Deliberative Democracy: Answering the Practical Challenges

by

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Bachelor of Philosophy, University of Prince Edward Island, 2007

A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of

MASTER OF PHILOSOPHY

in the Department of Philosophy

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University of Victoria

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Abstract

Sceptics about deliberative democracy point out that some issues involve material that is inaccessible to the untrained public, while other issues highlight fundamental value differences that cannot be resolved by public discussion. Value pluralism and public incompetence present serious challenges that threaten to limit the practical scope of deliberative democracy. This project aims to meet these challenges by considering cases that illustrate the successes and failures of public interaction. I draw upon the Oregon experiment, the BC Citizens’ Assembly, the Quebec kirpan controversy, and Turkey’s ongoing headscarf debate to outline useful procedures and institutional elements for a more robust deliberative theory. Provided these procedural suggestions, I argue that deliberative democracy can be a functional theory under non-ideal social conditions.
# Table of Contents

Supervisory Committee ........................................................................................................ ii
Abstract................................................................................................................................ iii
Table of Contents ................................................................................................................ iv
Acknowledgments .................................................................................................................. v
Introduction .......................................................................................................................... 1

## Chapter 1: What is deliberative democracy?

1.1 Deliberation or aggregation? ...................................................................................... 11
1.2 Instrumental or intrinsic? Procedural or substantive? .................................................. 16
1.3 The common good ...................................................................................................... 18
1.4 Plurality as a resource: a politics of difference ........................................................... 20
1.5 The advantage of social perspective: an example ....................................................... 23
1.6 Conclusion: what model? ............................................................................................ 33

## Chapter 2: Complex issues

2.1 Is detailed technical knowledge *always* needed? ..................................................... 39
2.2 The Oregon experiment .............................................................................................. 42
2.3 Criticisms of the Oregon experiment .......................................................................... 47
2.4 Xenotransplantation in Canada .................................................................................. 52
2.5 Further challenges ...................................................................................................... 54
2.6 The BC Citizens’ Assembly: an ideal framework? ..................................................... 58
2.7 Conclusion .................................................................................................................. 64

## Chapter 3: Deeply divisive issues

3.1 The legal route ........................................................................................................... 76
3.2 Preconditions of deliberation ..................................................................................... 79
3.3 An ideal model of representation ............................................................................... 81
3.4 Challenges and solutions ............................................................................................ 85
3.5 The limits of the citizen route .................................................................................... 95
3.6 Conclusion .................................................................................................................. 97

Conclusion .......................................................................................................................... 98
Bibliography .......................................................................................................................... 100
Acknowledgments

I would like to thank my entire committee for their support and quick feedback throughout this project. My supervisor, Colin Macleod, has always been readily available to discuss my work and has encouraged the further development of my ideas. My research work with Marsha Hanen over the summer of 2008 directly influenced my second chapter, and I am grateful for the opportunity and experience. I thank Scott Woodcock, as his role as a teacher greatly contributed to my development as a writer and critical thinker. I also appreciate my fellow graduate students for discussing elements of this project with me, and providing their own criticisms and insights.
Introduction

Broadly speaking, deliberative democracy is a democratic model that promises more inclusive citizen involvement in the policy making process via a process of reason giving. Common citizens would be called upon to deliberate in forums on issues ranging from health care to electoral reform. Ideally, participants would thoughtfully engage with others and speak in terms that are not alienating or exclusionary to those who might come from differing backgrounds and belief systems. This is the basic idea behind public reason (a term that will be considered in more depth in the following chapters). Basically, citizens should provide reasons for their positions in terms that are mutually acceptable; a particular belief system, religion, or philosophy should not be required to accept the types of reasoning involved in mutually binding decisions.

The question of whether or not deliberative democracy is a good idea is not generally up for debate. Surely, citizens discussing and working out policies that mutually affect and bind them would be great if it could work. If people could find a way to successfully engage each other as citizens in deliberative forums, this would certainly enhance their ability to understand and manage their own disagreements. Procedures could also be put in place to allow minority groups adequate representation in these forums. Despite their low numbers, minority groups could still have good reasons to promote a certain policy. This is all encouraging when the working alternative is often to have a vote without deliberation, or have policy decisions made solely by elected officials, or, in some cases, judges. If deliberations could be progressive while taking into
account a wider range of social perspectives, this would be beneficial for citizens and enhance the legitimacy of democratic decision making.

Most criticisms of deliberative democracy have focused on the practicality of citizen deliberation. The motivation for wanting to improve a democratic system is clear, but might not always be realistic. The purpose of this project is to make a positive case for deliberative democracy while trying to alleviate some of these concerns regarding the practicality of deliberation.

First, I make a positive case for deliberation that takes into account the advantage of social perspective. When decisions are made by elected officials and government representatives, the perspectives of many groups and individuals may fail to be considered. Representatives will often belong to certain demographics (higher education, high socioeconomic status, and so on), and their experiences will sometimes be very different from those in more marginalized social positions. As I point out in Chapter 1, there have been many observations regarding the benefits of a more inclusive, deliberative approach towards decision making. Given that modern democratic societies are pluralist, we need to take into account a wide range of perspectives from people belonging to different religions, cultures, and social backgrounds.

The first two major criticisms regarding the practicality of deliberative democracy that I deal with are the agenda-setting problem and the complexity objection (Chapter 2). The former deals with the charge that deliberative democracy is susceptible to particular types of manipulation. Somebody or some group has to set the agenda for deliberation (i.e. what topics will be discussed, how long to address each topic, and so on), and their influence over the agenda could potentially translate into an unfair influence over the
“democratic” outcome. The latter problem deals with the fact that some issues may be too complicated for lay citizens to competently engage with in a deliberative setting. I draw upon successful deliberative projects involving difficult issues such as health care (the Oregon Experiment) and electoral reform (the BC Citizens’ Assembly) to support an argument against these claims. Breaking down the successful elements of these cases, I provide several recommendations for future deliberations on complex issues and consider how agenda setting concerns can be diminished.

Finally, the last chapter will deal with the depth of disagreement objection: sometimes there are deep differences in the very value systems that citizens maintain. And sometimes these differences are so profound that constructive discussions seem impossible. It follows that some other decision making mechanism, such as the court system, is possibly needed to sort out deeply divisive issues. I maintain that citizen deliberation can usually be constructive even when divisive issues are being discussed. Expanding on the set of recommendations I spell out in Chapter 2, I consider what might be added to our deliberative model to help ensure discussions on divisive issues do not break down. Again, I consider several examples that shed insight on how we might approach such a task.
Chapter 1: What is deliberative democracy?

In any pluralistic society, there are bound to be fundamental disagreements on a wide range of social and political issues. Much of this disagreement is reasonable and is not easily resolvable\(^1\). When setting up a democratic political system, one basic consideration concerns what the most effective and legitimate way to resolve such disputes is. In other words, we need a decision-making system in place that is generally capable of being decisive, is legitimate in the sense that all reasonable citizens are able to have their concerns taken into consideration, and is able to attain just outcomes on a regular basis.

Considering the options in terms of democratic models, I shall argue that, in many contexts, deliberative democracy provides the most promising framework to deal with differing preferences and general disagreement in societies\(^2\). On deliberative accounts, a minimum requirement is that reasons be provided for mutually binding decisions. Citizens, then, are expected to go beyond simply voting with their individual or group interests in mind, with hopes that their interests are held by enough others to reach some desired outcome. Such self-interest is generally the type of behavior promoted by aggregative models of democracy. The main difference between aggregative and deliberative models lies not in the act of voting; many deliberative theorists insist that voting is still necessary when many people are involved in making a decision (Goodin,

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\(^{1}\) “Reasonable” here means that the arguments given in support of specific decisions must fall within some notion of public reason, which generally refers to reasons that should be acceptable to all democratic citizens.

\(^{2}\) To be sure, the ability of deliberative democracy to function will inevitably depend to some degree upon how sympathetic a given society is to democratic processes in general. And even in societies that are sympathetic to democracy, deliberation might not be desirable in cases where an issue cannot be made public for security or privacy reasons.
2008, p. 108). Nor is the primary difference found in the act of discussion itself; surely, agents seeking their self-interest can benefit from talking and sharing information with each other in certain circumstances (Freeman, 2000, p. 377). Rather, the difference lies in the types of reasons that are considered when making political decisions. A greater responsibility is implied when citizens have to offer reasons why others (who will often be differently socially situated) should accept the arguments that they find appealing. On deliberative accounts, these reasons ideally remain consistent with some idea of public reason, or what counts as reasonable when acting politically. Some political theorists, such as John Rawls, maintain that citizens do not fulfill their democratic duty when they knowingly appeal to reasons that rely on a particular worldview or comprehensive doctrine. Put differently, there needs to be a way of speaking as citizens among citizens; public reason should be limited to those arguments that are grounded on premises that other reasonable citizens can accept. This conception of acceptability to others is generally known as the principle of reciprocity, which is a guiding principle that provides a method for determining what counts as public reason. On Rawls’s conception, upholding this principle implies that citizens must act like judges when acting politically:

Just as judges are to decide cases by legal grounds of precedent, recognized canons of statutory interpretations, and other relevant grounds, so citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake… Thus, when there seems to be a stand-off, that is, when legal arguments seem evenly balanced on both sides, judges cannot resolve the case simply by appealing to their own political views. To do that is for judges to violate their duty. The same holds with public reason: if, when stand-offs occur, citizens simply invoke grounding reasons of their comprehensive views, the principle of reciprocity is violated (Rawls, 2005, p. 605).

Other political theorists such as Amy Gutmann and Dennis Thompson maintain a similar notion of reciprocity, but are willing to admit that citizens can invoke their more comprehensive views in cases where “mutually acceptable reasons” are not a realistic
possibility (Freeman, 2000, p. 406). Others are sceptical of the notion that these hypothetical approaches have any real normative guidance in practical circumstances. For example, Henry Richardson plainly rejects more hypothetical criteria based on a notion of “mutual acceptability” or what “no one can reasonably reject”, and instead suggests that substantive liberal principles should guide political actions (Richardson, 2002, p. 52-54). He does not disagree with the idea of deliberative democracy, but he does suggest that the idea of mutual acceptability is not realistic and argues that general liberal rights and principles should limit the sets of reasons that can be given in a deliberative forum.

I suggest that a conception of reciprocity similar to that of Gutmann and Thompson is ideal and increases the chances that political decisions will be regarded as morally legitimate by all affected individuals\(^3\). Being a guiding principle, reciprocity does not intend to provide a perfect decision rule for determining what counts as a legitimate argument in all practical circumstances. Rather, reciprocity implies that citizens should contemplate among themselves how to properly address each other fairly and equally in specific situations, and this process might further promote moral relations and mutual respect among citizens\(^4\).

\(^3\) David Estlund (2008) also shares a similar notion of reciprocity. He maintains that “political justifications cannot appeal to doctrines that are not acceptable to all qualified points of view” (p. 53).

\(^4\) I leave open the question of whether there can be different institutional “levels” of deliberation, where emphasis is placed on different deliberative virtues. For instance, Robert Goodin (2008) emphasizes that a rigid commitment to reciprocity might not be necessary in the early stages of deliberation, such as in a closed caucus room where members of a political party might be allowed to speak freely, so long as they state their preferences legitimately (and not strategically) (p. 195). He maintains that as long as fundamental deliberative virtues such as reciprocity are “on display at some point or another in the decision process” this, practically speaking, should be enough (Goodin, p. 201).
Beyond the moral appeal of a deliberative model that respects reciprocity, inclusion in a deliberative process has epistemic advantages as well. As Gutmann and Thompson (2004) note,

Reciprocity is to justice in political ethics what replication is to truth in scientific ethics. A finding of truth in science requires replicability, which calls for public demonstration. A finding of justice in political ethics requires reciprocity, which calls for public deliberation...The process of deliberation...has epistemic value. Decisions are more likely to be morally justifiable if decision-makers are required to offer justifications for policies to other people, including those who are both well informed and representative of the citizens who will be most affected by those decisions (p. 101-102).

Ensuring inclusion in a deliberative process can be a rich source of social knowledge in the sense that citizens from all different social positions can share their particular experiences and how they see themselves standing in relation to others. “Objective” political knowledge comes from having a relatively complete understanding of how groups socially relate to one another and what it means to be placed in different social positions (Young, 2000, p. 117). As many feminist philosophers have pointed out, it is problematic to assume that policy makers are always able to speak for the experiences and the knowledge various individuals obtain from being placed under particular social circumstances. A good example of a case where policy makers initially failed to address the needs of others can be found in the Canadian research context. In framing ethical guidelines on research involving humans, Canadian policy makers failed to provide proper means of inclusion in the early stages of the process. This resulted in some types of research being overlooked—particularly more interpretive, qualitative research. Further, certain guidelines did not make any sense when applied to some communities. This particular example will be explored in much more detail later. In general, groups that typically belong to specific demographics,

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5 As Lorraine Code (2006) notes, we need to “[cultivate] public sensitivity to the specificity of diverse social circumstances and positioning, in diverse habitats, and which acknowledges differences in habitus and ethos” (p. 272).
such as more educated individuals and policy makers, will be unlikely to acquire the requisite level of social knowledge for framing such policies on their own (Estlund, 2008, p. 222). Deliberation and inclusion in a pluralistic society is an invaluable tool in the process of attaining this knowledge.

The goal of this chapter is to build an affirmative case for deliberation and public inclusion. I maintain that the primary role of deliberative democracy is to enhance the character and the amount of input that citizens have in structured debates and discussions about social and political policies that affect their lives. Informed and reflective citizen input, on my view, should at the very least significantly influence policy and decision-making processes. Most of the examples discussed in this chapter highlight this aspect of deliberative democracy very well. However, I also endorse the stronger claim that future exercises in deliberative democracy should provide citizens greater authority to shape policies and render decisions. Put differently, the outcomes reached via deliberative forums should not be taken simply as “recommendations”. Providing citizens a direct connection with policy leaves little room for elected officials to ignore or celebrate the results of deliberative sessions (depending on their political aims). One example I discuss in later chapters, the BC Citizens’ Assembly, provides some evidence for the plausibility and value of this stronger claim. Because the terrain covering social and political issues is so vast, I do not deny that there is still a legislative role for parliament. The division of political labour will still require politicians to cover issues that need extremely quick action, issues that the public has little interest in discussing, and issues that might involve concerns of national security. But I do maintain that the legislative role of parliament should be significantly reduced.
Notably, there are a number of serious objections to deliberative democracy that will be considered in more detail in later chapters. One common objection to deliberative democracy is the complexity objection: complex moral and scientific judgments might require specific knowledge that most citizens simply do not have. While it is not generally disputed that deliberation is a useful tool in some circumstances, its effectiveness is often questioned when dealing with particular kinds of issues. When deciding how to allocate a health care budget, detailed knowledge of medical conditions and their available treatments might be needed. Perhaps these issues might be better left to more educated persons who are experts in the relevant fields of inquiry. Chapter 2 will take up this issue by introducing evidence which suggests citizens are often capable of making complex judgments. When provided sufficient background knowledge on a topic, citizens are often able to competently discuss the relevant social issues the topic raises.

There are also concerns about having fair control of deliberative agendas. Surely, somebody has to decide what topics should be discussed, what information is provided to citizens prior to deliberation, and so on. There is certainly some room for manipulation here, and so it is possible that “fair” deliberative models might really just reinforce certain distributions of power. Those in a position of authority will inevitably have more power over the setting of agendas. We might call this the agenda setting problem. As Ian Shapiro (2003) puts it:

Who decides which issues should be presented…for discussion, and, possibly decision? Who sets the agenda? The ‘experts’ who testify before the randomly selected groups are supposed to be ‘balanced,’ but who does the balancing, and who decides what criteria they should use? (p. 33)

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6 For example, in developing Philadelphia’s waterfront, many successful public meetings took place where citizens reached a broad consensus on most elements of the project (Sokoloff et al., 2005, p. 185). Not many would go out of their way to disagree with the notion that community members should have a say in what the best location is for a public park, a new swimming pool, or a new public building.
A third criticism of deliberative democracy is the *depth of disagreement* objection, which is taken up in Chapter 3. The idea is that there are some public matters where citizens will inevitably come to a complete stand-off because they do not even share basic premises on which discussion can be grounded. Examples might include abortion, euthanasia, capital punishment, pornography, wearing religious symbols in public institutions, certain land claims, and so on. If deliberation cannot make progress on extremely divisive issues, it might simply lead to a reinforcement of the social status-quo. In other words, deliberative democracy might be reduced to a popularity contest between irreconcilable views, making its supposed superiority over aggregative approaches doubtful. Some democratic theorists, such as Ian Shapiro, have suggested that the courts might sometimes be better positioned to ensure democratic progress and a legitimate competition of ideas. Shapiro argues that the courts are independent of the democratic process, and as a result are more likely to make progress on divisive issues by avoiding debates that might never be resolvable in a pluralistic society and focusing on what certain constitutional protections entail (Shapiro, 2003, p. 70). Despite this claim, I will suggest that deliberation can still be useful in more difficult contexts. In some cases, deliberation might very well make it more difficult to reach a consensus because more differences will be highlighted during discussion. But unless a decision needs to be made very quickly, we can allow for more complexity to be introduced in the hope of eventually reaching a more complete understanding of what underlies major disagreements (Young, 2000, p. 119). Including different perspectives in more detail might initially raise tensions, but it might also eventually make it clear that a completely different approach needs to be taken to resolve a problem.
1.1 Deliberation or aggregation?

