Open Research Online

The Open University's repository of research publications
and other research outputs

Rawls and deliberative democracy

Book Section

How to cite:

Saward, Michael (2002). Rawls and deliberative democracy. In: Passerin D'Entreves, Maurizio ed. Democracy as public deliberation: new perspectives. Perspectives on Democratization. Manchester, UK, and New York: Manchester University Press, pp. 112–130.

For guidance on citations see FAQs.

Version: [not recorded]

Link(s) to article on publisher's website:
http://www.manchesteruniversitypress.co.uk/information_areas/subjects/politics/Perspectives_Democratization.htm

oro.open.ac.uk

Rawls and Deliberative Democracy

Michael Saward

Introduction

It seems very reasonable to link the ideas of Rawls on public reason and related notions with the idea of deliberative democracy. Apart from the fact that in recent writings Rawls himself makes the connection explicitly,[1] we can ask whether any real compulsion to attach 'deliberation' and 'democracy' could have arisen at all without powerful contemporary forebears – Rawls and Habermas above all – emphasizing dialogical approaches to political principles and institutions.[2] Rawls' device of the original position famously models an ideal dialogue on principles of justice; Cohen's influential deliberative model[3] clearly springs directly from these Rawlsian roots. The original position provides a means to assess different interpretations of social justice, while deliberative democracy brings together different preferences in order to subject them to the test of public and open scrutiny. One can agree that these chains of influence are real and still question fundamentally whether some of the links are strong enough to sustain them. Benhabib[4] pursues this task briefly, noting among other things that Rawls' idea of public reason is about limits on how to reason rather than a process of actual reasoning in public. But it is worth paying closer attention to the issue in order to draw out (a) fundamental reasons why the Rawlsian project as Rawls presents it *cannot be* genuinely deliberative, and (b) the light that can be thrown on deliberative models of democracy by looking at basic Rawlsian categories in new ways.

This chapter offers arguments to support the following conjectures: (1) despite claims by Rawls and some commentators, Rawls is not and cannot be a deliberative democrat; the evidence for this can be gleaned by focussing on various interpretations of the structure of Rawls' arguments in *A Theory of Justice* (1972) and *Political Liberalism* (1993) respectively; and (2) if we ask more directly how the ideal dialogue of the original position might be approximated in real-world conditions, we can reach suggestive conclusions about institutions and deliberative democracy radically different from those reached by Rawls himself.

Layered ambiguities: Rawls on public reason

Rawls' account of 'public reason' has been cited as a 'major statement' of the 'idea of deliberative democracy', one which tries to work out 'the philosophical details of political justification based on deliberation and public reason'.[5] Rawls himself has written that public reason as he understands it is one vital ingredient of 'deliberative democracy'.[6] However, as I shall argue, this link cannot be sustained; public reason and deliberation are quite different things. Rawls' vision is more accurately seen as non-deliberative – even anti-deliberative – unless we stretch the meaning of deliberation well beyond what any of the major deliberative theorists[7] intend it to mean.

These claims require a clear distinction between deliberative and non-deliberative conceptions of democracy (to put it in black-and-white terms). Alas, we are not helped in this task by the stipulative and contestable nature of the definitions of deliberative democracy offered by key theorists. It rapidly becomes clear that 'deliberative democracy' means many things. Authors like Cohen,[8] Dryzek,[9] Gutmann and Thompson[10] and Fishkin[11] define and to varying degrees elaborate divergent conceptions of deliberative democracy. Some see it as discussion over issues in state forums, others in non-state contexts; some as a vital adjunct to exiting democratic practices like voting, others as elevating 'talk' well above traditional mechanisms. Even in reasonably full conceptions of democracy that are not tagged as deliberative or which on the face of it do not emphasize deliberation, reason-giving and political dialogue (such as that of Dahl[12] it is clear that deliberation of various types is envisaged and valued. However, it is not the raw presence of deliberation in a conception of democracy (or in a real system reflective the features of such a conception), but rather *its status and role* that defines the deliberative/non-deliberative boundary.[13]

Can we set out reasonable defining features of deliberative conceptions despite these understandable grey areas?[14] I believe so, if we specify a conception of democracy as 'deliberative' if it stipulates that (a) voting must be preceded by formal and actual deliberation among representative citizens, (b) there be evidence of successful public facilitation of free deliberation in a range of non-state civil forums, (c) deliberation of the first sort in particular must have a determinate impact on the shape of the final outcome, such that (for example) the outcome can be justified and accounted for in terms of themes or arguments that were prominent in the deliberative process concerned, and (d) that the formal deliberations in particular satisfied minimum procedural standards of equal respect and inclusiveness.

I will (briefly) explore key parts of Rawls' account in order to show how in fact it undermines even this baseline vision of deliberative democracy. This matters because the influence of Rawls on the world of political ideas is understandably huge given his achievements, and his impact on real institutional design and decision-making is not negligible.

