilemma. I take legitimacy to be a property of particular "social states", to use the language of social choice theory (Arrow 1963). In the context of a democratic decision, a social state is a full description of all economic, social, and political characteristics of the particular outcome as well as of the process through which the choice was made. Just like one can ask whether a particular social state is just or not, one can also ask whether or not it is legitimate. The dilemma may undermine democratic legitimacy because for any decision taken, the conditions framing deliberative processes – of which political equality is one – will be of a particular content. For any one social state – a particular set of conditions and an outcome chosen – the conditions may appear as too strong or too weak. The dilemma thus reveals how

[21] Note that the thrust of their argument is to criticize pure proceduralist views and to de-problematize the inclusion of substantive principles in the ideal of deliberative democracy. As such, they address a premise of the argument of the present paper, i.e. that the ideal of deliberative democracy is partially substantive.

the tension between procedure and substance affects the specification of the content of the condition of political equality. It shows how the attempt of ensuring both that substantive judgments be made through the deliberative process and that people can participate in the deliberative process has to fail. Contrary to what Cohen had argued, the two aims continue to be difficult to reconcile.

Concluding Remarks

The political egalitarian's dilemma reveals that even if it is granted that deliberative democracy imposes substantive constraints on the deliberative process, there is scope in the interpretation of these constraints. This leads to an ambiguity in the legitimacy requirement of deliberative democracy. The problem for how to interpret political equality arises in relation to claim (v). It says that the substantive criteria – of which political equality forms an important part – are necessary to ensure that the outcomes of democratic procedures are acceptable to everyone. Perhaps paradoxically, the desideratum that all have effectively equal opportunities to participate in the deliberative process leads to a narrowing of the scope of deliberative evaluation, which then leads to a clash with the requirement that the outcomes of democratic procedures be acceptable to everyone. The very motivation for deliberative democracy lies in the acknowledgement that in pluralist societies, there is no prior consensus on substantive issues. Deliberation is seen as the necessary means for generating acceptance and legitimacy. Without deliberation, dissent over alternative outcomes fails to be registered, and this undermines the legitimacy of the decisions made.

If the tension between procedure and substance shows itself even within deliberative democracy, rather than hoping for reconciliation, a trade-off needs to be made between the two. The interpretation of the requirements of democratic legitimacy favored by many deliberative democrats today puts great emphasis on heavy substantive

commitments. This is manifest *inter alia* in the tendency to endorse strong criteria of political equality. The political egalitarian's dilemma shows that there are important considerations in favor of a more procedural interpretation of the requirements of democratic legitimacy in deliberative democracy and of a weak criterion of political equality.

References

Arrow, Kenneth. 1963. *Social Choice and Individual Values*. New Haven: Yale University Press.

Beitz, Charles R. 1989. *Political Equality*. Princeton: Princeton University Press.

Bohman, James. 1996. *Public Deliberation*. Cambridge: MIT Press.

Bohman, James. 1997. "Deliberative Democracy and Effective Social Freedom: Capabilites, Resources, and Opportunities." In Bohman, James and William Rehg (eds.) *Deliberative Democracy: Essays on Reason and Politics*. Cambridge, Mass.: MIT Press, pp. 321 – 348.

Bohman, James. 1998. "The Coming of Age of Deliberative Democracy." *Journal of Political Philosophy* 6: 399 – 423.

Brighouse, Harry. 1997. "Political Equality in Justice as Fairness." *Philosophical Studies* 86: 155 – 184.

Christiano, Thomas. 1996. *The Rule of the Many*. Boulder: Westview.

Cohen, Joshua. 1997. "Procedure and Substance in Deliberative Democracy." In Bohman, James and William Rehg (eds.) *Deliberative Democracy*. Cambridge: MIT Press, 407 – 437. Reprinted from Benhabib, Seyla (ed.) *Democracy and Difference*. Princeton: Princeton University Press, pp. 95 – 119.

Daniels, Norman. 1990. "Equality of What: Welfare, Resources, or Capabilities?" *Philosophy and Phenomenological Research*, Suppl. Vol. 50: 273 – 296.

Dryzek, John. 2000. *Deliberative Democracy and Beyond*. Oxford: Oxford University Press.

Dworkin, Ronald. 2003. "What is Equality: Part 4: Political Equality." In Thomas Christiano (ed.) *Philosophy of Democracy*. Oxford: Oxford University Press, pp. 116 – 137. Reprinted from University of San Francisco Law Review 22 (1987).

Estlund, David. 2000. "Political Quality." In Paul, Ellen Frankel, Fred D. Miller, and Jeffrey Paul (eds.) *Democracy*. Cambridge: Cambridge University Press, pp. 127 – 160.

Fleurbaey, Marc. 2002. "Equality of Resources Revisited." *Ethics* 113: 82 – 105.

Freeman, Samuel. 2000. "Deliberative Democracy: A Sympathetic Comment." *Philosophy and Public Affairs* 29(4): 371 – 418.

Gutmann, Amy and Dennis Thompson. 1996. *Democracy and Disagreement*. Cambridge: Harvard University Press.

Gutmann, Amy and Dennis Thompson. 2004. *Why Deliberative Democracy*? Princeton: Princeton University Press.

Knight, Jack and James Johnson. 1997. "What Sort of Equality Does Deliberative Democracy Require?" In Bohman, James and William Rehg (eds.) *Deliberative Democracy*. Cambridge, Mass.: MIT Press, pp. 279 – 319.

Mill, John Stuart. 1998 [1869]. "On Liberty." In John Gray (ed.) *On Liberty and other Essays*. Oxford: Oxford University Press.

Nussbaum, Martha C. 2000. *Women and Human Development*. Cambridge: Cambridge University Press.
Nussbaum, Martha. 2003. “Beyond the Social Contract: Toward Global Justice.” *The Tanner Lectures in Human Value*. http://www.tannerlectures.utah.edu/lectures/volume24/nussbaum_2003.pdf.
Parkinson, John. 2003. “Legitimacy Problems in Deliberative Democracy.” *Political Studies* 51: 180 – 196.
Peter, Fabienne. 2006. “Pure Epistemic Proceduralism in Deliberative Democracy.” Submitted.
Pogge, Thomas. 2002. “Can the Capability Approach be Justified?” *Philosophical Topics* 30(2): 167 – 228. Online at ftp://194.167.156.192/EE/pogge1.pdf
Rawls, John. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.
Rawls, John. 1982. "Social Unity and Primary Goods". In Sen and Williams (eds.) *Utilitarianism and Beyond*. Cambridge (GB): Cambridge University Press, 159 – 185.
Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.
Sen, Amartya. 1980. "Equality of What?" In: Mc Murrin, S. M. (Ed.): The Tanner Lectures on Human Values, Vol.1. Salt Lake City: University of Utah Press, 195 – 220.
Sen, Amartya. 1985. *Commodities and Capabilities*. Amsterdam: North-Holland.
Sen, Amartya 1990. “Justice: Means vs. Freedoms.” *Philosophy and Public Affairs* 19: 111 – 121.
Sen, Amartya. 1992. *Inequality Re-examined*. Oxford: Clarendon.
Sen, Amartya. 1993. "Capabilities and Well-being". In Nussbaum and Sen (eds.) *Quality of Life*. Oxford: Clarendon, pp. 30 – 53.
Vallentyne, Peter. 2005. “Capabilities vs. Opportunities for Well-being.” *Journal of Political Philosophy* 13(3): 359 – 371.

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