Aggregative models of democracy suggest that citizens should vote with their given preferences in mind. On the aggregative conception, the role of each citizen is to reflect on her current individual and group interests and strategically place her vote in the manner that most benefits her (Freeman, 2000, p. 374). The role of democratic procedures is to ensure that citizens are able to express their preferences freely and that there remains genuine competition among preferences in society (Young, 2000, p. 19).

The primary concern is not with ensuring that reasons are provided for stated preferences, but with what the fairest method is for combining the interests of citizens in order to make just decisions (Gutmann and Thompson, 2004, p. 13). Aggregative conceptions of democracy are thought to be more practical by many social choice theorists. The most common aggregative model is majoritarianism, where an issue is put to the people in the form of a popular vote. On this view, as long as the voting process is fair and the procedural dice are not loaded to facilitate a particular outcome, a majority vote should pass. Majority-supported outcomes should be held as legitimate as long as procedures are followed that ensure a fair voting process. There are other ways to fairly combine preferences as well; perhaps stated preferences might be passed through an analytic filter.

As Adam Przeworski (1998) writes, “the idea that majority rule is just an expedient substitute for unanimity should be stored in the archives of eighteenth-century thought” (p. 155). While Przeworski thinks that deliberation can coordinate beliefs and place citizens in equilibria, he contends that the resulting equilibria will inevitably place some in more optimal positions than others. Private firms have privileged control over the interests of individuals. And because deliberation costs money, there will be limited and unequal chances to coordinate beliefs (Przeworski, p. 154-155). He thinks people’s beliefs are largely shaped by such external forces or environmental constraints. When we take into account that people’s beliefs are shaped in a wider social context with various power influences, it should be clear social deliberation will likely simply separate citizens into various bargaining positions—some better than others. The result: deliberation is not likely to amount to much more than aggregation.

Majoritarian approaches can either be part of a direct democracy, where citizens directly influence policy decisions themselves, or they can be part of a representative democratic system, where citizen representatives would simply vote on the matter.
such as a cost-benefit analysis. In any case, the act of expressing interests in the form of a vote is seen to be the foundational method of decision making in aggregative models.

In contrast, deliberative models emphasize the importance of open discussion and reasoned argument in decision making. On these accounts, the primary focus of decision making should not be on the numerical support for given preferences, but with other procedures such as inclusion, equality, and reasonableness. There are various models of deliberative democracy, but it is common for emphasis to be placed on these procedures. Inclusion is generally a central value; minimally, people deserve to have influence over decisions that significantly affect their lives (Young, 2000, p. 23). And it is generally held that individuals should be given equal opportunity for inclusion in the sense that every person should be given the same opportunity to raise points and concerns. Participants in the democratic process should also act reasonably by listening to the arguments of others and remaining open to the idea that a consensus might eventually be reached (Young, p. 24). This suggests that citizens must be accountable to others in a way that is not required when preferences and interests are simply stated; arguments must be put forward in a manner that all reasonable citizens could possibly accept. In other words, citizens should ideally speak as neutrally as possible (in regards to particular religious or philosophical views) so as not to alienate others coming from different perspectives. Of course, even among reasonable citizens, a consensus is never guaranteed, and certain mechanisms such as voting will still be needed in many situations. To suggest that we can make decisions by just talking with one another might be unduly optimistic. As one political

9 As we see below, however, it cannot be denied that voting procedures are still an important aspect of deliberative democracy.

10 As outlined above, I am maintaining a broadly Rawlsian notion of public reason here.
theorist notes, “[i]n any moderately large community...deliberation must almost inevitably be supplemented by voting as the ultimate decision procedure” (Goodin, 2008, p. 108). Similarly, Gutmann and Thompson (2004) write that “[d]eliberation must end in a decision...[i]t must rely on other procedures, most notably voting, which in themselves are not deliberative” (p. 18). In any case, deliberative models suggest that, generally speaking, there is nevertheless value in having inclusive and equal discussion among reasonable citizens.

There are clear advantages and disadvantages to both aggregative and deliberative models. In most cases, aggregation would clearly be less time consuming and cheaper to operate. It is also capable of consistently reaching determinate outcomes—for example, the procedure that the decision with the most votes wins is very clear cut (Gutmann and Thompson, 2004, p. 15). The aggregative approach is also more neutral because it does not maintain that preferences should keep in check with certain substantive values such as reasonableness. This might make aggregative models less controversial; the suggestion that the preferences of some should sometimes be changed might come across as dominating or paternalistic in some circumstances (Gutmann and Thompson, p. 16).

But there are also some significant problems with the aggregative approach. Aggregative models are generally sceptical of normative objectivity in the sense that standards or principles can be appealed to that go beyond subjective preference. If outcomes are simply shaped by adding up subjective preferences, how are we to assess the substantive worth of decisions? When preferences are simply taken as given, there is no way even to tell if the motivations for held preferences are reason-based or completely arbitrary (Young, 2000, p. 20). It seems that all we have left is the numerical support for
a decision, but this in itself does not tell us anything about the real substantive value of
the decision. The outcome would not have to stand up to open reasoned argument from
multiple points of view. Why, then, would a minority group accept an outcome that
ignores their interests as legitimate under these circumstances? Minorities might even
find themselves caught in a frustrating cycle, where distributions of power are constantly
reinforced through a “neutral” majority vote (Gutmann and Thompson, 2004, p. 16).
Aggregative models have no easy answer with respect to how such cycles can be broken.

The deliberative approach is not free of worries either. The process can be costly
and time consuming. In certain circumstances, deliberation might amount to “collective
fiddling while Rome burns” (Shapiro, 2003, p. 22). Sometimes it is the case that
decisions need to be made very quickly and deliberation might not reach a determinate
outcome in time. And we’ve already noted the complexity objection and the depth of
disagreement objection. Regarding the former, some issues might be too complicated for
ordinary citizens to discuss. As for the latter, we need to consider that deliberation might
not be helpful when dealing with issues of deep disagreement or where there is a
complete ideological stand-off. If there is no common grounding among disagreeing
groups, then how can we expect deliberation to be constructive in softening or
eliminating disagreements? Abortion is one topic that is frequently said to result in deep
disagreement. If, for example, pro-choicers assert that pro-lifers are “against women’s
rights” and pro-lifers assert that pro-choicers are “anti life”, deliberation might create
opportunities for opposing sides to become even more deeply divided on the issue.
Lastly, we looked at the agenda setting problem. A person or group must first set the
agenda for a deliberative process, and those with the money and power to do so might
load the dice to facilitate outcomes that protect their interests. Deliberative models, then, might simply reinforce social distributions of power in a different way from aggregative models.

However, despite these worries, it seems that there are reasons for giving the deliberative approach serious consideration. It is morally appealing because it implies that citizens deserve to have a voice in influencing policies that significantly affect their lives. Even if some perspectives are not included in a decision, reasonableness and accountability demand that moral reasons be provided for the exclusion of any perspectives. If perspectives are excluded for morally arbitrary reasons (such as simply not being popular), then some citizens are being used as a means to enhance the interests of those who happen to have the power to shape policies. Further, because of the demands of a reason giving process, there is clearly more hope for the transformation of preferences that are constrained by limited social knowledge. There is an advantage of social perspective where more points of view are considered. For example, in a discussion concerning the allocation of funds for the public school system, a person from a high socio-economic bracket might be extremely surprised to find out about the poor conditions of schools in lower income neighbourhoods. Similarly, a police force might gain significant social knowledge by including residents from various neighbourhoods in community meetings\(^\text{11}\). Deliberation would provide ample opportunities for citizens to learn more about how others from different backgrounds are affected by decisions.

\(^{11}\) A practical example of this comes from a project undertaken by the Chicago Police Department (CPD) in 1995. In response to doubts about the department’s effectiveness in dealing with crime in various neighborhoods, the CPD “[recognized] the need to address situated issues with focussed and contextualized attention” (Fung, 2003, p. 117). Officers split up to meet with residents in 279 decentralized “beat teams” that dealt with issues specific to the different neighbourhoods. Every team held open meetings every month. The result was that “residents contributed information, resources, and organized to act in ways that police could not have done” (Fung, p. 137).
1.2 Instrumental or intrinsic? Procedural or substantive?

There has been more than one proposed model of deliberative democracy, so some clarification is needed here. First, it makes sense to ask whether deliberation is valuable for instrumental reasons or more intrinsic reasons. Put differently, should we deliberate because of the resulting epistemic benefits, or because of certain moral values such as inclusion and mutual respect? Moral legitimacy is held through procedures that ensure inclusion, equality, mutual respect, and so on. Setting up proper procedures is supposed to ensure a fair and legitimate outcome. But it is argued that these procedures, by themselves, do “not show why the reasons for any such decision are good reasons” (Bohman, 1998, p. 402). On the other hand, if the epistemic benefits are what matter, then we presumably need some reliable way to validate epistemic claims that is independent of deliberation. But if we have independent standards for determining what is just (and epistemic reliability is what matters), why bother deliberating? As James Bohman (1998) puts it,

Deliberative democracy seems caught on the horns of a dilemma: if it establishes its moral credentials of legitimacy via an ideal procedure, it cannot underwrite its epistemic claims; if it establishes its epistemic claims, they can only be underwritten by standards that are not only procedure-independent, but also independent of deliberation. Such epistemic norms seem more appropriate for theoretical reason (p. 403).

The easy answer to this dilemma is to admit that deliberation is desirable for both intrinsic and epistemic reasons, and is both procedural and substantive. In other words, there is moral value in ensuring citizens an expressive voice on decisions that affect them and in ensuring citizens a fair and equal opportunity for expression in the democratic process by maintaining procedures of inclusion, equality, and mutual respect. And if it can be agreed that certain outcomes are better than others, it seems that epistemic
concerns matter too. Substantively speaking, some outcomes seem undesirable regardless of the procedures that produced them (e.g. slavery or racism). Presumably, if deliberative procedures consistently led to such unintuitive outcomes, this would throw into question the epistemic reliability of the democratic model. Considering this, we can simultaneously maintain that morally legitimate procedures are as important as are substantively just outcomes. Indeed, upon closer analysis, the procedural/substantive distinction seems dubious. Even allegedly “purely” procedural accounts have some substantive content. When deliberative theorists insist on procedures such as equality, inclusion, and mutual respect, they are (implicitly or explicitly) suggesting that these principles should restrict the set of outcomes that are possible in a decision-making process (Bohman, p. 305). Not just any procedures are selected; presumably even the most committed proceduralist would claim that there is something wrong with making democratic decisions with the arbitrary flip of a coin. John Rawls (2005) sums it up this way:

Here are five values that offhand seem to be values of the procedure—impartiality and equality, openness (no one and no relevant information is excluded) and lack of coercion, and unanimity—which in combination guide discussion to generalizable interests to the agreement of all participants. This outcome is certainly substantive, since it refers to a situation in which citizens’ generalizable interests are fulfilled. Moreover, any of the previous five values are included as part of the procedure in that they are necessary to render the outcomes just or reasonable. In that case, we have shaped the procedure to accord with our judgment of those outcomes (p. 425).

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12 Even Jurgen Habermas, who is often labeled as a pure proceduralist, uses procedure-independent standards to assess outcomes. His ideal speech situation is a hypothetical setting where participants have unlimited time to speak and are fully informed, power relations are non-existent, and only reason guides deliberation. Although any actual setting will almost surely fall short of this, the idea is that this hypothetical construct can provide some guidance in regards to what justice requires. In other words, the substantive worth of outcomes can be held in reference to whether this set of ideal procedures (which are independent of the actual procedures) could have produced them (Estlund, 2008, p. 88-89).
If it makes sense to say that some outcomes are better than others, then the next question to ask regards what epistemic considerations are appropriate when assessing outcomes. Presumably, we want to be able to say that deliberation can minimally have a better than random chance at “getting things right”. Otherwise, despite the moral appeal of deliberative procedures, we might look elsewhere for political decision making. What tools are potentially at our disposal for making an epistemic case for deliberative democracy?

1.3 The common good

It might be possible to refer to some notion of the common good when assessing the epistemic worth of outcomes. It is sometimes asserted that deliberative democracy should attempt to arrive at consensus by realizing an ideal of the common good. The opposing view is that in a pluralistic society some political disagreements are largely facts of life that we often need to accept (Gutmann and Thompson, 2004, p. 27). On the former view, the aim of deliberation is to solve disputes by appealing to some (deliberatively-prior) notion of the common good or by attempting to arrive at such an ideal notion of the common good via certain procedures. The idea is to reach a rich common ground or consensus that all citizens can accept, regardless of their various differences. The latter view, the position of pluralism, generally takes a more minimalist position on the common good in the sense that collectively binding decisions need only be justified as fairly and equally as possible. In other words, the common good should be non-comprehensive; deliberation should be more open to diversity and focus on finding ways to deal and live with deep disagreements (Gutmann and Thompson, p. 28).
The idea that a rich common understanding is required for deliberation is problematic for a number of reasons. Iris Young (2000) notes that it is odd to think that we would often find a common grounding when dealing with political conflicts in pluralistic societies; political units are generally multicultural and are further diversified by gender differences “that are sources of different social experience and often different interests” (p. 41). In other words, people come from a wide range of social backgrounds, and it seems unrealistically optimistic to assume that there would be a rich common understanding of what constitutes the public good. As Robert Goodin (2008) notes, “[i]t is a massive leap of faith to suppose that all parties to a conversation-cum-deliberation share the same view of the ‘purpose’ of the discussion, of ‘what it is about’” (p. 190).

There are other problems if we say our goal is to arrive at such a common good through deliberation. For one, the possibility of a more comprehensive idea of the common good presents an opportunity for exclusion and repression. If, as pluralists maintain, political disagreements can run very deep, then the only way to attempt to reach a thick notion of the common good is by excluding or repressing some points of view (Gutmann and Thompson, 2004, p. 28). It might not be surprising to find that the “common good” ends up benefiting demographic groups that typically have more political sway than others. And provided that social and economic inequalities are rampant in most societies, those that are more privileged are more likely to have their perspectives reflected in the common good. In other words, “difference-blind” or universal principles are likely to simply reflect one dominant culture (Taylor, 1994, p. 43). Similarly, the deliberative agenda is likely to be adjusted to remain consistent with the goal of reaching a common good. From the very outset, then, marginalized and
unpopular views might simply be silenced in the name of a “common” understanding (Young, 2000, p. 43).

This leaves us with the pluralist view, which needs some qualification here. Pluralism does not maintain that every perspective should be respected. On virtually any version of pluralism, the common good minimally requires that we can determine what perspectives are respectable in a democratic process. For a position to be respected, the position must be recognizable as moral. A moral perspective is one that recognizes all citizens as free and equal and could realistically be adopted by any citizen regardless of their social position (Gutmann and Thompson, 2004, p. 72). Further, any empirical evidence that is offered in support of a moral perspective must remain open to criticism from generally acceptable methods of inquiry (Gutmann and Thompson, p. 72). Racism does not count as a morally respectable point of view because it arbitrarily excludes the consideration of the interests of some citizens and is not empirically defensible by standard methods of inquiry (Gutmann, 1994, p. 22-23). As long as pluralism maintains a minimal account of the common good in which only reasons that qualify as moral are considered legitimate, it can avoid being committed to the notion that “anything goes”.

1.4 Plurality as a resource: a politics of difference

If a comprehensive notion of the common good is not an appealing epistemic goal, what other resources are there for making epistemic arguments for deliberative democracy? One resource might be pluralism itself. Iris Young (2000) argues that different structural social groups (such as gender, race, sexuality, class, and ability) and some cultural groups involve structural relations of power that place some in more
privileged positions than others (p. 83). These structural inequalities, in turn, imply that there are going to be vast differences among groups in terms of educational opportunity, access to and quality of health care, occupation, income, political influence, and so on (Young, p. 95). On this view, inclusion is not just a fair procedure, but also a rich resource for social knowledge. This is the advantage of social perspective we alluded to earlier. Taking note of the experiences and knowledge of people in very different social positions will only increase the overall pool of social knowledge and let us respond to political problems with a better understanding of the complexities involved. Because of these vast differences, it is particularly important that an effort be made to include more marginalized groups. If we want to make fully informed decisions, we must make efforts to listen to the experiences of those who are placed in minority or more marginalized positions.