For Rawls, 'public reason' is either *a set of reasons* or *a way of reasoning* (it makes a real difference which it is – this is the first significant ambiguity) necessary to the adequacy of legislative or constitutional outcomes on important political questions. In Rawls' view of 'public reason', so central to his project in *Political Liberalism*, who gets to 'reason', and where and how? Initially, it is everyone: 'Public reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship'.[15] But in fact Rawls sees it as applying in particular to a more narrowly circumscribed set of issues and group of actors. On this view, it is not something that all need engage or indulge in, at least not constantly or compulsorily – it is primarily something that applies to, and should act as a constraint upon, judges, elected politicians, government officials and candidates for political office.[16]

Public reason is also seen by Rawls as applying not to 'political' questions generally, but to 'constitutional essentials and questions of basic justice'; it has to do with higher, constitutional arrangements rather than more mundane, within-politics issues. It is distinguished from the 'non-public' reasons people offer for the political stances they adopt on a variety of issues within the institutions in civil society, such as churches, universities, etc.[17]

So when we reason in public on fundamental issues, we must reason in a certain way, by accepting certain constraints. But, Rawls asks – taking the broad view of who should honour public reason's constraints – 'why should citizens in discussing and voting on the most fundamental political questions honour the limits of public reason?'.[18] His

reply, from within 'political liberalism', is that 'our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational'.[19]

Let us break this key argument down into its constituent parts:

A   Reasonable and rational people, aware of pluralism …
B   will find certain principles/ideals acceptable to them …
C   therefore they will endorse a constitution which embodies these principles/ideals.
D   If political power is exercised in accordance with this constitution …
E   then political power is exercised legitimately.

I have suggested that deliberative democracy ultimately involves (among other things) actual public or semi-public forums discussing and debating key issues. Referring to public reason seemingly *implies* a process of actual reasoning (discussing, debating, in a certain way in a variety of actual settings). But note that the location of 'public reason' in the above schema is in points A – C, and that this is precisely where reasoning is a solitary, inward-looking, thoughtful matter; public decision-making only comes into the equation in point D – E. The affirmation or endorsement of the principles and ideals in B is done by individuals thinking/'reasoning' alone, not together. Affirmation is a solitary affair, even involving citizens abstracting in their minds away from the content of the 'comprehensive doctrines' they hold in their non-public lives.[20]

I pointed out above the ambiguity in the term 'reason' – an ambiguity that Rawls does little to clear up in his own use of the notion. To reason with another is to talk with them with an eye to convincing them rationally of one's viewpoint. But clearly one can also 'reason' in one's mind, perhaps by conducting an internal dialogue with imaginary others. The above comments suggest that it is the latter interpretation that most clearly captures the sense of the term in Rawls' schema.

In comments on the public's role in applying public reason to specific cases in the 1997 edition of *Political Liberalism* (reproduced in 1997a for present purposes), Rawls writes that: 'For how to think about a kind of case depends not on general considerations alone but on our formulating relevant political values we may not have imagined before we reflect about particular instances'.[21] Think, imagine, reflect – these are 'internal dialogue' terms, not injunctions to real public discussion. Further, in the essay 'The Idea of Public Reason Revisited', Rawls mentions that on those occasions when they must exercise distinctively public reason citizens should 'ask themselves' what provisions it would be reasonable to enact; and, in considering 'the idea of political legitimacy based on the criterion of reciprocity' (the latter a, possibly the, crucial ingredient of public reason), Rawls writes that: 'our exercise of political power is proper only when we sincerely *believe* that the reasons we *would* offer for our political actions – *were* we to state them as government officials – are sufficient, and we also reasonably *think* that other citizens *might* also reasonably accept those reasons'.[22] The added italics highlight the conditional, non-discursive – non-deliberative – character of Rawls' thinking here. One thing these comments do is drive a wedge between 'public reason' and (actual) deliberation.

It appears, then, that 'public reason' for Rawls is not an injunction *actually* to reason (deliberate, debate) in public with fellow citizens. Rather, it appears to be about content – a set of guidelines about how to think about fundamental issues in the 'public political forum'. Indeed, Rawls notes that a central part of the 'structure' of public reason is 'its content as given by a family of reasonable political conceptions of justice'.[23] So on this view public reason is a 'thing' rather than a process, something 'given' rather than created or practiced. And if that is the case, no actual deliberation takes place.

We can search for the reasons for this by digging a little deeper into a related ambiguity: is the 'content' of public reason the product of the original position, or could it acceptably be derived from some other 'reasonable political conception of justice'?

On one reading of *Political Liberalism* the former answer seems correct. The basis for the content of public reason is provided by the original position:

> … the guidelines of inquiry of public reason, as well as its principle of legitimacy, have the same basis as the substantive principles of justice. This means in justice as fairness that the parties in the original position, in adopting principles of justice for the basic structure, must also adopt guidelines and criteria of public reason for applying those norms.[24]

On this interpretation the respective structures of the arguments in *A Theory of Justice* and *Political Liberalism* 'meet' in the sense that the subject of the 'overlapping consensus of reasonable comprehensive doctrines' is itself the conception of 'justice as fairness'.

However, more often Rawls notes that there may be a number of reasonable political conceptions – justice as fairness is one among various possible political conceptions of justice. Here, different political conceptions of justice will contain criteria that others will reasonably be able to endorse along with us.[25] Each of these conceptions can properly be deployed in the public political forum, since (above all) each will accept reciprocity as its core principle and thereby be a reasonable focus for an overlapping consensus of reasonable comprehensive doctrines, in Rawls' terms. There are 'different liberalisms'[26] so there will be different versions; justice as fairness is 'just one' view[27] which Rawls himself prefers.[28] Clearly Rawls does not imagine these different political conceptions differing too much from each other – reciprocity qualifies each of them, and each includes a conception of rights, priorities and means directly reminiscent of the two principles of justice in justice as fairness. It does not seem unreasonable to suggest that for Rawls justice as fairness is the 'default mode' political conception for all who fail to (make the mental effort to) come up with their own.

It seems clear, then, that *something akin to* the original position is needed to provide a reasonable political conception of justice even if that conception (in line with the second interpretation, above) is not necessarily Rawls' preferred one of justice as fairness. And, of course, the original position is a purely hypothetical device: one can at any time 'simulate the deliberations of this hypothetical situation, simply by reasoning in accordance with the appropriate restrictions'.[29] It is a place in which deliberation is ideal and general and inclusive; therefore it cannot be an actual place. Recall, too, that we reach the favoured conception of the original position by a process of 'reflective equilibrium'. As discussed in *A Theory of Justice*, reflective equilibrium is a solitary thought process, engaged in (ideally) by all citizens on their own, conducted in order to reach a specific conception of an initial situation which accords with our considered convictions about the content of justice.

One strength – from Rawls' point of view, at least – of the conception of justice embodied in the specification of the original position is that each individual need not in fact engage in the process of seeking reflective equilibrium; all we need to know is that reasonable and rational people *would* reach similar conclusions, if they did so engage. So even solitary 'deliberation' is not necessary; the outcome is fixed (even given some flexibility as represented in the second interpretation), with no process of actual reasoning of any sort necessarily being involved. Again, this may be called 'public reason', but it is not open-ended, explicit reasoning or actual public deliberation. The metaphor of the original position – non-deliberative, hypothetical – runs through the

structure of the argument in *Political Liberalism* and later statements on public reason too.

Despite the (inevitable, fixed) non-deliberative origins of public reason, Rawls does want citizens to engage with fundamental political questions:

> As to whom public reason applies, we say that it applies to citizens when they engage in political advocacy in the public forum, in political campaigns for example and when they vote on those fundamental questions. It always applies to public and government officers in official forums, in their debates and votes on the floor of the legislature. Public reason applies especially to the judiciary in its decisions and as the institutional exemplar of public reason.[30]

Note, first, that citizens must adopt the content of public reason in certain instances of their *voting* in particular, but it is highly ambiguous as to which instances. On fundamental political questions, citizens must vote according to canons of public reason: ' … public reason with its duty of civility gives a view about voting on fundamental questions is some ways reminiscent of Rousseau's *Social Contract*. He saw voting as ideally expressing our opinion as to which of the alternatives best advances the common good'[31] … 'citizens and legislators may properly vote their more comprehensive views when constitutional essentials and basic justice are not at stake'[32] But where is the neat dividing line between the fundamental political and the non-fundamental political (Rawls implies rather than states the existence of the second category)?

So, my argument is that the basis of public reason in the (purely hypothetical) original position, its related notion of the (solitary) seeking of reflective equilibrium, and the (solitary, mental) assessments by citizens as to the status of this vote (and consequently the motivation they should bring to it), render public reason a thoroughly non-deliberative notion. Or, if it chimes at all with the work of deliberative democrats, it can only be in the unhelpful sense of advocating solitary, not actual and effective, deliberation.[33] No doubt the larger Rawlsian argument welcomes citizens deliberating with each other and being attentive to the deliberations of (e.g.) representatives. The point, however, is that the status this view accords to deliberation does not match what we would need to see to regard the conception as genuinely 'deliberative'. Rawls' views, in short, provide an argument which is virtually diametrically opposed to dominant visions of deliberative democracy, each of which stresses the importance of actual deliberation whatever the specific forums or sites are favoured.