Young advocates a non-essentialist conception of groups. Social groups should not be viewed as entirely distinct and fixed, but as more overlapping and fluid (Young, 2000, p. 89). Within any given group, individuals are relationally tied to others within the group as well as those outside the group. What defines membership to a group on this

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13 One notable study involving government employees from greater London has shown that even minor differences in employment grade can have significant impacts on health (Sreenivasan, 2007, p. 24). Subjects in the study at the highest employment grade (administrative) had a lower mortality rate than those at even the very next grade (professional/executive). Mortality rates were successively higher for the next two levels (clerical and “other”) (Sreenivasan, p. 23). Interestingly, all of the subjects were from the same area, worked for the government, and had free health care access (Sreenivasan, p. 24). Much greater social inequalities than this certainly exist in many societies, particularly among more marginalized groups. For more details on this specific study, see the original study (Marmot et al., 1978), and the 25 year follow-up (van Rossum et al., 2000).

14 Consider that before there was a language and legal theory of sexual harassment, there was no recognized way to issue a reasonable complaint regarding such improper behavior. In the 1970s and 1980s, many women started to discuss the issue with each other and gradually began to address the wider public on the issue (Young, 2000, p. 72). When it was made clear just what was happening in many workplaces and that virtually nothing was being done about it, a legal means was quickly developed to legitimize action against the painful and humiliating experiences that many women were having (Young, p. 73).
view is not some particular set of attributes (such as genetic similarity or a similar ancestry), but rather the similarities members share in how they stand in relation to others in society. For example, we might imagine that an Asian African man who was born into a mainly African American neighbourhood and has lived there all his life might be similarly socially situated with African Americans (Young, p. 148). The implication here is not that social groups are illusions, but that the typical attributes found in these groups do not necessarily dictate an individual’s identity. Complex arrays of social factors combine to influence a person’s identity, and structural social inequalities can affect members within particular groups differently.

By including all of these differently socially situated persons in a deliberative process, we can hope to shed light on what the most objective political judgment might be under a particular set of circumstances. The most “objective” judgments are not made by abstracting away from all social difference and arriving at a general “view from nowhere”. Rather, it seems to make more sense to say that the most objective political judgments occur when people from all different social positions are encouraged to share an understanding of their position in society and how it relates to others, a perspective of their society’s history, how they think various social processes affect their lives, and so on (Young, 2000, p. 117). In other words,

[a]iming to promote social justice through public action requires more than framing debate in terms that appeal to justice. It requires an objective understanding of the society, a comprehensive account of its relations and structured processes, its material

15 This position is somewhat different from what is perhaps the most famous politics of difference, Charles Taylor’s politics of recognition. Taylor argues that cultural differences have especially deep impacts in the formation of personal identities. Cultural recognition, in terms of respecting various customs and practices, is thus taken to be of particular importance in ensuring justice (Taylor, 1994, p. 36). While Young agrees that cultural recognition can be correctly seen as claims of justice, she is sceptical of the notion that injustice, in terms of identity and difference, is characterized by cultural misrecognition (Young, 2000, p. 105).
locations and environmental conditions, a detailed knowledge of events and conditions in different places and positions, and the ability to predict the likely consequences of actions and policies. Only pooling the situated knowledge of all social positions can produce such social knowledge (Young, p. 117).

1.5 The advantage of social perspective: an example

The recent attempt to form a universal code of ethics governing all research done on humans in Canada nicely demonstrates the importance of having diverse public input. Not only can different types of researchers using very different research methods be affected by such an ethics code—various communities will inevitably be differently affected as well. The advantage of social perspective that comes with inclusion is made clear when we compare the earlier Canadian policy statements, which resulted from very limited public inclusion, with the most recent policy draft on research involving humans, which has paid more attention to the voices of researchers in more marginalized disciplines and the special needs of members in different communities.

In an effort to put together a universal code of ethics for research involving humans in Canada, the Tri-Council Working Group (TCWG) was formed in 1994. It consisted of representatives from the three major federal granting agencies in Canada: the Social Sciences and Humanities Research Council (SSHRC), the National Institute for Health Research (NIHR); formerly the Medical Research Council of Canada (MRC), and the Natural Sciences and Engineering Research Council (NSERC). Initially, each of these councils independently set ethical standards for research relevant to their respective disciplines. The intent in forming the Tri-Council was to arrive at a code that all institutions and persons using funding from these agencies would have to adhere to when conducting research on humans. Local university research ethics boards (REBs) would
then ensure that research proposals remained consistent with the Tri-Council code. A series of drafts for the *Code of Ethical Conduct for Research Involving Humans* were released over the next few years. A final version of the *Code* was put out by the Working Group in 1997, and the Tri-Councils have since revised the document further.

Open forums were periodically held throughout the development of the *Code*, but they were intended to focus on a very narrow range of questions and occur within a limited time frame (i.e. months). It was also initially clear that the goal was to “tweak” the already established 1987 MRC guidelines so that they would be generalizable to researchers working under SSHRC and NSERC grants. In other words, the process was meant to be revisionary rather than visionary, and the rigid structure of public participation reflected this fact (Sherwin et al., 1998, p. 247). In a November 1994 meeting, at least one group intended to change this. A network of feminists used the discussion period to draw attention to the fact that much more public deliberation was needed. They also insisted that a different, more flexible ethical framework might be needed than the sought after revisionary code could supply. Initially, it seemed that their project was a success; the deadlines were somewhat relaxed, and the idea that input should be valued from across the country was well received. An official document was even prepared by the group of feminists and given to all the members of the Working Group.

Despite their efforts, after the second draft of the *Code* was released in February 1997, it appeared that “fundamental ethical change was unlikely to emerge from [the deliberative process] despite the clear presence of feminist voices. It seemed clear that other, more powerful voices (both within and without) were influencing the Working
Group's deliberations and the broad conceptual shift we had hoped for seemed more elusive than ever” (Sherwin et al., 1998, p. 252). Although more of their concerns were taken into account in the Working Group's final code later in 1997, some later Tri-Council policy statements again failed to address feminist concerns (Sherwin et al., 1998, p. 257).

Others also noticed problems with the unilateral decision making of the Working Group. In his comment on the 1996 discussion draft of the Code, Ted Palys noted that the TCWG called for the participation of all affected groups in the development of research projects involving humans, but did not follow their own principle when framing their code of ethics (Palys, 1996)\(^\text{16}\). If we consider the individuals that the TCWG consisted of, it immediately becomes clear that the process of developing the code itself did not meet this inclusive standard. As Palys noted in his comments on the 1996 discussion draft:

No member of the working group is a non-researcher from any vulnerable population that is commonly the subject of research. Six of the members have medical degrees, two have backgrounds in law, and there is one member each from Anthropology, Psychology, Philosophy, Engineering, and Applied Ethics. Disciplines such as Sociology, Criminology, Political Science, Economics, and Human Geography, have no representation at all. All the members also seem to be quite senior in their positions, which means there are no researchers representing those at lower ranks. No biographical information is given on the extent to which the members of the TCWG vary in their experience with qualitative or quantitative methods; tend to adopt more critical or agency-centered perspectives; include representatives of socially and scientifically marginalized groups such as Aboriginal, Black, Third World, or radical Feminist academics; and/or whether they have preferred and sought or avoided Council-funded research (Palys, 1996).

Although Palys notes that there were limited opportunities for lay individuals and other academics to comment on the draft (in writing or in periodic open forums), he points out

\(^{16}\) Ted Palys is a researcher at Simon Frasier University. He also is a member of the Social Sciences and Humanities Research Ethics Special Working Committee (SSHWC), which is a working committee of the Interagency Advisory Panel on Research Ethics (PRE). The PRE is currently the main advisory body for the Tri-Council.
that their participatory role was extremely limited; there was no guarantee that all reasonable suggestions would even be considered in subsequent drafts. And further, commentators were asked to focus on specific questions, set out by the Working Group. When it came to having a “seat at the table”, it is clear that not all affected individuals had representative voices (Palys, 1997).

Arguably, many of the initial problems with the Code resulted directly from this unilateral decision making process. In their response to the 1997 draft, the Canadian Association of University Teachers (CAUT) made it clear that a biased medical perspective appeared to be dominating much of the Code’s content (CAUT, 1997).17 The complaint was that certain medical regulations might have devastating consequences when applied to other areas of research. For example, the regulation that no harm be done to research subjects might severely restrict what can be said when doing literary criticism research. A “no-harm” principle might also limit useful criticism of political leaders in doing some social and environmental research.

Similarly, the language of weighing costs and benefits was questioned by the Society for Academic Freedom and Scholarship (SAFS). In their response to the 1996 draft, they noted that while it might be normal for a researcher to weigh costs and benefits in a very controlled medical setting, nonmedical research might not always have the same foresight as to what the potential harms or benefits might be. As one representative for the SAFS noted, “weighing harms versus benefits arises from a medical model, and is largely irrelevant to most non-health research” (Furedy, 1996, p. 17).

17 This might have had a lot to do with disproportionally higher levels of representation for those with medical degrees in the Working Group and the initial intentions to tweak the 1987 MRC guidelines so they could apply to research in the natural sciences and humanities.
5). The SAFS further charged the Working Group with “taking one model and forcing an artificial application on others” (Furedy, p. 5). Consider, for example, that more interpretive, qualitative research does not work well under the assumption that most factors can be mainly accounted for by the researcher before research commences. The SAFS did not think things improved with the TCWG’s 1997 final document, noting that the outlined plan still “uses a medical research model which is not applicable to research in general” and “has been developed by a top down process driven by insiders and bioethicists” (Seligman and Sorrentino, 2003, p. 3).

The Working Group also originally used research guidelines previously designed for specific Aboriginal communities and applied them to a broad range of other communities, including Ashkenazi Jews (Weijer and Emanuel, 2000, p. 1142). However, it was soon made clear through discussion and practical application that such a practice would not work. For example, while the concept of “community consent” for research generally works in Indigenous communities that have established political authorities, it does not work in less cohesive communities, such as “Ashkenazi Jews in North America”\(^\text{18}\). Significantly, the Ashkenazi Jews have no recognized political authority that legitimately speaks for their group, and so the concept of “community consent” does not

\(^{18}\) If this group did not require special protection, this might not be a major issue. But Ashkenazi Jews have had to deal with stigmatization because their group has been the focus of many genetic studies that have demonstrated evidence for genetic susceptibilities to various diseases. Researchers have determined that the Ashkenazi population is genetically susceptible to colon cancer, breast and ovarian cancer, Tay Sachs, and Gaucher's disease (Lehrman, 1997, p. 322). The group has also been targeted for studies on bipolar disorder and schizophrenia (Stolberg, 1998, p. A24). Scientific researchers commonly favour groups that keep clean genealogical records and marry within their communities because this provides a basis for supposed genetic homogeneity. While the average North American probably has just as many genetic susceptibilities as Ashkenazi Jews, it just so happens that we know more about the particular genetics of the Ashkenazi population. This can easily produce the illusion that they are more genetically “flawed” than the average person. People within the Ashkenazi community have noted that, because of the way this research is presented in the media, there are many negative implications concerning employment opportunities and access to health insurance coverage (Lehrman, 1997, p. 322).
rightly apply to their group (Weijer and Emaneul, p. 1143). A failure to recognize that some groups are not entirely cohesive (because they do not have legitimate political authorities or any formal mechanism for setting priorities in health care) provides one reason for why “general” ethical guidelines that are drafted in one community often fail to work in other communities (Weijer and Emanuel, p. 1142). This suggests that as soon as ethical guidelines go into any detail, situation-specific variables concerning the structure of the particular community need to be taken into account. As noted above, this is particularly important with minority groups because it is easy to overlook their needs when structuring policies. Clearly, one way to get this information is by providing members of these affected communities a “seat at the table” when establishing research guidelines.\footnote{A separate section was created in later policy statements in an attempt to deal with this problem. It even states in this section on Aboriginal peoples that “[t]he agencies...have not held sufficient discussions with representatives of the affected peoples or groups, or with the various organizations or researchers involved. The agencies have therefore decided that it is not yet appropriate to establish policies in this area” (Tri-Council, 2005, 6.1).}

In 1998, the Tri-Councils adopted their own formal policy statement, appropriately dubbed the Tri-Council Policy Statement (TCPS). This statement differed in certain regards from the final version of the Code put out by the TCWG in 1997. Notably, the Tri-Council largely abandoned talk of a “code” and preferred to speak of their document as an ever-changing and evolving “policy statement”. But the TCPS nevertheless still maintained many of the problems of the Code, including concerns regarding the accommodation of qualitative research.

These concerns regarding qualitative research were particularly troublesome to many researchers. Consider a practical example of how qualitative research can present
different challenges from those commonly found in a medical setting. When Susan Tilly conducted an ethnography in a school located in a federal/provincial women’s prison, she quickly learned that there were certain factors involved in the specific research context that she was previously unaware of. In ethnographic work, the researcher’s relationships with participants are constantly changing and research methods need to be applied contextually (Tilley and Gormley, 2007, p. 377). Susan had never been in the prison before her research began. As required by the TCPS, she gained permission from all the relevant authoritative bodies and collected consent forms from all the women participating in the research project. When research began, she normally conducted prisoner interviews in a visitors’ area, but prison authorities sometimes instructed her to conduct the interviews in a general purpose “interview” area in the participant’s cellblock. This interview area was known to be used by prison authorities when questioning the women and lawyers sometimes used it to meet with their clients.

Prisoners passing by the cellblock could clearly observe what was occurring in this room through a glass window and interpret what they were seeing in different ways (e.g. they might see participants as informers). When one participant told Susan that other (non-participating) prisoners were asking what was going in the rooms, it immediately became clear that a significant risk factor had been overlooked—one that participants never explicitly consented to (Tilley and Gormley, p. 373).

The point here is that consent can be a complex issue and it is unrealistic and undesirable to expect that the researcher will always have sufficient cultural knowledge to oversee the ongoing consent process without acknowledging their limitations of cultural knowledge. According to the TCPS, consent is the ongoing responsibility of the
researcher. But no indication is made in the 1998 TCPS (with later amendments) that researchers should also responsibly acknowledge their limited cultural knowledge in specific contexts and actively seek ways to educate themselves before and during research (Tilley and Gormley, 2007, p. 373).

In 2001, the Tri-Council appointed the Interagency Advisory Panel on Research Ethics (PRE) to function as an independent and multidisciplinary body that would provide recommendations to the Tri-Council for future revisions to the TCPS. In contrast to much of the history behind the TCPS, the PRE has taken public consultation more seriously. The PRE panel consists of 12 members, and has representation from engineering, medicine, sociology, political science, administration, research involving aboriginal peoples, and the public (PRE, 2009b).

In coming up with a list of recommendations for the Tri-Council’s most recent draft of the TCPS (released December 3rd 2008), the PRE held numerous public consultations in order to receive a broad range of input on what should be changed in the policy statement. Among these consultations was one held on the subject of qualitative research between February 16 and April 16, 2007 (later extended to April 30, 2007 to allow for more people to respond). The working committee responsible for the consultation process received 97 written responses regarding Qualitative Research in the Context of the TCPS. The responses were reportedly “geographically diverse” and included extensive representation from many disciplines, including Sociology, Social Work, Education, Environmental Studies, Anthropology, Library and Information Science, History, Urban Studies, and so on (SSHWC, 2009, p. 1). 63% of respondents thought that an effort should be made to integrate qualitative research perspectives
throughout the policy statement or that there should be an entirely new section added for qualitative research (SSHWC, 2009, p. 2). Interestingly, this process resulted in the addition of an entire chapter on qualitative research in the most recent draft of the TCPS. In the introduction of this new chapter, it states “[q]ualitative research approaches are inherently dynamic and are grounded in different assumptions than those that shape the biomedical model of research” (PRE, 2008, p. 109). In other sections, the policy is careful to elaborate on differences in qualitative research. One section even addresses that researchers need to recognize certain limitations of knowledge when working in some contexts:

Certain accepted research paradigms bring inherent limitations to the prior identification of risk. For example, when research in the social sciences employs emergent design, the manner in which the study will proceed and any associated risks will be known only as the study unfolds (PRE, 2008, p. 13).

Most recently, the PRE has planned the Tri-Council Policy Statement Regional Consultation tour 2009. Discussions were held on the most recent draft of the TCPS, released on December 3rd, 2008. Forums were open to the public and 11 cities were included in discussions held between January 16 and March 26, 2009 (PRE, 2009a, p. 1-4). Further consultations were organized by third-parties and held through video conferences. This is a considerable improvement over the final consultation process that was held by the TCWG before releasing their final version of the Code in 1997.

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20 Another section also notes: “In qualitative research, the nature of the methodology may lead the research participant to sense attempts to legalize or formalize the [consent] process as a violation of trust. Hence, written consent is not the norm in qualitative research. Rather, qualitative researchers use a range of consent procedures, including oral consent, field notes, and other strategies, for documenting the consent process” (PRE, 2008, p. 36).

21 Only five public meetings were held in September and October 1997. The locations were UBC, Regina, Toronto, Montreal, and Dalhousie University (Lauziere, 1997).
What are the implications of all this? Since the Tri-Council was originally formed in 1994, significant improvements have been made in their policies on ethical research involving humans. Many of these improvements were made by paying attention to just how diverse research involving humans is. Some research contexts allow for an incredible amount of control over variables, while other research contexts do not. Different methodologies often need to be applied when conducting different types of research. Different types of research also target different groups of people, which might vary significantly in their culture. This brief analysis of the TCPS has highlighted that policy statement changes accounting for these differences have been to some degree a result of public inclusion. Public inclusion was limited in the beginning of the project, both in terms of time and structure (questions on particular topics were clearly laid out beforehand). Allowing the public opportunities to freely provide recommendations for the policy statement (both in writing and in forums) has recently coincided with some major shifts in the latest TCPS draft, including the addition of an entire chapter on qualitative research. The addition of even more venues for open forums in 2009 will likely only further improve future revisions to the policy statement.\footnote{While this example does a good job of explaining the value of public input and inclusion, the public did not have any assurance that their input would directly impact the outcome on the TCPS. However, this could be changed in future revisions.}

For moral and epistemic reasons, researchers representing all disciplines should be included in the policy making process and representatives of the public should also have direct input. Not only is it ethically important for those affected by such policies to have a voice in their development, it is also crucial that they be included so that policies do not end up being inflexible towards certain disciplines or ignorant towards certain cultures. As one group of researchers put it:
As a matter of democratic legitimacy, guidelines written to govern research involving a particular community should include community members in the guideline-writing committee. Community representation adds legitimacy to the final product because it provides an opportunity for a community to help formulate and thereby consent to the ethical ground rules under which research involving the community may proceed. Furthermore, involving community representatives helps to ensure that guidelines are comprehensive and cover all the concerns that arise from the traditions and values unique to and constitutive of the community (Weijer et al., 1999, p. 277).

1.6 Conclusion: what model?

Up until this point, I have been giving a very general framework that can help us narrow our focus on a more particular model of deliberative democracy. To summarize, our model should be both procedural and substantive, maintain a relatively thin or non-comprehensive notion of the common good, should be pluralist in that it recognizes there are many perspectives that may or may not be compatible, and should pay close attention to these different perspectives so that more informed approaches to social problems can be undertaken. Further, citizens should not only be involved in the democratic process because they are resources of social knowledge; where possible, citizens should have a role in actually shaping policies that significantly affect their lives. The example above concerning the TCPS demonstrates this point.

One proposed model that is consistent with these basic premises comes from Amy Gutmann and Dennis Thompson. They hold that the fundamental principle of democracy should be the principle of reciprocity, which holds that “citizens owe one another justifications for the mutually binding laws and public policies they collectively enact” (Gutmann and Thompson, 2004, p. 98). These mutual justifications are necessarily grounded in substantive principles, the bases for which are brought to our attention through public deliberation. They maintain that the foundational role of the principle of
reciprocity is different from the grounding role of utility and liberty in the “first-order” theories of utilitarianism and libertarianism. It is more flexible in the sense that it guides people to think about what justice will require under specific circumstances. In other words, “[r]eciprocity is not a principle from which justice is derived, but rather one that governs the ongoing process by which the conditions and content of justice are determined in specific cases” (Gutmann and Thompson, p. 133). In light of any amount of deliberation, it should minimally become clear that certain basic substantive principles will be needed to mutually justify policies, such as accountability, basic liberty, basic and equal opportunity, and so on (Gutmann and Thompson, p. 100). However, in theory, even these principles are always open to revision. Even the principle of reciprocity is open to reinterpretation on their view. The only element of their theory that is not provisional is the fact that “binding political decisions must be justified by moral reasons” (Gutmann and Thompson, p. 114). This is their minimal conception of the common good.

Considering this, the range of acceptable reasons in mutual justification is wider than most other theories allow for, and can remain consistent with pluralism (Gutmann and Thompson, p. 126). Gutmann and Thompson take this to be a great advantage of their theory because it can accommodate a wider range of disagreement and is more realistic in a pluralistic society. While they do not expect deliberation to reach mutual agreement all the time, they believe that their approach will make outcomes appear more legitimate and mutually acceptable. As they note,

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23 Gutmann and Thompson (2004) distinguish between first- and second-order theories by the scope of disagreement they allow for. Utilitarianism, libertarianism, communitarianism, and liberal egalitarianism are first order theories because they pretend to resolve all moral conflict on the basis of a principle that trumps all others. On the other hand, second-order theories, such as deliberative democracy, “are about other theories, in the sense that they refer to first-order principles without affirming or denying their ultimate validity” (p. 126).
it would be unrealistic to expect agreement on every controversial moral issue…[b]ut the
continuing effort to present reasons that are accessible, with the aim of reaching
conclusions that are acceptable, can contribute to moral progress (Gutmann and
Thompson, p. 52).

Drawing more from the civic republican tradition, Ian Shapiro (2003) contends
that Gutmann and Thompson treat deliberation as a panacea (p. 24)\textsuperscript{24}. His main concern
is that, as a practical matter, they do not explain why deliberation would necessarily be
free from the power relations that pervade common sound-bite politics. In the United
States, it is a fact that private money has a lot to do with the success of campaigns and
decision making\textsuperscript{25}. Provided that the U.S. Supreme Court declared in 1976 that
interfering with political expenditures would violate the constitutional right to free
speech, there is no reason to believe that deliberative models would not also suffer from
the same problems we see in the current political arena (Shapiro, p. 24). Better funded
parties and organizations would still be able to afford better speakers, ensure better pre-
and post- deliberation media coverage, run more structured campaigns, and so on.

In the next chapter, we will consider Shapiro’s concerns in more detail by looking
at a case that has been proposed as an exemplar of deliberative democracy, the Oregon
Experiment. In the 1980s, Oregon citizens were consulted in numerous community

\textsuperscript{24} In their own response to criticisms like Shapiro’s, Gutmann and Thompson (2004) point out that they “do
not claim that deliberation is a panacea…only that it is better than its alternatives” (p. 41). They admit that
deliberation “can…be used cynically” and “can serve as a cover for the exercise of power politics”
(Gutmann and Thompson, p. 46). But they also think that deliberative processes hold more promise because
they can be framed in a way such that candidates and political positions are not advertised to people by only
demonstrating comparative advantages and disadvantages. Rather, the right procedures will ensure that
arguments are provided which provide moral reasons for going with a particular decision (Gutmann and
Thompson, p. 14). Of course there is always going to be a worry that power relations will sneak into
deliberation, but if careful attention is paid to process, a lot of this can be avoided.

\textsuperscript{25} For example, just consider the 2008 passing of Proposition 8 in California, which denied the right for gays
to marry. While churches risk their federal tax-exempt status if they donate money for a political cause as
an institution, they can strongly encourage members to provide \textit{private} funding for political causes. This is
exactly what the Mormon Church (or LDS) did in its support for Proposition 8. Some reports suggest that
the LDS almost single-handedly decided the motion as a result (McKinley and Johnson, 2008, A1).
meetings about a new health care proposal, and were given the opportunity to sit down with health care professionals to discuss the plan. While theorists such as Gutmann and Thompson praise the experiment as a success, Shapiro argues that those most affected by the plan (the nonelderly poor) were almost entirely excluded. Before we can determine whether a model of deliberative democracy like Gutmann and Thompson’s is realistic, it is necessary to consider what the empirical evidence supports. Next, we will consider how successfully deliberation has worked in the context of complex scientific and moral issues, such as allocating a health care budget or determining whether a medical treatment is too risky. Is it possible for the public to rationally deliberate about complex issues? And can deliberative experiments be set up to accommodate Shapiro’s worries regarding power relations and agenda setting?
Chapter 2: Complex issues

If any practical instantiation of deliberative democracy is to maintain some consistency with ideal deliberative theory, it should perform reasonably well in several areas. It must be inclusive in the sense that a sufficiently broad range of perspectives from various social positions are represented. The process should also provide fair and equal opportunity for input from these representatives. Further, there must be reason to believe that the deliberations are genuine. This means that all information provided to participants in a deliberative project needs to be as unbiased as possible. And in discussion, argumentation should strictly adhere to a process of reason-giving and steer relatively free of power relations and motivations of self-interest. The outcomes of deliberation should also be decisive and have an impact on policy.

Clearly, if participants in a deliberative forum are going to follow a process of reason-giving, they must be able to competently engage substantively with the topic of discussion. It might be the case, however, that more complex topics are inaccessible to many people. Is the public generally too uneducated and uninformed to engage in deliberative decision making on complex issues in any way that might be helpful or meaningful? If this is the case, is it possible to provide them with the necessary information to make these issues comprehensible to them? In this chapter, I shall take up these practical questions concerning the viability of publicly inclusive deliberative decision making. A large part of this task is to present some of the empirical evidence that has demonstrated the ability of the public to deal rationally with complicated policy issues. As we shall see, there is promising evidence which lends support to the feasibility
of broader-scale public inclusion. The Oregon experiment provided citizens of Oregon the opportunity to deliberate about a prioritized list for funding medical treatments. In Canada, a notable deliberative session was held on the animal-to-human transfer of organs, and the BC Citizens’ Assembly provided randomly selected citizens of British Columbia a space to learn about and discuss the issue of electoral reform. These examples will be broken down in order to deal with particular structural concerns regarding representation and inclusion, time constraints in decision making, and so on. The agenda setting problem will be given particular attention: somebody or some group has to set an agenda for discussion, so how do we ensure those placed in this position of power do not abuse it? Complex issues pose a particular challenge in dealing with this issue because some sort of “educational phase” is generally needed where expert presenters are brought in to inform participants on a given topic. If one of the presenters (or the person deciding who should present) has a particular bias or conflict of interest, this could taint the entire deliberative process. After all, if participants do not know much about a subject, they might be easily misled.

Despite these concerns, I shall argue that certain procedures can be put in place to help ensure that a deliberative process is genuine. It is possible to make the agenda-setting process more reflexive than it has been in some deliberative experiments. The agenda-setting problem is only a problem insofar as decisions are made in a top-down manner with little or no transparency. To ensure participant input in the agenda, votes could be held at certain points regarding major structural and substantive issues. Working groups, made up of participants in the deliberative process, could be established and
delegated the responsibility of lobbying for any necessary changes in the process. For example, if a presenter is not already scheduled to speak on a topic deemed significant by a working group, every effort would be made to bring one in. If executive decisions need to be made extremely quickly because of time or budget constraints, the decision making procedure should at least be transparent so those outside the process would be able to detect conflicts of interest. Independent organizations, scientists, and other experts would ideally donate their time to act as referees for the substantive content of presentations, much like scientists donate their time to make the peer-review publication process work. As we shall see, many of these suggestions have already been implemented in practice and have achieved some level of success. Given the right conditions, there is good reason to suspect that citizens can deal with complex policy issues without being manipulated by the biases of experts or particular interest groups.

2.1 Is detailed technical knowledge always needed?

The Eurobarometer is one survey which has reported that the public has a lack of understanding regarding scientific issues. In 1996, 15,900 people throughout Europe were asked to give a true, false, or don’t know answer to specific factual questions. As an example, one question asked if “cloning living things produces exactly identical offspring” (European Commission, 1996, p. 24). Knowledge on such a question might be relevant when it comes to certain policy issues regarding human cloning. For example, having multiple individuals with the exact same DNA could create obvious problems for

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26 This was one of the key differences between the Ontario Citizens’ Assembly on electoral reform and the BC Citizens’ Assembly. Working groups were not part of the process in BC, while in Ontario four working groups were established to deal with agenda issues (LeDuc et al, 2008, p. 12).
law enforcement and the legal system. In the survey, the right answer regarding the cloning question (true) was answered correctly by only 46% of individuals (European Commission, p. 24). On the surface, this suggests that over half of the public is ignorant on the issue. But this is not necessarily the case; the way questions are framed matters to some extent. Some people who answered false might have considered that although nuclear DNA is always exactly replicated, mitochondrial DNA is not replicated in certain cloning processes (Levitt, 2000, p. 20). Some who answered “wrongly” may have actually known more about the process of cloning than many who answered “correctly”. Other individuals might have considered environmental factors that would differentiate a clone after it was born (Levitt, p. 20). In any case, it is not clear that a “false” answer to this question corresponds to a general lack of knowledge on the topic.

There is also a question regarding just how important it is to have technical knowledge like this when dealing with certain scientific policy issues. Scientific questions are not entirely separate from social/political issues, and in some cases having some knowledge of an underlying social problem may be all that is needed to contribute to a discussion. If a person attends a meeting and complains that she is unable to take part in clinical drug trials on morally arbitrary grounds, she is unlikely to be satisfied with an elaborate display of scientific jargon. For instance, little technical knowledge about HIV/AIDS would be required to make the point that certain groups of people are largely excluded from participation in clinical drug trials. Consider the activist movements in the 1980s that pushed for a change in the structure of clinical trials for AIDS drugs. Until 1986, all women “of childbearing age” were unable to participate in clinical trials.

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27 Significant numbers of people also got other questions wrong, such as one regarding whether only genetically modified tomatoes have genes (all tomatoes have genes).
because of the possible damage to fetuses (or potential fetuses) (Epstein, 1996, p. 260).

Even when women were eventually included, thorough exams (such as pelvic exams) were not conducted (Epstein, p. 289). Because of such policies, it was uncertain how women would react to the use of these drugs. Further, many of the symptoms that appeared exclusively in women (such as pelvic inflammatory disease) continued to be excluded from the Center for Disease Control's formal definition of AIDS (Epstein, p. 288). Because women were so underrepresented in trials, the data was not there to show a significant connection between symptoms unique to women and HIV infection. As a major result of pressure from lay activists armed with a wide range of perspectives, the Center for Disease Control eventually changed the definition to include these symptoms (Epstein, p. 288-289). This raises the question of just how relevant it is for the public to know technical scientific details when dealing with many issues.

Of course, it is undeniable that detailed knowledge on a particular issue might still be necessary to pass judgment in many cases. But it is one thing to point out that many people do not have enough background knowledge to deal with a topic, and quite another to suggest that “ordinary people” cannot acquire this knowledge. What form would most social debates take if the public was properly informed and provided with the opportunity to discuss public policy issues? In what follows, I go through several key examples that demonstrate the ability of the public to rationally engage with a variety of complex issues. While none of these examples provides a perfect working model for current deliberative theory (outlined in Chapter 1), they cumulatively demonstrate that deliberative democracy can be designed to operate smoothly even in situations where
citizens are not initially informed on the given topic and might be easily influenced or misled.

2.2 The Oregon experiment

In 1987, Coby Howard died of leukemia because the state of Oregon refused to pay for a bone marrow transplant. At the time, low-income citizens insured under Medicaid in Oregon were not covered for transplant operations (Oberlander et al., 2001, p. 1583)\(^{28}\). Naturally, many thought that funding should simply be expanded to cover organ and marrow transplants in order to avoid a repeat of the incident. However, there were still many poor Oregon residents that had no Medicaid coverage at all. How could extra coverage be provided to those who already had insurance when others did not have any coverage?

A plan was put together in an attempt to both expand the population of insured citizens and provide better coverage for life saving treatments for those already in the Medicaid plan (Bodenheimer, 1997, p. 651). Given a limited budget, clearly something had to give if Oregon was to avoid a financial meltdown. Part of the answer came in the form of a “prioritized list”; roughly 700 medical conditions and their treatments were eventually ranked according to their assigned level of importance. At some point on the list, a line was drawn; nothing below the line was to be covered. The idea was to provide insurance to more people by limiting health coverage to those cases that were deemed to

\(^{28}\) In the United States, the Medicaid program is jointly funded by the federal government and states. Provided a general framework for operation, states manage their own programs. As a result, eligibility for insurance depends to some extent on the state. Simply being poor does not normally qualify an individual for Medicaid coverage—typically a person also has to fall under a particular eligibility category (such as disability, age, or citizenship status). This program is separate from the Medicare program, which is entirely federally funded and is targeted at seniors.
be of the highest priority. With a reduced benefit package based on a prioritized list, coverage could be provided to all Oregon citizens below 100 percent of the federal poverty level (Oberlander, 2007, p. 97).

The proposed plan immediately received a lot of harsh criticism. Oregon was, after all, openly advocating the rationing of health care among the poorest residents of the state. There was also a public outcry over the initial prioritized list that was mainly formed by making cost-benefit calculations (Gutmann and Thompson, 2004, p. 17). These calculations resulted in some strangely unintuitive rankings; for example, tooth capping initially ranked significantly higher than an appendectomy (Gutmann and Thompson, p. 17). Not surprisingly, this did not improve the public’s perception of the rationing process. Conveniently, however, Oregon had already taken steps to involve the public in making health care discussions. Between 1983 and 1984, a series of nearly 300 community meetings involving a total of over 5000 citizens were convened across the state (Brannigan, 1993, p. 15). In 1987, a particular project called “Oregon Health Priorities for the 1990s” set out to determine which health services citizens thought should have the highest priority (Crawshaw et al., 1990, p. 441). Community meetings were arranged with 19 being held over the lifespan of the project. Attendees included both health care workers and members of the general public.