The Rawlsian mirror

Arguably, the reason why Bohman and Rehg, along with Rawls himself, can readily characterize public reason as deliberative democracy has a good deal to do with the fact that Rawls' theory has changed fundamentally since *A Theory of Justice*. This, of course, is a huge topic, and not one I wish to enter into here in any detail. But in general terms public reason and the seeking of an overlapping consensus of reasonable comprehensive doctrines *sounds like* a more worldly, engaged, *political* project (and so has Rawls characterized it). In *A Theory of Justice,* the device of the four-stage sequence by which the 'veils' are gradually lifted takes us through a process whereby we descend from imaginary contexts to real world politics. *Political Liberalism* by way of contrast seems to give us the real political world from the start, with irreducible pluralism of religious and other comprehensive doctrines, the possibility of different reasonable conceptions of justice, and so on. This sense is reinforced by the fact that the argumentative devices which distance the process of reaching compelling principles of justice in *A Theory of*

Justice – the original position above all – are downgraded in the later work, though their presence in it is a haunting one, as I have tried too briefly to indicate above.

I want to suggest, however, that *the arguments of Political Liberalism can properly be interpreted as the mirror image of those of A Theory of Justice.* The architectural structure of the early work operates as a metaphor for the structure of the later work and the elements which comprise it. This conjecture in itself, if accurate, cannot alone account for the unworldliness, especially the absence of (the need or desire for) actual deliberation, in the writings on public reason and related concepts, but surely it can go some considerable way in that direction.

By examining features of the arguments in the early and later books, we can draw links between key concepts within and across the arguments of the two books. Thus, we being with *the individual citizen* in Story A, who has his or her *considered convictions* and takes these into the device of representation known as the *original position*. By a process of *reflective equilibrium*, our citizen brings his or her considered convictions into line with the demands of justice as modelled by the structure of choice behind the veil of ignorance. Thus our citizen reaches agreement on *the two principles of justice* in the conception known as *justice as fairness*. In Story B, the citizen is identified with his or her *comprehensive doctrine* – and hopefully a *reasonable comprehensive doctrine* – which will shape and inform most of the political arguments our citizen will make, most of the time. However, when our citizen enters the *public political forum* – or, more accurately, has to think through reasonable solutions to fundamental questions that he or she may be called to vote upon – he or she must accept the constraints of *public reason*. By deploying a *political conception of justice* which satisfies public reason guidelines, our citizen can locate grounds on a given issue that he or she could reasonably expect others to reasonably agree with – an *overlapping consensus*.

By positing the interpretive device of the mirror I am suggesting that each step in each of these 'stories' can be linked to equivalent steps in the other; that is, there are equivalent concepts in each story which, so to speak, do the same work within the respective arguments. The citizen with his or her considered convictions is the citizen enfolded in his or her (reasonable) comprehensive doctrine. The citizen in the public political forum, like the citizen in the original position, is in a context where only certain sorts of arguments about courses of action are appropriate or acceptable. Public reason is an internal, mental process of finding good and right reasons for believing in a conception of justice and its implications for given issues; reflective equilibrium is likewise. And what public reason produces is a political conception of justice which (ideally) can act as the focus for an overlapping consensus of reasonable comprehensive doctrines, just as justice as fairness as one, favoured such conception, would be agreed by all engaged in the relevant processes.

In short, the argument in *Political Liberalism* is, at a deeper level, the mirror image of the argument of *A Theory of Justice*.[34] We have seen already how little actual deliberation takes place within the story told in Rawls' later work. Considering how that work represents a metaphorical reconstruction of the early work reinforces our suspicions that there is nothing here that deliberative democrats can call their own.[35] It may be 'political not metaphysical' on the surface; beneath that, the metaphysical is still in the driving seat.

The more things change …

In his much-cited essay 'Deliberation and Democratic Legitimacy' Cohen[36] adopts the very same architecture I have discussed above as the template for a theory of deliberative democracy. That at least is my interpretation.[37] Cohen attempts to distance himself from the Rawlsian framework just as he deploys it. To that extent, his *intention* is

to construct a regulative principle or ideal of deliberation that can be approximated as far as possible in practice. His is one effort to move from a Rawlsian framework to a practical ideal of deliberative democracy; Rawls' own efforts in *Political Liberalism* and 'The Idea of Public Reason Revisited' represent another. These particular efforts do not, I argue, get us far. The non-deliberative roots of the argumentative structure get in the way; the Rawlsian metaphor prevents the argument metamorphosing into something else – like a practical conception of deliberative democracy.

Ironically enough, this point can be illustrated by focusing on *differences* (e.g. in terminology) or *adaptations* of the initial Rawlsian framework in the course of these efforts to move more squarely into the realm of *democratic* theory. Clearly, someone could protest that my discussion so far has underestimated the real changes and adaptations of the Rawlsian framework from the 1970s to the 1990s. My argument here, in short, is that to the extent that he shifts away from the framework in *A Theory of Justice* Rawls is forced to make new assumptions about citizens in particular; this is done apparently to render the conception more practical in political terms. By contrast, I would argue that it is done *in order to retain control of, or certainty about, the outcomes of 'deliberations' focused on justice* – which in turn further undermines the deliberative claims of the project. Things are changed so that they might remain the same; public reason is not the original position, but it is different in ways that ensure the ultimate product and effect is the same.