As part of their involvement in this project, participants were asked to fill out a survey regarding their opinions on resource allocation. Initially, it became clear that many participants were guilty of “magical” thinking in the sense that they were expecting more resources to become available without making any significant trade-offs (Crawshaw et al., 1990, p. 442). Similarly, when asked to hypothetically prioritize the allocation of
funds within the health sector by taking things such as age and the nature of the health service into account, most participants expressed discomfort while some even refused to answer the question (Crawshaw et al., p. 442).

Once spread out in small groups, facilitators encouraged the participants to provide the reasoning behind their value judgments. Interestingly, the meetings produced a consensus on the types of health care that should be given priority. Participants generally assessed health care priorities by balancing quality of life with quantity of life (Crawshaw et al., 1990, p. 445). Taking everything into consideration, preventive health care was reasoned to be of the highest value; one frequently cited reason for this was the efficiency of prevention in the sense that health benefits can be increased at very little cost (Crawshaw et al., p. 442). As Crawshaw et al. (1990) note,

Through open community meetings, the inherent prejudices that come with fixed turf or allegiance to political parties were subordinated to an ongoing, self-adjusting source of community values that enjoys a broad commonality (p. 446).

Confronting difficult health care decisions in a deliberative context made it difficult for participants to hold onto any notion that there are magical solutions, such as that all types of health care should be on the priority list. Participants considered the new information they received throughout the discussions and addressed the issues in a rational manner. This suggests that “the commonplace [complaint] that the public is unrealistic in its expectations for health care services…is adrift” (Crawshaw et al., 1990, p. 445).

In another project that ran from January-March 1990, 47 community meetings were held which involved 1048 participants (Hasnain and Garland, 1990, p. 5). Before actual discussions were held, participants were handed informational materials and
shown a slide show explaining the scope of the health care crisis in the United States. After filling out some forms, participants were then split into groups of about ten to discuss which health services were of particular importance to the community (Garland and Hasnain, 1990, p. 17). Each of the groups collectively classified different categories of health care as essential, very important, or important. Throughout this process, the conveners of the meetings looked for shared values or a “common grounding” from which health priority decisions might be made.

As the meetings went on, it became clear that there were several key values that nearly all participants could agree upon. At every meeting, participants agreed that preventive health care should be highly valued because of its cost-effectiveness and its ability to improve the quality of life for many people. People also reasoned that preventive health care is achievable, benefits many people, and can result in a visibly healthier community (Hasnain and Garland, 1990, p. 9). Quality of life was also discussed at all 47 meetings and was thought to be valuable because it has implications for emotional well-being, reduced pain and suffering, increased productivity, and so on (Hasnain and Garland, p. 11). To a slightly lesser extent, cost-effectiveness, ability to function, and equity were highly valued. Comparatively, very little value was ascribed to quantity of life and personal responsibility, which did not even come up in most of the meetings (Hasnain and Garland, p. 23-24).

In general, the participants addressed the problem of prioritization in a rational manner by thinking through their decisions with precision and care. By providing reasons
for their value prioritizations in a deliberative format, the participants were generally able to arrive at a sensible consensus\textsuperscript{29}. As Garland and Hasnain (1990) put it,

The community meetings…test the validity of the conviction that ordinary persons have sensible and important moral intuitions relevant to moving society through the challenging dilemmas that confront U.S. health policy. We see and hear the wisdom ordinary persons derive from their experience (p. 17).

The Health Services Commission was established by the Oregon legislature and set with the final task of prioritizing health services. Although this means that the community meetings did not have a direct impact at the policy level, the Commission did consider community values when prioritizing health services (Brannigan, 1997, p. 20)\textsuperscript{30}. In an indirect way, then, the citizens of Oregon had an influence on the production of the list. Further, when complications arose with the initial list in August 1992 because of federal funding issues, a further public meeting was held to discuss what had changed (Brannigan, 1997, p. 25).

The Oregon projects are interesting because they demonstrate the ability of ordinary citizens to reason together in a deliberative context\textsuperscript{31}. Once participants were given the relevant background information to address the problem of rationing and were provided with the opportunity to discuss the issue in an open forum they were able to put aside many of their differences and even agree on certain fundamental values. These

\textsuperscript{29} I say “generally” because there were a few isolated incidents where consensus was not reached. For example, in the Eugene community meeting, one table was insistent that reproductive rights be strongly considered (Hasnain and Garland, 1990, p. 25).

\textsuperscript{30} This does mean the Oregon experiment did not meet the strong claim set out in chapter 1, which is that deliberative forums should play a direct role in policy formation.

\textsuperscript{31} My use of “ordinary citizens” might be contested here. A possible limitation of the Oregon projects is that many of the participants were self-selected. As a result, the kind of demographic representation that is desirable in deliberative projects was rarely achieved during the Oregon Experiment (Young, 2000, p. 153). This is discussed in more detail below.
deliberations show that the public has the capacity to discuss complex ethical issues coherently and rationally.

2.3 Criticisms of the Oregon experiment

Ian Shapiro (2003) argues that the Oregon deliberations were ultimately a failure because those most affected by the rationing program (the nonelderly poor) were not included in the deliberative process (p. 44). The exit costs of a health care rationing program are extremely high for uninsured individuals likely to encounter medical problems. While in Canada, virtually everyone is affected by the rationing of collective medical services, about 80 percent of Oregonians are unaffected by the publicly funded Medicaid program (Shapiro, p. 29). This is because most individuals have other options for health insurance, such as private insurance or some other state/federal program like military insurance. Since individuals with more options have much less to lose, this places them in a position of power over others for which the exit costs are much higher. In Canada, the exit costs of the government funded health care program are high for virtually everyone. There would be little reason to question the outcome of a deliberative process in this context, because a situation would rarely (if ever) arise where some people are placed in a position where they can determine the basic interests of others. Put differently, everyone’s basic interests are at stake. In Oregon, on the other hand, the exit costs are much higher for some groups. This presents an opportunity for relatively unaffected insured individuals to make life-changing decisions for others. Because insured individuals are not dependent on Medicaid, they could exercise their decision power arbitrarily without feeling any direct consequences themselves. This qualifies as domination. Shapiro argues that, for the most part, individuals from these Medicaid-
dependent groups were not given a voice, and this is a fundamental injustice because it is *their* basic interests that are at stake (Shapiro, p. 45).

Shapiro does have the facts he presents straight. The Oregon deliberations were self-selective, and so it is not surprising to find that certain demographic groups showed up in greater proportions than others. Particularly, we might expect high representative numbers for those individuals able to make easy arrangements to attend the meetings, those that were initially more informed or educated about the health care system, and so on. For the last set of deliberations, the following facts back up Shapiro’s claim and might be particularly alarming: 56% were between 31-50 years old, 67% were college graduates, 93% were white, 77% were male, 69% were health care workers, 91% were insured, and over half made at least $35,000 a year for a household income (Hasnain and Garland, 1990, p. 29-30). Only 9%, then, were uninsured. This is particularly problematic because it does not even match the percentage of uninsured individuals in Oregon. Considering what is at stake for this group of people, this is morally problematic. Shapiro’s point here is well taken.

There were also framing concerns with the deliberations. For example, it was never a real option for deliberative participants to fundamentally question the extremely inefficient combination of government and private insurance programs for poor and elder individuals in the United States. Instead of initiating a rationing system that works within the context of a disorganized and inefficient health care system, the project could

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32 Consider, for example, that 7.3 percent of the national health budget in the U.S. goes towards health administration and insurance. In the benchmark (or the top group of countries), this figure is only 2 percent. This places the U.S. very low at 28% of the benchmark. Similarly, the patchwork health-care system in the U.S. is particularly bad when it comes to wasting resources. Duplicate medical tests are common, where a patient is ordered to have a test she has already taken. Records are also often unavailable at the time of a patient’s appointment, which can result in a lot of wasted time (Schoen, 2006, p. 467-468).
have been more ambitious by questioning the structure of a system that causes so many individuals to go uninsured in the first place. Gutmann and Thompson do note that the experiment forced legislators to see what treatments would be excluded from the list, and that this led to an increase in the overall budget for the health program. However, they fail to point out that budget concerns were never part of the substantive content of the deliberative meetings, “which never dealt with what the overall budget should be or how health care resources should be traded off against other demands on the state treasury” (Shapiro, 2003, p. 28). The deliberations themselves did not actually produce a change in the size of the budget. Rather, as Shapiro notes, the move to expand the budget was largely a move made by legislators in response to some of the poor media attention the prioritized list was receiving.

Finally, is it well known that the Oregon Health Plan has run into all kinds of problems since 2003. In January 2003, there were at least 104,000 people enrolled in the health plan. By the end of 2003, the number of people in the plan had dropped to about 49,000. And in 2004, enrollment was frozen at 24,000 citizens. (Oberlander, 2007, p. 99). On top of this, the benefit packages have worsened. All of this further throws into question whether the deliberations the Oregon experiment started with were really on the right track.

Despite these concerns, a defense can still be made for the value of the deliberations. First, the unraveling of Oregon Health Plan had virtually nothing to do with the meetings that were held during the 1990s. As pointed out by Shapiro, it was policy makers that proposed budgetary changes—not citizens in the community meetings. This is important, because it was largely this and other changes proposed by policy makers
that ended up causing problems for the plan. Notably, the Oregon Health Plan (OHP) moved closer to universal coverage when OHP2 was introduced in February 2003. The intent behind the new plan was to increase coverage from those at or below the 100 percent federal poverty level to the 185 percent level. A distinction was made between OHP Plus and OHP Standard: OHP Plus offered the most benefits and covered those categorically eligible for Medicaid according to federal guidelines, and OHP Standard offered a slightly reduced benefit package to the expansion population. The plan was to gradually raise the budget over time and phase in the expansion coverage to the 185 percent poverty level (Oberlander, 2007, p. 97).

One major concern with this change is that policy makers framed the new plan on the idea of “cost-sharing” and also increased the premiums for citizens in OHP standard (Oberlander, 2007, p. 98-99). Further, if individuals could not make copayments, they were to be locked out of the program for 6 months. This created many problems; for instance, 72% of those who lost coverage from missing a payment could not get it back again. Within four months of OHP2 being introduced, OHP standard enrollment fell close to 40%. As Oberlander (2007) notes,

OHP2 revealed a clear mismatch between policymakers’ understanding of low-income populations and their actual behavior. Oregon failed to anticipate how price-sensitive OHP enrollees were and their troubles navigating the new system, a cautionary tale for states enamored with consumerism and the prospect of having Medicaid recipients put more 'skin in the game' through added cost sharing (p. 100).

The initial failure of the Oregon Health Plan had almost nothing to do with the deliberations held during the 1990s. If anything, the problems with the plan might have

33 Economic factors created even more difficulty for the proposed changes. From 2001-2003, Oregon's unemployment rate was higher than that of any other state in the U.S. (Oberlander, 2007, p. 100).
been resolved by having a more inclusive decision making process. OHP2 was favoured by republican lawmakers because the plan heavily valued the importance of “personal responsibility” and was similar to commercial insurance (Oberlander, p. 99). And, if you will recall, personal responsibility was never considered a top priority at any of the deliberative meetings, and did not even make it into many of the discussions. In many ways, OHP2 represented precisely the opposite of what citizens recommended in the early stages of the Oregon experiment.

Shapiro’s concerns regarding representation during the meetings and the narrowness of the deliberative agenda in Oregon are more problematic, however. The fact that the uninsured poor were largely excluded from this process is perhaps the most striking. And limiting the deliberations to talk surrounding the rationing process almost certainty put a restraint on serious discussion regarding the size of the health care budget and how it should be balanced against other public needs such as education and transportation. Increasing taxes in Oregon was not seriously considered either. But what can be taken from the experiment is that participants were generally quite thoughtful and offered non-arbitrary reasons for their decisions. What the Oregon experiment demonstrated is that individuals lacking knowledge on certain health care issues can learn what is needed to participate in social policy development on these issues. A deliberative

resulted in vastly reduced income tax collections for the state, and this particularly hurt Oregon because it has no general sales tax; personal income taxes make up roughly 70 percent of Oregon's tax revenue (Oberlander, p. 100). Health costs were also increasing. All of these factors came together at a very bad time for the new plan.

34 A ballot referendum (Measure 30) was eventually held which proposed a tax increase that would generate $542 million dollars to help out the failing health plan. Measure 30 was turned down by 59 percent of Oregon voters in February 2004 (Oberlander, 2007, p. 101). The governor at the time took this as a sign that the public had no interest in paying more taxes to keep the OHP functioning. However, the initial plan to raise taxes was a decision made by lawmakers in a legislative session. The result might have been different if the publicly inclusive deliberative spirit had continued into these decisions.
atmosphere proved to get most participants thinking about what it might be like to see things from different perspectives. There was also overwhelming consistency in the judgments of different groups throughout the deliberations; after discussion, quality of life and preventive health were considered the highest values by virtually everyone participating in the process. No reports suggest that groups with particularly high levels of representation for the uninsured/poor population reached notably different conclusions.

As Hasnain and Garland (1990) point out in their report on the last series of deliberations:

[D]emographic sheets filled out by participants reflect an imbalance with fully 90% of participants being insured while only 4.4% were Medicaid recipients and 9.4% were uninsured. Of interest, however is the fact that several individual meetings had much higher percentages in the later two categories with no striking differences in values discussed (p. 6, emphasis added).

Further, and most importantly, there are ways to deal with particular structural and substantive concerns with the Oregon experiment that have been highlighted. First, there is the issue of representation. Some recent experiments involving complex topics have taken pains to randomize the selection process for participation, and adjust representation further to ensure that no social groups are excluded or marginalized. The following example elaborates on one of these experiments.

### 2.4 Xenotransplantation in Canada

Xenotransplantation is the animal-to-human transfer of organs or living cells/tissues. This method provides one way to deal with the critical shortage of transplant organs in Canada. Tests are currently being conducted with laboratory animals in Canada, but xenotransplantation has not yet reached the clinical trial stage involving humans (CHPA, 2001, p. 1). Between March and July of 2001, six citizen forums on xenotransplantation were held in different regions throughout Canada, which included
Saskatoon, Halifax, Vancouver, Toronto, Quebec City, and Yellowknife (CHPA, p. 5). The task of the participants in the project was to discuss whether Canada should proceed with xenotransplantation. As was the case in Oregon, these public discussions were not designed to have a direct impact on public policy. Rather, the intent was to “help guide the future development of government policy on xenotransplantation in Canada” (CHPA, p. i).

Participants for the citizen forums were randomly selected into a pool and then further narrowed in order to adjust for demographics (CHPA, 2001, p. 11). The forums each took place over three days and consisted of both informative sessions and deliberative sessions. In the informative sessions, participants would watch documentaries, listen to experts give presentations, and so on (CHPA, p. 6). Discussion periods were held with experts and without. Besides the citizen forums, a representative telephone survey was also conducted. An open (voluntary) mail-in-survey and website survey were conducted as well.

The general findings of this project are very interesting. The official report put out by the Canadian Public Health Association (2001) notes that:

When generally uninformed Canadians were asked if Canada should proceed with xenotransplantation, the majority said yes. However, as they became more informed, a shift occurred and the majority of informed Canadians said no, Canada should not proceed (p. 10).

Of the 1,519 Canadians interviewed by telephone, 65% were in favor of proceeding with xenotransplantation while 24% were against it and 11% were unsure. In the citizen forums, participants were given the opportunity to qualify their positions. After the second day of the forums, none of the 107 participants gave a definitive “yes” answer to xenotransplantation; in fact, all 46% who answered “yes” qualified their position (CHPA,
The majority of participants actually answered “no” after day two; 34% gave an unqualified “no”, 19% gave a qualified “no”, and the only person to abstain from answering the question had to leave early (CHPA, p. 15).

What is particularly interesting is how the participants in the forums began to provide rationales for their decisions. Some participants noted that we should first address complicated social issues that have known implications on health. In fact, 80% of the participants ended up recommending alternative strategies to deal with the problem of organ shortage (CHPA, 2001, p. 18). Preventive strategies to reduce the number of people who require organ transplants had the most support, while other strategies such as stem cell research, mechanical substitutes, and increasing the number of donors received significant endorsement as well (CHPA, p. 19).

All of this is very interesting when we consider that most of the participants knew very little about xenotransplantation before taking part in the project. After just two days of citizen forums, Canadians were much more cautious about giving the green light to xenotransplantation and most were able to use the information gain to articulate coherent arguments for their positions.