By way of illustration, consider the accounts of (a) motivation, (b) the wide view of public reason, (c) civility and (d) the normalizing of citizens in Rawls' discussion of public reason. Like Cohen,[38] who stipulates that citizens will be motivated to seek the common good in deliberations, the later Rawls stipulates that people must 'sincerely vote in accordance with the idea of public reason'.[39] Just as judges cannot simply give their own opinions in difficult cases, citizens must not on fundamental political questions simply invoke their comprehensive doctrine: 'From the point of view of public reason, citizens must vote for the ordering of political values they sincerely think the most reasonable. Otherwise they fail to exercise political power in ways that satisfy the criterion of reciprocity'.[40] Now, the idea in the original position that citizens (or to-be-citizens) were self-interested was surely a more practical assumption for building real-world institutions. There are dangers in letting political legitimacy rests so strongly on hopes of citizens voting with certain motivations uppermost in their minds.[41] But the fact is that, having loosened the reigns on his structure to some extent, Rawls has had to tighten his motivational assumptions/stipulations in an unrealistic manner in order to continue to make justice a likely achievement in the world of *Political Liberalism.*

Similarly, in the late 1990s Rawls relented somewhat on the question of whether views from people's comprehensive doctrines could rightly be invoked in public political debate on fundamental questions. On 'the wide view of public reason', citizens can now invoke elements of their comprehensive doctrines with the proviso that backing for what they invoke from within a political conception of justice is forthcoming in due course.[42] Among other things, this shift can be interpreted as partial compensation for the loss of what in the original position was the representation of all generations behind the veil of ignorance. If, for example, the views of future generations are part of the simulated deliberations in the original position, new ideas about what justice might involve can be 'on the table'. The menu of topics and possibilities will not be restricted to what one generation alone is capable of thinking. The wide view of public reason cannot capture what is lost here, but it can go part way in that new ideas from (e.g.) newly emergent ideologies like environmentalism can more readily reach the public political forum.

The 'duty of civility' has a prominent place in later work on similar grounds, too. In the original position, civility was built into the structure – if all are effectively the same,

with the same views, there is hardly anyone to be (or to imagine being) uncivil to. Having loosened his grip on the derivation (and the doing) of justice, however, Rawls needs to invoke this duty, not to add something new to the mix but to *restore what was lost* on moving to the *Political Liberalism* framework. Without a duty of civility, citizens could easily refuse to act civilly, saying 'accept my view or be damned' rather than 'fulfil their duty of civility' by explaining their positions in the appropriate way.[43]

Finally, *Political Liberalism* still gives us a 'normalized' citizen, even if it is not the severely ironed out creature that inhabits the original position. People will be different, with different comprehensive views which together provide an irreducible plurality of reasons and ways of reasoning about issues. Rawls denies that his project of public reason 'normalizes' people so that they are effectively the same on a philosophical view. Instead, he writes, 'Accounts of human nature we put aside and rely on a political conception of persons as citizens instead'. But the trick is in the latter – 'citizens' must do and be certain things, all the same, for justice to be done in the world of *Political Liberalism*. The very next sentence in 'The Idea of Public Reason Revisited' is: 'As I have stressed throughout, it is central to political liberalism that free and equal citizens affirm both a comprehensive doctrine and a political conception'.[44]

So, apparently genuine and significant changes in key assumptions from the early to the later Rawlsian frameworks are in fact better seen as *devices to retain or restore* the certainty, and control by the theorist, of his own creation. I have noted this aspect of Rawls' work in order to highlight the underlying commonality regardless of whether we consider surface continuity or change in Rawls' journey to (as he sees it) deliberative democracy.

Forward to the origins?

The 'deliberative model of democracy' is surely entering its endgame period. Fragmentation characterizes the theory, whether it be (for example) differences over whether deliberative forums ought to be governmental or non-governmental, what standards for discussion and debate are regarded as appropriate, the extent to which inclusion and consensus are central goals, etc.[45] I do not seek to unify perspectives, necessarily– to do that, for a start, we would need to address the theory of *democracy*, not deliberative democracy.[46] Rather, I ask whether taking a quite different view of the Rawlsian project and deliberative democracy can illuminate the fragmentation and confusion attending the latter.

One can understand why Rawls himself does not in the end make as many significant changes to his initial framework as is often supposed – or so I have argued. The same goes for the extent to which the Rawlsian framing of questions in political theory has, and continues to, set the agenda for others.[47] In seeking to step outside the bulk of that framework while nonetheless toying with one key element of it, I am saying nothing to diminish the sheer weight of the intellectual achievement of Rawls. I am, with due modesty, suggesting that we are not forced to accept that the building blocks of theory need be assembled in the way the master has done it. And with that I proceed 'to stretch fantasy too far'.[48]

I want to ask – with self-conscious naivety – what it might mean to attempt to approximate the terms and features of the original position in practice. If we (a) insist on actual spoken deliberation in actual deliberative forums, (b) do not worry about keeping 'control' of processes and outcomes in the way I have suggested Rawls does, but (c) try to retain where possible some real sense of both the realistic and the positive features of the original position, can we illuminate the subject of deliberative democracy?

The central conditions and descriptive features of the original position are the assumption that all present act in their self-interest and the inducement of impartiality

through the imposition of ignorance on the parties via the device of the veil of ignorance. Let us retain the self-interest assumption for what follows. The key positive features of the original position from a democratic perspective are:

- generality: the outcomes reached will have general applicability across the political community for whom the original position is acting as a device of representation
- inclusiveness: all interests are 'there', represented in the 'deliberations', including multiple generations
- impartiality: all can fully and equally endorse the fairness of the outcomes
- productivity: it unfailingly produces an outcome of the above sort; stalemate is not an option
- the face-to-face character of the 'deliberations'.

We might use these features as regulative principles for the design of real world deliberative institutions or contexts. But let us be very clear on the extent to which, and the ways in which, the realization of each of these principles is rendered inaccessible by the simple transfer of focus from the hypothetical to the real deliberative context. We stand to lose *generality* to the extent that the outcomes will have applicability only to living generations and to the political community that is (in some plausible respect) present in the deliberations. We stand to lose *inclusiveness* in similar respects – the interests of future (and past) generations will not/cannot be included, a more delimited territorial community will form the basis of the deliberative group, and the possibility of including non-human interests to move toward a 'democracy of the affected'[49] greatly diminishes. And the move to actual spoken discourse with differentiated, gendered, accented (etc.) others means differentiated inclusion for different styles of discourse, appearance and so forth. *Impartiality* disappears to the same extent through the limited range of interests now effectively represented in the dialogue and the fact that the 'enforced' ignorance-based impartiality of the original position is now replaced by a partiality born of particular, incomplete knowledge of self and society. And the delightful *productivity* of the ideal dialogue, which guarantees an outcome, and a thoroughly legitimate one at that, is lost to the degree that some mechanism(s) – keep talking until you all agree? take a vote and respect simple majority views? – has to be imported, and no decision mechanism exists which is universally acceptable on all grounds that count.

I have suggested that Rawls himself reinstates the features and outcomes of the lost hypothetical dialogue by restating the hypothetical in the guise of the real. This is not an option for us. Keeping an eye on the regulative principles arising from the original position, what institutional and contextual features for a democratic structure built around actual, spoken deliberation could we propose?

I will begin with inclusiveness, as this helps to establish the context for key features under other headings. Clearly everyone cannot be included in a face-to-face fashion in one deliberative forum. So the device of representation becomes critical. Arguably the best way to ensure a fair 'presence' for all in an indirect way is through the use of random sampling of the population to produce a representative body to do the deliberating on behalf of all. In this respect, something like Fishkin's deliberative polls suggest themselves.[50] Any delineated population can be randomly sampled, from the local to the global, so the move from the original position's total inclusiveness to our partial exclusion need not bring in tight national or other territorial exclusions.

Now, generality too is a principle served by random sampling to produce a representative forum. If the deliberating body is (scientifically) drawn from the whole (relevant) population, then we can have some confidence in its outcomes reflecting general concerns across that population. Allied to the psychological effects of having to give reasons to fellow deliberators that they can accept the premises of, if not the reasons themselves, this derivation of the forum is likely to foster generality. Clearly, we are now

dealing with various forms and degrees of partiality rather than an easy impartiality. But again a forum derived in the way discussed will lessen the extent to which partial outcomes are lopsidedly or unacceptably partial.

So, something like a deliberative poll à la Fishkin may be seen as the most defensible real-world equivalent of an original position in the sense of attempting to replicate where possible desirable and democratic features of the latter. But – and this is where the speculations start to get more interesting – there are other, additional institutional devices which we can link to the deliberative poll in order to attempt to pick up further features in line with the regulative principles identified. In particular, a dynamic civil society characterized by a strong culture of freedom of movement and expression is absolutely critical to this skeletal vision. Primarily this is because in the original position there is no problem of agenda-setting: because all people of all generations are 'there', all issues and all ways of looking at issues are there too. A real deliberative poll, by contrast (to say the least), must have its agenda set for it. A continuous one, like that envisaged here and unlike that deployed by Fishkin and colleagues, requires continuous agenda-setting and continuous pressure to look at new issues, and at old issues in new ways (impartiality and generality too are fostered: impartiality through ignorance can be substituted by a 'higher' (or 'reflective') partiality born of knowledge of many and varied partial perspectives). This might broadly be achieved by civil society as I have very broadly characterized its ideal features, with the important addition of formal means of agenda-setting stipulating appropriate use of a device such as the citizens' initiative. Even the interests of future generations might then feature in real-world debates; if organized interests in civil society press the case for considering the future in present decisions, some small but significant part of that effect of the veil of ignorance might be recaptured.