### 2.5 Further challenges

Shapiro, however, has a further problem with experiments like these. Even under ideal conditions of representation, there are concerns regarding the setting of deliberative agendas. This is the *agenda setting problem* that was outlined in chapter 1. As noted, this was also a serious concern during the Oregon experiment, as deliberation was directed to operate within a certain substantive scope, and was limited to one of several possible
solutions to a problem. Who gets to decide which solutions to a problem are worth discussing, and who picks the supposedly “balanced” experts that inform and educate the public on a given topic (Shapiro, 2003, p. 33)? Although people’s views might be altered in these deliberative experiments, how do we necessarily know their views have generally been altered for the better unless we have good answers to these kinds of questions?

If we consider the xenotransplantation example, the same kinds of experts were asked to attend each meeting; there were experts on animal welfare, ethics, infectious disease, law, transplantation, and a transplant patient/recipient. Generally speaking, local experts were used from the cities where deliberations were held (CHPA, 2001, p. 6). Health Canada provided funding to the Canadian Public Health Association (CPHA) to form a Public Advisory Group (PAG) for the purposes of operating and structuring the process. This PAG created the database of experts which to choose from. Consisting of 12 members at the time, the PAG filtered membership in order to ensure representation of various perspectives including animal welfare, cultural diversity, spirituality, health care, the public, public health and safety, and so on (CHPA, 2001, p. 33). The PAG was also responsible for determining what issues were worthy of public discussion.

To go back to Shapiro’s initial question then, perhaps a small representative group could determine the agenda as in the above example. It might be possible for such a small group to handle conflicts of interest and abuses of power. In their own conflict of interest statement, the PAG notes that they “would be in a position of real or perceived conflict of

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35 Arguably, the rationing solution was not even the best way to tackle the health insurance problem in Oregon (tax increases could have been seriously discussed, and so on).

36 The one exception was Quebec city, where the transplant recipient could not attend (CHPA, 2001, p. 39)
interest if actions of individual members damage the work or integrity of the PAG” (CHPA, 2001, p. 34). They further go on to state that conflicts of interest will be managed by making the work of the PAG transparent, that their collective decisions are presented, and that there is always adequate representation in the group (CHPA, p. 34). One other thing the PAG did is clearly flag things that happened during the experiment that might be perceived to be a result of selection bias. For example, in one area, it explains that when giving presentations, “two animal rights activists voiced opposition to xenotransplantation clinical trials and a third stated that ‘just because we can do it does not mean we should do it’” (CHPA, p. 40). If the backgrounds of the group members are known, the selection process for their decisions is made transparent, and outcomes and events that are possibly the result of bias are clearly flagged, then Shapiro’s concerns might be eased.

Of course, the very decision to have a public consultation on xenotransplantation was ultimately up to the Canadian federal government. After all, this is where the necessary money came from. Besides government, the only other places where such large sums of money are likely to come from are corporations or extremely wealthy individuals. Presumably, those institutions and individuals with this money have the power to say “no” if a public consultation is not in their interests. Thus, in the broader picture, there is still room for abuse of power even if care is taken to avoid conflicts of interests within projects themselves. After all, in the xenotransplantation case, there was no direct commitment from the government to follow through with the decision (this was
the same situation as in the Oregon experiment). The report that resulted from the deliberations was only ever intended to be a “recommendation” to the Canadian government (CHPA, p. 33). If the government did not like what it was seeing, it could presumably put the brakes on funding and effectively end the deliberations or simply ignore the end results. In other words, the citizens in these deliberations had very little power in the actual decision making process. And, as Fung and Wright (2003) put it, where countervailing power is weak or nonexistent, the rules of collaboration are likely to favor entrenched, previously organized, or concentrated interests. They may do so by limiting the agenda of issues that is open to collaboration, restricting the range of participants to a select few, and reducing the influence of collaboration to mere advice that can be heeded or ignored (p. 263-264, emphasis added).

There is also a concern with the short amount of time allocated for the xenotransplantation deliberations. It is at least questionable whether three days is enough time to properly digest and assess complex new information. This is made clear by considering a fact about the next example we will look at. In the BC Citizens’ Assembly, participants in the deliberative process were initially very captivated by a Mixed-Proportional Representation system, but “over a summer of reflection, the view shifted massively to [Single Transferable Vote]” (Gibson, A15). This suggests that individuals might change their mind about a topic if they are given a significant amount of time to think it through. Notably, a longer timeframe for decision making also reduces the chances of participants being manipulated or feeling pressured to make a decision quickly. More time for decisions means more time for participants to engage in independent research and for others outside the process to learn about the deliberations.

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37 In the first chapter, I indicated that citizens should have a direct impact on policy issues that affect them. As the other examples outlined so far, the xenotransplantation case failed to meet this standard.
2.6 The BC Citizens’ Assembly: an ideal framework?

There are further ways to ensure that power influence is minimalized. A good example of how to eliminate conflicts of interest on a broad scale comes from the British Columbia Citizens’ Assembly on Electoral Reform. In fulfilling an earlier promise, the Provincial Liberal Government in BC put the necessary wheels in motion to form a Citizens’ Assembly that would deal with the issue of whether British Columbia should keep its current First-Past-the-Post (FPTP) electoral system or switch to something different. In a FPTP system, if an electoral candidate secures the plurality of votes in a riding, he or she wins the seat. Under this system, it is theoretically possible for one party to secure all the legislative seats by a small margin, and yet gain a complete monopoly on political power. This can create very strange results; for example, the Liberal government responsible for delivering on the Citizens’ Assembly itself gained power by winning 77 of 79 seats (97%), despite having only 58% of the popular vote. The remaining opposition, with 42% of the popular vote, won 2 of 79 seats (less than 3%) (BC, 2004, p. 8).

In forming the Citizens’ Assembly, 23,034 letters were mailed to randomly selected citizens. These letters explained the purpose of the Assembly and the general eligibility requirements for participation. Eligibility requirements focused on excluding anyone that might have a clear conflict of interest, and this included those working in government. It was ensured, for example, that no member or officer from any level of government could take part in the Assembly, and nor could any political candidate from the last 2 federal, provincial, municipal, or regional district elections (BC, 2004, p. 146). In total, 1,715 citizens responded to the letters. Of the 1,715 that responded, 1,441 people
were invited to one of 27 selection meetings. 1,105 confirmed that they intended to attend; 964 people kept their word and actually attended (BC, p. 33). After the meetings, 50 people voluntarily withdrew from the process after determining themselves ineligible (BC, p. 36). The remaining members were narrowed down by a further randomizing process--each of their names was placed in individual envelopes, with only their gender and electoral district labeled on the fronts. After being organized by gender and district, one female and male from each district was randomly selected. In BC, there are 79 districts, and so the total head count was 158. In retrospect, it was made clear that there was no aboriginal representation. Because of this, a separate process ensured that a male and female aboriginal joined the group, bringing the group total to 160 (BC, p. 39).

What was very special about this series of deliberations is that the Assembly was provided the power to review the current system and provide a new option to be added to a ballot referendum. The assembly had “complete independence from government” in this process, and so it was ensured that the Assembly’s power could not later be hijacked if the government later decided it did not like the proposal (BC, p. xiii). In this sense, the citizens had full control over what would eventually be added to the ballot.

As in the xenotransplantation case, the public knew very little about the subject matter. Most citizens do not study electoral reform and alternatives to the FPTP system in their spare time. Ranking how comfortable they felt with the material, the participants on average felt they were at 4.3 out of a possible 10 comfort points (BC, 2004, p. 65). It was clear, then, from the outset that a learning phase would be needed before any deliberation took place. And somebody or some group would have to structure the learning phase. Senior members of staff were responsible for organizing the learning phase and the
general proceedings of meetings. This staff was selected by the chair of the BC Citizens’ Assembly, Dr. Jack Blaney. The position of Dr. Blaney himself (and the staff he selected) was subject to a Special Committee of Parliament, which consisted of seven MLAs. With their unanimous approval of Dr. Blaney and his decisions, seven senior staff members were put in place. In selecting the senior staff, Dr. Blaney made every effort to ensure that “a candidate would be assessed on their ability to work without bias on the complex issue of electoral reform” (BC, p. 2).

The chief research officer was primarily responsible for planning the learning phase and getting it started. The associate research officer also helped design the education program. The education program involved everything from presentations by experts, the topics that would be up for discussion, and so on (BC, p. 65). During this period, which lasted from January 10 to March 24, 2004, participants were informed about alternatives to the FPTP system, such as Single Transferable Vote (STV) systems and Mixed-Proportional Representation (MMP) systems.

Because of their low familiarity level with the subject matter, participants found the lectures by experts more informative than other learning methods that were used, such as personal study and web forums (BC, 2004, p. 68-69). A potential problem with this, however, is that participants might have been very influenced by the particular biases and opinions of lecturers. Further, there were concerns that the staff’s ultimate authority over

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38 For example, it was explained that under a STV system, there would be more than one MLA per district and voters would rank their preferences accordingly (e.g. 1, 2, 3, 4, and so on). If one candidate met the required number of votes for election, all of the “extra” votes for that candidate would be transferred to the next preferences of the surplus voters (BC, 2004, p. 17). The idea is that almost no votes are wasted and almost everybody gets to have an impact on the final outcome. In an MMP system, each citizen would get two votes—one for their preferred candidate, and one for the party of their choice. Unlike an STV system, each district would remain with just one MLA (as in FPTP). However, to ensure greater representation, there would also be additional Assembly members elected via the party vote on the ballot. If parties receive enough votes from all the districts combined, they would be able to place members into the legislative assembly accordingly.
the agenda process might throw into question the legitimacy of member input. For example, Assembly members tried to clarify whether there was a set limit on the number of legislative seats (set at 79). Their worry was not unwarranted, because some electoral systems (such as MMP) would not work well in BC unless the size of the legislature could be increased. There were contradictory opinions among the staff on this subject, but ultimately the Chair’s word became final—the number of seats would stay at 79. Despite the fact that Assembly members kept asking for the reasoning behind this position, it was made clear early on that this was not negotiable (Lang, 2008, p. 92). In this sense, the members were not able to keep in “check” the staff’s interpretation of their mandate, although many members noted that this decision would certainly impact that outcome of the process.

At one point, many Assembly members also voiced that they would like to revisit the three core values that they had been asked to choose earlier in the process (voter choice, proportionality, and effective local representation). First, they had not understood the significance the exercise would have in guiding the rest of the discussion, let alone the final decision. Some Assembly members also questioned the method that was used to aggregate all of the values members suggested into just three core values (Lang, 2008, p. 94). The result of this was the introduction of a further exercise in which Assembly members were given 15 minutes to suggest values that might have been overlooked. Unfortunately, none of these suggestions ever seriously surfaced in the following discussions; the Chair indicated that there was a “strong opinion” to move forward (although it was unclear exactly whose opinion this was), and this greatly deterred revisiting fundamentals that were guiding the discussions (Lang, p. 94).
Clearly, there were real structural problems in this process that created an uneven balance of power favouring staff members over Assembly members. However, there is also evidence that this did not translate into Assembly members being “duped” or tricked into reaching a predetermined outcome. On average, participants’ comfort level in dealing with the material went from 4.3 (out of 10) before the learning phase to 9.11 afterwards (BC, 2004, p. 68). And 88% of the participants in the BC Citizen’s Assembly reported that they thought the presentations were fair and unbiased (Carty et al., 2008, p. 151). All of this indicates that most participants felt they had good reason to trust the information that was given to them. There could be a variety of good reasons for this. Some members did their own web research on electoral systems, and surely cross-checked what they were being told with their own research. One member even designed a computer program to provide simulations of the various electoral systems in BC. All of these members shared what they were doing with others, and this likely contributed to an increased confidence in their own ability to assess the credibility of presenters (Carty et al., p. 151).

Further, despite the fact that there was a formal agenda set up, citizens identified problems of their own on an unofficial agenda, and this helped guide their decisions. On many issues, “discussion spread out into all the other spaces the members occupied – into coffee breaks, into meals, in their online discussion forum, and in the evenings after the day’s work was supposed to be finished” (Lang, 2008, p. 87). For instance, an advocate for the “needs of the north”, Wilf Chelle, became famous for throwing late night parties in his hotel room, where he regularly offered his guests glasses of whiskey while engaging them in discussion about issues such as local representation (Lang, p. 96).
Others also took on an advocacy role for the north and the special needs of rural citizens. This motivated extensive discussion in the allocated time for deliberation in the formal process, and staff members responded by bringing in someone to speak on the demographics of BC. After further discussion, it became clear that northerners could support a STV system without compromising their traditional values (Lang, p. 97).

Although this amount of reflexivity in the agenda was not found in other areas of the BC Assembly, there are design elements that can be implemented in future projects to ensure that agenda issues are not imposed on participants in a top-down manner. In 2006, a very similar Citizens’ Assembly began in Ontario, and there were some notable structural differences that dealt with some of the “agenda pushing” concerns the BC Assembly encountered. First, there were four working groups established to deal with substantive issues; one of each for women and underrepresented groups, political parties, government stability, and geographic representation (LeDuc et al., 2008, p. 12). The citizens who composed these groups were given the responsibility of ensuring that these issues were kept high up in the agenda. Four citizen-driven advisory committees were also developed to deal explicitly with more structural and procedural issues. There was a committee responsible for the final report of the Assembly, consultation submissions (from citizens outside the Assembly), deliberation planning and monitoring, and evaluation (LeDuc et al., p. 12).

The process in Ontario also allowed for more than three guiding values to be selected. Apart from effective local representation, proportionality, and voter choice (the three values selected during the BC Assembly), Ontario Assembly members added simplicity and practicality as a core value (LeDuc et al., 2008, p. 13). STV and MMP
systems were selected as the two systems that best fulfilled these values. This was also
the case in the BC Citizens’ Assembly. However, in the Ontario Assembly, citizens voted
on which of these two systems to design first, and then voted on whether the second
should be modeled later. This was not the case in the BC Assembly, where the staff
recommended that STV be developed first because it would have fewer design elements.
In Ontario, then, Assembly members “had more independence in choosing which
electoral system to model, and at which point in the process” (LeDuc et al., p. 14).

2.7 Conclusion

Considering all of this, we find some convincing evidence that public deliberation
can be expanded in scope to cover some more complex issues and still remain fairly
consistent with deliberative theory. Ideal deliberation calls for a process of reason-giving
that is inclusive in the sense that citizens representing all relevant social perspectives are
present, provides fair and equal opportunity for input, is genuine (free of power relations
and motivations of self-interest), and is able to reach decisive outcomes that have a clear
impact on policy. To maintain a high standard of inclusion, a process such as random
digit dialing or random letter mailing might be used (as in the xenotransplantation
example and the BC Citizens’ Assembly, respectively). Further adjustment might be
needed after a randomization process to adjust for demographics. Both the
xenoransplantation experiment and the BC Citizens’ Assembly did this.

To further ensure the process is genuine, I suggest that at least three criteria are
significant. Transparency provides the opportunity for citizens and experts outside the
process to act as “checks” on the deliberative process by ensuring that the “education
phase” and deliberation phases are not designed to facilitate a particular outcome.
Outsiders should at least be allowed to sit in on the presentations and deliberations, or watch a recording of them later. The BC Citizens’ Assembly did very well in this regard; one notable researcher conducted 17 months of field-work throughout and after the process, and was allowed to take notes of non-recorded small group discussions and conduct detailed interviews with staff members and Assembly members (Lang, 2008, p. 87-88).

Reflexivity in the agenda is also important. As Amy Lang (2008) notes, regardless of their intentions, organizers of deliberative forums create obstacles for citizens: they set a mandate, control information, ‘manage’ the encounters among citizens and state agents, and interpret citizen input… (p. 86).

To deal with this concern, the deliberative agenda cannot be developed entirely through a “top-down” process. The primary committee responsible for decisions regarding the agenda might include representation from the public, as well as any experts that might be needed (the PAG from the xenotranslationion experiment is a good example). A conflict of interest statement should be put together that defines eligibility for participation in the committee, and all members should be willing to have background checks to ensure their eligibility. Further, working groups, made up of participants in the deliberative process, might also be established specifically for the purposes of keeping certain substantive issues high up on the agenda. As in the Ontario Citizens’ Assembly, advisory committees might further be developed for dealing with procedural issues.

Participants in a deliberative process will also need to be given enough time to engage with the new information obtained from the educational phase. Some have argued, for instance, that a long time-frame for decision making is the reason why the BC Citizens’ Assembly ended up choosing STV over MMP (Gibson, A15). More time
enables participants in the process to do some of their own independent research on the
topic and discuss content on their own informal agenda. The BC Assembly demonstrated
that, in certain circumstances, people will do both of these things.

Lastly, the impact of the deliberations is important. Even if a deliberative process
is genuine and maintains transparency, reflexivity, and sufficient time for decision
making, it needs to go a step further and make a clear impact on policy. If deliberations
are only ever meant to be taken as “recommendations”, then the amount of power given
to participants is likely to be very minimal. Put simply, the advice might be ignored by
elected officials and policy makers if they do not like the results. The BC Citizens’
Assembly escaped this problem by giving assembly members power over the decision
regarding which electoral system to recommend for the public referendum. A more
indirect way to make a deliberative process effective would be to produce high levels of
awareness of the deliberations through various forms of media.