The possibility of stalemate rears its head, of course, in reality. Here, we need further, familiar devices in order to hold on to something of the substance of the relevant regulative principle. Voting according to rules that are broadly acceptable – itself a topic akin to a can of worms, but I say no more on it here – is vital if the real world equivalent to the ideal deliberative forum is to be reasonably productive in the sense I use the term here. I refer here to voting in the deliberative-representative forum itself; but much more broadly than that, we need citizens who have the right to vote for *further* representative bodies which can in a more formal way play an agenda-setting and implementational role. The latter are required because of the danger of randomly selected representatives being insulated from popular pressures in ways that undermine key regulative principles in practice.

This sketch is all too brief – barely a beginning, let alone an end. It is not meant to be more than suggestive. What it does suggest is that, if one were minded to replicate as far as possible the assumptions and features of the original position in the real world, one would have to produce a vision that, in terms of institutions at least, provided for a mix of mechanisms of agenda-setting, deliberation and decision-making, variously broad and narrow and formal and informal. More specifically, as I have hinted, a literally representative deliberative forum with real decision-making authority would need to be located in a larger matrix of institutions including elected assemblies, and free and open civil society, the device of the initiative, and so on. On one side, this begins to look like a list of (mostly) familiar democratic institutions. On another, it looks like a radical re-visioning of democracy. Either way, it is a democratic vision, subject to change and uncertain outcomes. And it is arguably its democratic character which differentiates it from the contrasting vision in Rawls' *Political Liberalism* of how his early theory can be transformed into a vision of 'deliberative democracy'.

[1] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.772.

[2] Arguably, political theory as a discipline pays insufficient attention to the path-dependence of theorizing; in the current era, it has been adaptations of the dominant dialogical metaphor – the Kuhnian paradigm of the times? – that have driven our conceptions of both justice and democracy.

[3] Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell.

[4] Benhabib, S. (1996) 'Toward a deliberative model of democratic legitimacy' in Benhabib, S. (ed.) *Democracy and Difference,* Princeton, N.J., Princeton University Press, pp.74–75.

[5] Bohman, J. and Rehg, W. (1997) 'Introduction' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass. and London, MIT Press, xv.

[6] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.772.

[7] Gutmann, A. and Thompson, D. (1996) *Democracy and Disagreement*, Cambridge, Mass and London, Belknap Press; Dryzek, J. (2000) *Deliberative Democracy and Beyond*, Oxford, Oxford University Press; Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell; Fishkin, J. S. (1991) *Democracy and Deliberation*, New Haven and London, Yale University Press.

[8] Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell.

[9] Dryzek, J. (2000) *Deliberative Democracy and Beyond*, Oxford, Oxford University Press.

[10] Gutmann, A. and Thompson, D. (1996) *Democracy and Disagreement*, Cambridge, Mass and London, Belknap Press.

[11] Fishkin, J. S. (1991) *Democracy and Deliberation*, New Haven and London, Yale University Press.

[12] Dahl, R.A. (1989) *Democracy and Its Critics*, New Haven, Yale University Press.

[13] Only Dryzek's 'discursive' variant of deliberative democracy goes so far as to suggest that discursive contestation can be the basis of 'a logically complete deliberative alternative to the aggregative idea that public opinion is transmitted to government through voting that registers preferences'. Dryzek, J. (2000) *Deliberative Democracy and Beyond*, Oxford, Oxford University Press, p.50.

[14] I set to one side efforts to distinguish deliberative democracy according to its ability to realize independent standards (e.g. Estlund, D. (1993) 'Who's afraid of deliberative democracy? On the strategic/deliberative divide in recent constitutional jurisprudence', *Texas Law Review*, vol.71). These are peripheral to a debate which accepts, indeed often starts with, the fact of moral pluralism and the fact that political decisions inevitably include contestable moral choices.

[15] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.213.

[16] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.767.

[17] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.213.

[18] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.216.

[19] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.217.

[20] Rawls, J. (1997a) 'The idea of public reason: postscript' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, pp.97–8.

[21] Rawls, J. (1997a) 'The idea of public reason: postscript' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, p.136.

[22] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.771.

[23] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.767.

[24] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.225.

[25] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.226.

[26] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.774.

[27] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.774.

[28] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.226–7.

[29] Rawls, J. (1972) *A Theory of Justice*, Oxford, Oxford University Press, p.138.

[30] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.252–3.

[31] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.219–20.

[32] Rawls, J. (1993) *Political Liberalism*, New York, Columbia University Press, p.215.

[33] Goodin has suggested that 'internal-reflective' deliberation is an important ingredient in deliberative democracy, given the impossibility of 'external-collective' deliberation encompassing a mass community. Certainly the term 'deliberation' – like 'reasoning', discussed above – can refer to mental, reflective processes as well as spoken interaction with others. My view, implied in my arguments here, is that deliberation as actual spoken interaction is central to deliberative *democracy,* and to that extent can in no way be substituted by other, internalist, forms. See Goodin, R.E. (2000) 'Democratic deliberation within', *Philosophy and Public Affairs,* vol.29.