This is not a detailed or comprehensive list, but the examples considered in this
chapter combine to demonstrate the importance of each of the above factors. Provided the
conditions above, there is good reason to expect that deliberative democracy can be
successful when dealing with more complex matters. Citizens are generally competent
and able to learn necessary new information. And although Shapiro contends that
deliberative democrats have not seriously dealt with the agenda setting problem, some of
the most recent evidence in the field demonstrates that this is changing and that this issue
can be dealt with even when dealing with complex issues.
Chapter 3: Deeply divisive issues

The model of democratic deliberation used by the BC Citizens’ Assembly demonstrated that citizens can learn about many complex political issues, deliberate about them, and reach a reasonable consensus. In the previous chapter, we looked at several ways the model might be improved to deal with agenda setting concerns and how the genuineness of the deliberations might be ensured. In this chapter, I maintain that the same basic elements are important and necessary, but not sufficient for dealing with contentious issues that reflect deeper forms of normative diversity and disagreement amongst citizens. As a starting point, then, it is significant that a deliberative process has a high level of transparency, is reflexive, and provides enough time for participants to make informed decisions. And impact on policy is essential: where possible, deliberations should have direct influence on policies. Conclusions reached in deliberative forums cannot be taken simply as “advice” that elected officials can embrace or discard (depending on their political aims or personal whims). A corollary of this last point is that the legislative role of parliament should be significantly reduced in the area of divisive issues. Instead, deliberative forums themselves should produce binding decisions, or at least produce a formal recommendation that citizens can consider when voting in a referendum.

The unique and complex challenges that divisive issues pose will easily test the upper limits of the model discussed so far. Up until this point, we have not considered how deep cultural differences and diversity in the very value systems of citizens might pose a significant problem for any model of deliberative democracy. Sometimes divergences in the basic normative commitments of citizens generate profound, and
seemingly irresolvable, disagreements about important policy matters. In any pluralistic society, there are bound to be some topics that generate ideological stand-offs between different groups. John Rawls (2005) argues that value pluralism is a fact in any modern democratic society:

The diversity of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy (p. 36).

For Rawls, there is a corresponding fact of oppression: if a democratic society attempts to attain homogeneity by accepting and enforcing a single comprehensive doctrine, this can only be done through the oppressive use of state power. This is the case regardless of whether we are talking about the state affirming the Catholic faith in the Middle Ages, or whether a philosophical ethical principle such as utilitarianism is affirmed by the state (Rawls, p. 37). If this account is correct, it is clearly necessary that a democratic society take diversity seriously.

It is essential to deliberative democracy that there is a structure or foundation from which deliberation can proceed. There must be some shared premises, a shared notion of what is relevant to an issue, or some way for people to speak so they are not completely talking past one another. Some issues, such as abortion, have multiple and complex sources of reasonable disagreement that work against such a foundation. First, there is conflicting scientific evidence regarding when exactly a fetus reaches the stage of viability (the capability of surviving as an independent), or at what stage it can feel pain. It is reasonable to claim that these concerns might be of some normative relevance, and so this is a source of reasonable disagreement. Then there is the issue of weighing the mother’s right to liberty and the fetus’s right to a future: at what stage does the fetus no
longer place an undue burden on a woman’s constitutionally protected rights? At what stage can the state take a legitimate interest in the potential for life? The problem with the abortion debate is that those on opposing sides weigh these values extremely differently. There is a fundamental disagreement regarding the importance of these values.

We might also consider disagreements regarding the wearing of religious symbols in school classrooms. Many religious groups in specific locations argue that there should be few restrictions when it comes to wearing and displaying religious symbols in public institutions. This is the case in Turkey, where Muslims have long fought for the right to wear headscarves in public schools. Many people strongly identify with religious symbols and believe it only further marginalizes and oppresses their group when they are denied the right to wear them. But some secularists believe that such a tolerant approach is problematic for a number of reasons. For example, we might have a duty to educate students about what it means to be good citizens of the state, and perhaps this requires a more impartial environment where religious displays are kept to a minimum. Underlying this disagreement is another set of differing value assessments. Even if we can all agree that some type of secular system is desirable, there are a number of values we need to prioritize. How should we balance the moral equality of citizens with their right to freedom of conscience and religion? How much significance should we give to the separation of Church and State, and how should we interpret the neutrality of the State towards different religions and secular convictions (Bouchard and Taylor, 2008, p. 45)? Where state neutrality is defined broadly (such as France), we find that religious expressions are often restricted in the public sphere. Less value, then, would be placed on freedom of conscience and religion. But state neutrality could be interpreted as being
consistent with promoting and encouraging the expressions of these different values, so long as the state refrains from taking an official stance by upholding one set of values.

Again, we find complex sources of reasonable disagreement.

Other disagreements are fundamentally rooted in the experiences of citizens\(^{39}\). As we shall see, individuals in indigenous communities sometimes disagree on the benefits of job opportunities brought to their communities by external corporations. Mining jobs, for instance, tend to be more heavily favoured by men than women because the experience of most women is that these companies will not hire them. And the experience of individuals working in the tourism industry may be that these corporations drive business away. The experiences of citizens on these issues will often be different enough for their judgments to differ.

Since these debates are difficult and complex, what can be done to make progress on these issues? Following the analysis of the Bouchard-Taylor commission, we can distinguish two routes to take when settling issues of deep disagreement: the legal route and the citizen route. The legal route is very formal, and relies on the use of the court system as the primary decision making mechanism. Codified procedures generally ensure a clear winner and loser among the involved parties, and final decisions are generally imposed by judicial authorities on the groups involved, with little attempt to forge mutual

\(^{39}\) Notice that some of these issues may be more resolvable than others and are not necessarily divisive in quite the same way. Group cohesiveness, or sense of “sameness” will vary depending on the group, issue and the context. A shared geographical location, a shared culture and history, shared resources, and a recognized political authority are all examples of things that would likely contribute to group cohesiveness (Weijer and Emanuel, 2000, p. 1143). At least some members of reasonably cohesive groups are going to take deep offence when a practice uniquely associated with their group (and its culture, history, and “way of life”) is questioned. In this sense, the questioning of a practice might be seen as threatening their core identity. This could make some issues especially difficult to resolve.
understanding amongst divided parties\textsuperscript{40} (Bouchard and Taylor, 2008, p. 52). The legal route focuses on the \textit{reasonable accommodation} of minorities. Rules and policies are adjusted to accommodate the needs of specific groups. The citizen route is less formal and embraces compromise and the goal of trying to find a solution that all parties can understand and accept. The citizen route corresponds with the concept of \textit{concerted adjustment}: negotiation and compromise are sought in the civic sphere, without the involvement of third parties. As a result, citizens would render social/political decisions directly. This approach emphasizes the importance of broad public deliberation and decision power while acknowledging a context where individuals may be coming from very different social positions. The idea is that citizens would negotiate respectfully with each other and seek reasonable and stable compromises on divisive issues.

By way of illustrating the distinction between these two routes, Bouchard and Taylor (2008) discuss the kirpan (a ceremonial dagger worn by some Sikhs) and the controversy it has created in Quebec public schools. This example also demonstrates a situation where the citizen route seems preferable. In one particular case, the school board of École Sainte-Catherine-Labouré contacted the family of a boy wearing a kirpan. Together with the student's family, the conclusion was reached that the kirpan could be accommodated under certain conditions (for instance, as long as it is sealed and underneath clothing, and could be regularly checked by school authorities). The family of the boy found the restrictions reasonable and had no objections. The school's governing board (the Commission scolaire Marguerite-Bourgeoys), however, was concerned about the object and its potential for use as a weapon. It argued that, as a matter of legal

\textsuperscript{40} An example of this is the famous \textit{Roe v. Wade} case on abortion, decided by the United States Supreme Court. The court decided that the state has a legitimate interest in protecting potential life, and laid out a clear three-trimester framework where abortions in the third trimester could be banned by states.
principle, weapons could not be worn by anybody on school grounds. The school's position was ultimately overruled by the board, and the issue went to Canada's Supreme Court (*Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006). Interestingly, the Court’s position was nearly the exact same as the conclusion that was reached before in discussions with the student's family: it could be worn, but only under certain conditions (Bouchard and Taylor, p. 62). This demonstrates that, at least in some cases, citizens are capable of making direct decisions on divisive social issues via contracts and agreements, without the (redundant) use of the court system.

With the local massacres of 1984 (National Assembly) and 1989 (Ecole Polytechnique) still in the minds of many Quebecers, not to mention more recent school shootings in the U.S. and the fear instilled by the September 11, 2001 attacks, the vast majority of the population was surprised and confused when the Court ruled against the school authority (Bouchard and Taylor, 2008, p. 61-62). Many wondered why a symbolic religious object needed to be 20cm long and made of metal. Unfortunately, most Quebecers did not know about the religious significance of the kirpan. As Bouchard and Taylor (2008) note, “the religious obligation to wear the kirpan should have been better explained to those who were opposed to it” (p. 62). The legal route largely failed at doing this, while the citizen route clearly had the potential to deal with the complaints and concerns in a localized fashion that was more hospitable to fostering mutual understanding amongst citizens and reasonable acceptance of the solution to the controversy. The citizen route “fosters the awareness among individuals of their responsibilities and seeks to avoid the emergence of conflict and antagonism” (Bouchard and Taylor, p. 63). This has all been evidenced by further cases in Quebec involving the
kirpan that have successfully used the citizen route. In one case, localized discussions led one family to accept a compromise where their son would wear a smaller symbolic kirpan around his neck (Bouchard and Taylor, p. 63).

Although there will inevitably be situations where the court system is the best way to deal with an issue, I argue that there are several reasons to favour the direct citizen route in most situations. First, the legal route does very little in the way of helping citizens to learn how to deal with conflict. It is important for citizens to learn how to manage and negotiate their disagreements, and a deliberative environment involving citizens would encourage this more. This method is also more inclusive and provides citizens more opportunities to voice concerns regarding policies that affect them. Further, the citizen route would avoid the congestion of the courts (Bouchard and Taylor, 2008, p. 52). I also make some recommendations regarding how deliberations might be structured to encourage progressive discussions on divisive issues. Notably, open, genuine deliberations on sensitive and divisive issues might not be likely if we take culture to be the primary marker of difference in individuals. If we place too much emphasis on cultural attributes, we might overlook other structural factors that uniquely shape people’s social perspectives. These various structural factors, such as gender, social class, and ability, are often indicators of power struggles and differences of opinion within cultural groups. Problematically, cultural elites with political power might argue that a practice is central to their group’s cultural identity and should be protected from social debate, but other members of the same group might not all agree. This can limit the

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41 I provide one example of where this is not the case later on.

42 I do not deny that group rights are appropriate in some circumstances—I am only pointing out that if a proper representational model is not used, “group protections” might be put in place that can have the effect of limiting debate on issues that members of the same group do not agree upon.
potential for open democratic dialogue. Shifting towards broader considerations of identity and difference can help ensure dialogue remains open. This approach would also encourage a more inclusive model of representation that includes all these relevant social perspectives, and this could shed light on potential solutions to social problems that would otherwise be unconsidered.

There are also procedures that can be used to minimize the occurrences of deep conflicts when deliberating. For instance, if it is made clear the outcome reached is provisional and subject to further changes, people might be more likely to listen to the other side of an argument. And if deliberations are framed so that deeply ingrained value differences are more indirectly addressed, or even temporarily relegated to the background, spaces for resolution may open that would not otherwise be possible. For instance, if the focus is shifted to what values groups share, conflicting value differences may seem less significant, and even possible to live with. I draw upon two cases as support for this argument. Quebec’s kirpan controversy, noted above, will be revisited here. In arguing for their right to wear the kirpan in public schools, Sikhs avoided confronting dominant secular values in Quebec and instead focused on how the kirpan represents values that are consistent with a secular democracy. And in Turkey, Muslims took a similar approach when fighting for the right to wear headscarves in public schools. When Muslims abandoned the approach of asserting their unique religious identity, and focused instead on their fundamental human right to education, powerful secular interest groups had a more difficult time maintaining the position that Muslims had an agenda to impose their beliefs on others.
3.1 The legal route

Ian Shapiro argues that judicial review is better suited for resolving disputes over deeply divisive issues than deliberation\(^{43}\). To make his point, he uses the example of abortion. Even under ideal deliberative conditions, it might be impossible for pro-lifers and pro-choicers to reach common terms of agreement. After all, what arguments would count as mutually acceptable when disagreement is so deeply entrenched? Shapiro (2003) notes that, in many cases, the courts have had much more success than deliberation in making headway on the abortion issue:

> [A]s the debate has moved away from metaphysical imponderables—about when life begins and whether a fetus is a person—and toward consideration of what constitutes an undue burden on a woman’s constitutionally protected rights in the service of a legitimate governmental interest, it has become plain that there is a good deal of room for rational argument about the legal right to abortion. That abortion can be an unmanageably polarizing issue does not mean that is has to be, and that is certainly an advantage of [the Court’s approach] that it pushes the debate way from issues that cannot be resolved in a pluralist culture and toward areas where accommodation is possible (p. 70).

While Shapiro is right that the courts have had some success in reaching workable conclusions on the abortion debate, the courts have not entirely moved away from “metaphysical imponderables”, such as when life begins or when the fetus becomes a person. Shapiro’s argument that the Courts can avoid these topics does not fit well with

\(^{43}\) To provide some background, Shapiro’s minimalist notion of the common good is simply that reasonable citizens wish to avoid domination and so procedures should be set up that ensure non-domination and a competition of political ideas. He is critical of more substantive theories of democracy that attempt to regulate what would count as just outcomes of a democratic process; as Shapiro (2003) notes, “there is no criterion of justice that is entirely independent of what democracy生成s” (p. 66). What he opts for instead is a “middle ground” approach, in which there is a role for the courts in acting as “second guessing agencies” of the democratic process. However idealistically we set up procedures, there are always going to be circumstances where those with an economic advantage or particular social sway can distort the operation of democracy (Shapiro, p. 75). In order to resolve disputes that are thickly clouded with power relations, an agency that is independent of the democratic process is often required to act as a regulator to ensure that legitimate competition of political ideas remains. As Shapiro notes, “[i]f the courts can play a role in limiting [power distortions] by making the system more genuinely competitive, they contribute to this stripped-down conception of the common good” (Shapiro, p. 75).
the evidence. According to the outcome of *Roe v. Wade*[^44], for instance, when the fetus becomes “independently viable”, or capable of surviving on its own, the state is entitled to impose its interests on the women:

> With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother (*Roe v. Wade*, 1973).

> Interestingly, the criterion of viability was upheld in the more recent case of *Planned Parenthood v. Casey* (1992)[^45]:

> Whenever [viability] may occur, the attainment of viability may continue to serve as the critical fact, just as it has done since Roe was decided; which is to say that no change in Roe's factual underpinning has left its central holding obsolete, and none supports an argument for overruling it (*Planned Parenthood v. Casey*, 1992).

> The court goes on to conclude that “the line [of a women's liberty in her choice to go through with a pregnancy] should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy” (*Planned Parenthood v. Casey*, 1992). At the time of viability, the court states that the fetus “can in reason and all fairness be the object of state protection that now overrides the rights of the woman” (*Planned Parenthood v. Casey*, 1992).

[^44]: In *Roe v. Wade*, two attorneys representing a woman who claimed her pregnancy was the result of rape brought a case against the state of Texas. The Supreme Court decision ensured that abortions would be legal at least until the end of the first trimester.

[^45]: *Planned Parenthood v. Casey* was a dispute over provisions regulating abortion in Pennsylvania. Women had to go through a process to ensure informed consent, had to inform their husbands of their intent to go through with the abortion, and had to wait 24 hours to get an abortion. Minors also had to get permission from their parents. Planned Parenthood, an international federation that lobbies for various issues concerning sexuality, brought the case against Robert Casey, the pro-life governor of Pennsylvania at the time. The Supreme Court of the United States decided the case.
The court arrived at the criterion of viability without directly discussing metaphysical questions, but only at the risk of coming across as arbitrary. It may be a biological fact that at some point a fetus can survive outside of the womb. And viability is “logical” in the sense that it occurs within a definite timeframe (22-28 weeks) and is manageable. But how do these facts turn into moral and legal status for the fetus? There may be an answer to this question, but the court does not discuss it. Why not choose “significant brain activity” as the main criterion?