[34] In an article on Rawls' *Collected Papers* (1999), Waldron writes: ' … what if an economist asks a theologian to justify anti-euthanasia laws? It is no good saying: "Well, put them behind the veil of ignorance, and see what they come up with." The veil of ignorance is itself a way of modeling ideas about fairness, and the problem posed by pluralism is that fairness may be understood quite differently (or may not figure prominently at all) in various traditions. In *Political Liberalism,* Rawls insists that public justifications in a well-ordered society must in some sense stand above or apart from the religious, cultural and philosophical issues that divide the citizens. A person does not show the other the requisite respect if he responds to requests for justification in terms that he knows the other cannot accept.' (Waldron, J. (1999) 'The plight of the poor in the midst of plenty' in *London Review of Books*, 15 July, pp.3–6). Waldron here feels that he is pointing out a significant difference between the two 'stories'. In fact notice the great similarities, on his description. In the second story, it is unacceptable for particularity to affect a suitably general view being adopted by citizens – which is just what the veil of ignorance models in the first story. And in *Political Liberalism,* of course, all must have some conception of justice, similar in structure and effect to justice as fairness if not the latter exactly. I suggest that Waldron in fact underlines the metaphorical and mirroring effects I discuss.

[35] Rawls, J. (1997a) 'The idea of public reason: postscript' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, p.140, writes that his project consists of two stages: the derivation of justice as fairness as a freestanding political conception of justice, and the issue of reasonable comprehensive doctrines and the overlapping consensus. The first stage is about principles, the second

about stability. But this cannot be interpreted as a chronological point as opposed to a convenient way to characterize conceptually (apparently) different aspects of the argument. And at any rate, keeping these two parts separate would undermine thoroughly Rawls' claim that there will be political conceptions of justice which respect the limits of public reason other than his own preferred conception.

[36] Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell.

[37] Saward, M. (2000) 'Less than meets the eye: democratic legitimacy and deliberative theory' in Saward, M. (ed.) *Democratic Innovation*, London, Routledge.

[38] Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell.

[39] Rawls, J. (1997a) 'The idea of public reason: postscript' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, p.138.

[40] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.797.

[41] Wolff, J. (1994) 'Democratic voting and the mixed motivation problem' in *Analysis*, vol.54, no.4.

[42] Rawls, J. (1997a) 'The idea of public reason: postscript' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, p.135.

[43] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, pp.768–9.

[44] Rawls, J. (1997b) 'The idea of public reason revisited', *The University of Chicago Law Review*, vol.64, no.3, p.800.

[45] Fishkin, J. S. (1991) *Democracy and Deliberation*, New Haven and London, Yale University Press and Fishkin, J. S. and Luskin, R. (2000) 'The quest for deliberative democracy' in Saward, M. (ed.) *Democratic Innovation*, London, Routledge, represent a kind of semi-governmental perspective; Dryzek, J. (2000) *Deliberative Democracy and Beyond*, Oxford, Oxford University Press, a largely anti-statist view; Benhabib, S. (1996) 'Toward a deliberative model of democratic legitimacy' in Benhabib, S. (ed.) *Democracy and Difference*, Princeton, N.J., Princeton University Press, a view of siting forums which like Habermas, J. (1996) *Between Facts and Norms*, Cambridge, Polity Press, bridges that divide to some degree; Young, I.M. (1997) 'Difference as a resource for democratic communication' in Bohman, J. and Rehg, W. (eds) *Deliberative Democracy*, Cambridge, Mass and London, MIT Press, discusses difference and inclusion, and Cohen, J. (1989) 'Deliberation and democratic legitimacy' in Hamlin, A. and Pettit, P. (eds) *The Good Polity*, Oxford, Basil Blackwell, is the key source on consensus.

[46] Saward, M. (1998) *The Terms of Democracy*, Cambridge, Polity Press, pp.64–5.

[47] Ronald Dworkin, for example, is quoted as saying of Rawls that: 'I do not even have to think where to start; it is automatic that I start with him. My present view is opposed to his in some ways, but only from within a field defined by him' (quoted in Rogers, B. (1999) 'John Rawls' in *Prospect*, June, pp.50–55.).

[48] Rawls, J. (1972) *A Theory of Justice*, Oxford, Oxford University Press, p.139.

[49] Eckersley, R. (2000) 'Deliberative democracy, ecological representation and risk: towards a democracy of the affected' in Saward, M. (ed.) *Democratic Innovation*, London, Routledge.

[50] Fishkin, J.S. and Luskin, R. (2000) 'The quest for deliberative democracy' in Saward, M. (ed.) *Democratic Innovation*, London, Routledge.