In a dissenting opinion regarding viability, Justice Antonin Scalia had similar sentiments. He found it hard to see how the court was “interpreting a constitution rather than inventing one” in its use of the viability criterion (*Planned Parenthood v. Casey*, 1992). He goes on to elaborate that:

The arbitrariness of the viability line is confirmed by the Court's inability to offer any justification for it beyond the conclusory assertion that it is only at that point that the unborn child's life "can in reason and all fairness" be thought to override the interests of the mother... Precisely why is it that, at the magical second when machines currently in use (though not necessarily available to the particular woman) are able to keep an unborn child alive apart from its mother, the creature is suddenly able (under our Constitution) to be protected by law, whereas before that magical second it was not? That makes no more sense than according infants legal protection only after the point when they can feed themselves (*Planned Parenthood v. Casey*, 1992).

Contrary to what Shapiro claims, there are metaphysical concerns still lurking in the background when the courts discuss abortion. If there is a reason to choose viability over other criteria that could determine the right of a woman vs. the fetus, then there must be something about viability that makes it morally and legally relevant in a way that other potential criteria are not. For example, viability might be morally significant because the fetus becomes a person at this point. But the courts fail to discuss this.
3.2 Preconditions of deliberation

From what has been noted, it is not immediately clear how deliberation would manage these issues with greater ease. The informal nature of the citizen route might even make it easier for the discussion to be controlled by organized interest groups. There are, however, a few additions to the citizen route that would likely make it more successful.

We need to ensure that we are working with an adequate model of citizen representation that allows for open debate across a wide range of social perspectives. But first we need to make sure there are no roadblocks to this project. A model of “representation” based exclusively on cultural differences is not sufficient because relevant social perspectives may not be taken into account. As noted in Chapter 1, a number of other factors such as economic status, ability, and gender greatly impact our identity and the way we perceive the world. Cultural identity, while important, does not shape a person’s entire social perspective. If only established political representatives from various cultures are included when making political decisions, this can effectively silence dissenting voices within these groups. The worry, then, is that if we focus too much on one aspect of identity when determining the relevance of a person’s perspective to political debate, this could limit or even eliminate the potential for open and critical democratic dialogue on issues in certain communities.

Notably, there are some political theories that place significant weight on cultural differences, and we should address this briefly. Charles Taylor’s politics of recognition posits that cultural differences play a significant role in the shaping of our personal identities, and that the way people perceive themselves crucially depends on whether
their cultural identities are recognized as legitimate by others. For this reason, Taylor’s politics of recognition places a very high value on protecting cultural practices and traditions. When we fail to recognize the legitimacy of some specific cultural practice in a group, we are effectively failing to recognize the individuals making up that group, and this can actually be harmful (Taylor, 1994, p. 36). Taylor argues that a favourable model of liberalism should be “willing to weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favour of the latter . . . the integrity of cultures has an important place” (Taylor, p. 61). What this means is that subjecting everyone to the same equal status might actually harm those in marginalized or minority cultures; cultural groups should often be given special protections that enable their traditional practices and customs to survive.

Notice, however, that tunnel vision on cultural differences can create problems. Consider that an argument might be made that we should recognize a minority religious group’s right to protect their culture and way of life by allowing a certain religious dress in the public school system. Such a claim might be legitimate, but we need to consider who in the group is advocating this practice. Problematically, it is often conservative elites (with political power) within groups who claim to have the authority to judge which practices are essential and authentic (Kymlicka, 2007, p. 101). If the state hears from these elites and takes a stance that legitimizes this practice in the name of “cultural protection”, it might make it very difficult for citizens within and outside the group to take an opposing view (McBride, 2005, p. 502). Positive endorsement by the state on an

46 While it is certainly appropriate to protect certain groups under some circumstances, the basis for this kind of protection should always be supported by a more relational logic that considers how members of the group are connected to each other in terms of ability, opportunity, economic well-being, and so on. This will be discussed in more detail later on.
issue might benefit some people in the group, but other group members might be
negatively affected by the state’s position. If, for instance, a traditional religious symbol
or practice potentially represents patriarchal norms within a culture, we might find that
many group members have at least questioned the practice. For example, Islamic
feminists have widely recognized that there is a problem with interpreting the hijab as a
necessary part of women’s dress. In any case, the point is that there are often deep
relations of power within cultures that can be overlooked if we are only concerned with
culture itself as a marker of identity. Group elites can easily use “cultural protection” as a
political trump card with the objective of avoiding democratic debate. As Will Kymlicka
(2007) puts it: “Where identity claims are presented in this way as non-negotiable trumps,
the result is to erode the potential for democratic dialogue” (p. 102).

The implication for a model of deliberative democracy here is that a politics of
cultural recognition can actually be a hindrance to having successful, open deliberations
that question divisive issues that are largely about culture. The suggestion that certain
practices and traditions should be protected is not wrong, but opportunities to deliberate
on the issue must be given to members of the culture from all different social positions.47

3.3 An ideal model of representation

47 To be sure, cultural attributes do matter in shaping personal identities. A shared history of oppression, for
example, might significantly bind members of a group because these historical injustices might affect them
similarly today. A shared geographical location or shared resources might also make group members more
likely to share similar thought patterns. However, our model of representation should not assume that
people within the group have similar thoughts on an issue because they share these cultural attributes. If
markers of difference such as gender, economic opportunity, ability, and so on, can impact individuals at
least as much as culture, then multiple members representing different genders, social classes, and ability,
should be included in a deliberation to ensure that there really is consensus within the group.
Some land claims issues involving indigenous groups in Canada nicely demonstrate just how important it is to include the broader community in discussions. For instance, the introduction of mining operations in various indigenous communities affects members within these groups very differently. Royalties obtained from mineral extraction, and the jobs mining companies offer tend to benefit some in these communities more than others. Those who already have jobs in the tourism industry, for instance, might find the introduction of a mine in the community devastating. And women, in particular, do not reap the same economic benefits from mining work because most individuals working in the mining industry are men. (Hipwell et al., 2002, p. 13)

What further complicates the issue for women is that their voices have often gone unheard when Band Councils negotiate with the government and mining corporations. The reason for this has to do with the long-standing implications of the Indian Act in Canada, which blatantly imposed sexist standards on Aboriginal communities, where women often traditionally held a significant role in the political community. For instance, the Indian Act initially made it clear that only males could be members of Band Councils, which are given the right to govern their communities under the Act. The Indian Act also always allowed men to marry non-Natives and still maintain status while women could not (Alfred, 1995, p. 165). Much of this has since changed, but Band Councils are still very male-dominated. The implication has been that women are often largely excluded from negotiations involving land claims in these communities. As Hipwell et al. (2002) point out,

The colonial imposition of the Indian Act on previously sovereign nations meant in many cases that male-dominated Band Councils usurped the traditional political power of women. Consequently, when Land Claims negotiations take place between the Canadian and provincial government and Band Council, the voices of women are often
marginalised or excluded. This change in political power is exacerbated when resource corporations conduct specific negotiations with the Band Council rather than with more broadly constituted community structures, or with traditional forms of Aboriginal government (p. 13).

Clearly, having a discussion that only involves recognized cultural representatives would be problematic in cases like this. If discussions were more inclusive, the outcomes would likely often be different and more reflective of the concerns of the community at large.

Evidence for this is provided by the fact that women have vocally opposed the position of Band Councils on some land issues. For example, in the 1990s, the Meadow Lake Tribal Council in Saskatchewan cited various economic benefits as a reason to allow a nuclear waste dump to be built on Aboriginal land, while many women’s groups warned about the health and environmental pitfalls of the project. Many opportunities for public input were given during this particular project, and 531 presentations were given from citizens in 16 different communities between March 1996 and March 1997. The report summarizing the public hearings stated that the “concept for deep geological disposal has not been demonstrated to have broad public support” and “until ... broad public acceptance of a nuclear fuel waste management approach has been achieved, the search for a specific site should not proceed” (Canadian Environmental Assessment Agency, 1998b). Indeed, the project did not proceed, but the outcome likely would have been different without these opportunities for public input. Several women’s groups delivered presentations at the hearings, including the Voice of Women, the Alberta Indigenous Women Environmental Foundation, the NAC Environment Committee and Toronto Women for a Just and Healthy Planet, and the National Council of Women of Canada (Canadian Environmental Assessment Agency, 1998b).
The kind of representation I am advocating could also be helpful in debates on abortion. Ensuring the inclusion of multiple perspectives could generate new avenues of resolution by revealing certain facts about the way people live. If single, low-income women pointed out that they could not provide for (future) children, both sides might be able to agree that certain social programs need to be more fully developed to assist women placed in these unfortunate circumstances. We might also learn that some young women have no easy means of obtaining contraceptive pills, or that condoms are too expensive for some citizens. Similarly, others might not be properly educated in contraceptive use. If these issues could all be resolved through various social programs, abortions may decrease significantly without any legal restrictions. To be sure, this is a far cry from resolving the underlying value disagreement, but social programs (that can significantly influence the frequency of abortions) offer a space for potential agreement that affects the practice of abortion. And an inclusive, deliberative forum could lead to the discovery of such spaces.

In practice, the model of representation I am advocating would be similar to that used in the B.C. Citizens’ Assembly (see Chapter 2). The random selection of citizens for a deliberation presumably would not be sufficient because it is quite possible that minority populations that will be greatly affected by an issue will not get selected, and that individuals coming from some social perspectives within groups will by chance simply not get represented. Recall that in the BC Citizens’ Assembly, no indigenous representatives were initially selected by chance, and corrective action had to be taken to rectify this. My suggestion is that a randomization filter is still needed early on in the process to select an initial pool of potential participants, but, as in the BC Citizens’
Assembly, this pool should be much larger than the number of individuals who will actually participate in the final deliberative process. Potential participants might be asked to fill out a brief voluntary survey where they would answer general questions regarding their background, age, financial situation, living conditions, and so on. Different responses to such questions could be indicators of different perspectives, and the survey results could be used to approximate representation for any relevant social perspectives. Another option would be to give the initial randomized list of potential participants to a committee that would determine how many individuals from each demographic should be selected. In general, some approach like this will need to be taken to adjust for demographics.

### 3.4 Challenges and solutions

In contrast to the potential advantages of higher levels of representation, it is possible that having all of these different people participate in a discussion could just create more opportunities for deep disagreements. While broader inclusion in the deliberative process might ensure that more issues are left open for genuine debate, the introduction of even more perspectives might make it harder to have a managed and controlled discussion. Even if ideal representation is attained, it might be very hard to get people to have a rational debate about the issue at hand or seriously consider alternatives to their position. It might be argued that the legal route can deal with these vast differences more efficiently.

One way to get people to listen to each other might be to make it clear the results are only *provisional*. If the outcome is taken to be provisional, meaning that it is not “set
in stone”, people might be more willing to listen to the other side of an argument. If it is made clear that the issue will be revisited in future forums, participants might be less likely to take a “now or never” approach to the discussion. Participants will be ensured that they can change their minds later down the road and still have opportunities to impact the issue up for consideration. No decisions are final; it can never be assumed that any particular group of citizens will reach the best outcome possible for an issue. And instead of using a divisive “yes/no/not sure” vote at the end of a deliberation, more options might be provided for participants to qualify their position. For example, participants might be able to express that they vote a certain way under the condition that the issue be revisited in a certain amount of time. If we consider the kirpan case again, Quebec citizens concerned about maintaining French culture might agree to the religious displays as long as they do not lead to an erosion of Quebec values in the future.

It would also help if deliberations could be structured in a manner that avoids confronting deeply ingrained value differences between involved parties. For example, we might focus on the needs of different groups and not on general values (Dryzek, 2005, p. 225). Focusing debates on divisive matters that individuals strongly identity with, such as core values, might only freeze the identities of individuals representing opposing sides on an issue. Individuals always come into debates with specific identities; that is, they locate themselves in a complex web of discourses and social categories. However, issues can often be framed in a manner that does not shine the spotlight on clashing identities. Identities are fluid and capable of changing, but are not likely to change or accommodate other views under conditions where individuals feel they have to defend their differing core values.
By way of illustration, let us reconsider the controversial kirpan case. It might seem that framing discussion away from deep-seated value differences contradicts one of the supposed virtues of the citizen model, namely the increased potential for mutual understanding that the citizen approach boasts. After all, if we are really going to understand each other, we will need to understand each other’s values at some level. But some value differences can be relegated to the background temporarily for the purpose of furthering debate. As a strategic manoeuvre, a group might focus on what aspects of identity unite the involved parties. As we consider below, this is the strategy that most Sikhs took in Montreal when discussing the kirpan case.

In Quebec, there are two dominant views regarding how a secular society should be operated. Social progressivists think of secularism as modern enlightened rationality; pre-modern religious beliefs do not need to be accommodated, and are furthermore generally seen as threats to the secular and francophone culture. They want to see a “common set of modern, secular values” applied to students in public schools (Stoker, 2007, p. 825). This group is, for obvious reasons, anti-kirpan and also represents the most dominant view among the Quebecois. Multiculturalists are more favourable towards multiculturalism and the expression of religious values. In other words, secularism is consistent with most expressions of religion (e.g. the kirpan) (Stoker, p. 816-17). Notably, Sikh activists took these audiences into consideration when framing arguments for their position:

Sikh activists worked to present a version of the kirpan that would be palatable to the two dominant audiences they were addressing, and thereby managed to play a large role in defining the terms of this debate and affecting its outcome. By presenting the kirpan as an emblem of resistance to oppression and the struggle for equality, Sikhs at once distanced the kirpan from any martial implications it may have once had and made it coalesce not
only with Canadian multiculturalism but with Québec’s social progressivism (Stoker, p. 817).

The approach most Sikhs took, then, was not one of simply asserting their unique identity and the right to express it. The argument was framed strategically in such a way that it did not directly challenge the dominant audience’s value system (particularly the belief that secularism is defined as “enlightened rationality” and is inconsistent with public religious displays). Sikhs used the already existing discourses on secularism “not only to defend their rights but to force dominant communities to reassess a fundamental component of their value system” (Stoker, p. 818). In the forefront, they maintained a version of the kirpan that the dominant culture could agree with and maintained that “kirpan-wearing...invokes shared values such as equality, tolerance, and inclusivism” (Stoker, p. 818). For example, at Waterloo University, the Sikh Students Association noted that Sikhism is “a faith founded on the principle of inclusiveness. It is a faith that wishes to see all ideas given a fair chance, a religion whose founders laid down their very lives for the freedom of choice. It is in keeping with this liberal and democratic heritage that Sikhs are so proud to be Canadians” (The Kirpan Website, 2002). By adopting this general strategy, Sikhs “simultaneously aligned their traditions with dominant values and preserved their distinctive identity” (Stoker, p. 818). With this approach, social progressivists had to seriously reconsider just why it was they were so against the idea of the kirpan in public schools. After all, Sikhs themselves did not list “pre-modern values” as reasons for the ceremonial dagger. Their strategy also indirectly exposed the socially constructed nature of Quebec’s less tolerant model of secularism.\footnote{A number of historical factors, such as alleged power abuses on the part of the Catholic Church, a declining birth rate among native (French speaking) Quebecois, and a changing economy led to the development of protectionist policies that ensured French-medium education (Stoker, 2007, p. 826). As}
As another example of how this might work, consider the issue of religious toleration in Turkey. Kemalism, an authoritarian and militant secular ideology, is what many “white”, western Turks generally identify with\(^49\). The main objective of Kemalists is to ensure the Islamic “other” is kept under control and out of political discourse (Yavuz, 2000, p. 25). Despite being a minority population, the Kemalists have held a significant amount of political power through their influence over the military. After several “Kemalist reforms”, where political efforts focused on making society appear Western and modern, “Muslims felt there was no longer any common public culture that would provide a context within which they could engage in communication and debate to exert influence over a newly emerging polity that would hold itself accountable to their opinions” (Yavuz, p. 24). And despite Turkey being a democracy, where the religious are the majority, Turkish governments and political parties tolerant of religion have been forced to step down from political power for purposes of “securitization” and “protecting the state” (Yavuz, p. 26). This has largely been possible because of Turkey's National Security Council, which is dominated by elite military personnel that are guardians of Kemalism. Identites who stray from Kemalist ideology are seen as a threat to modernization and the ideal society; they are taken to be signs of political instability.

The Kurds and “black” Turks share the same religious roots, and have used this shared identity to promote political parties and movements. Over the years, there has always been some version of a political party that the Islamic population could identify

\(^49\) By “white”, I do not mean racially Caucasian (although some Turks are), but “white” in a more abstract sense, designating a particular ethnic background and the social placement one enjoys by being associated with that demographic.
with. Previous Islamic parties, such as the Welfare Party, have focused on identity differences between the religious and secular groups:

The Welfare Party's Islamic agenda was nationalistic and homogenizing, seeking political power to transform society. It succeeded in becoming an ideology of opposition, but never achieved a position as an ideology of liberation and was unable to establish itself as an alternative civil society movement. It remained statist and constantly defined itself as ‘other’ (Yavuz, 2000, p. 35).

Although this particular party achieved some success, and even had Turkey's first Islamist prime minister elected in 1996, the Turkish military became involved in February 1997, labelling the Islamic identity proclamations as threats to national security (Yavuz, p. 37). Some of their concern particularly focused on the party's support for new sale restrictions on alcohol, increased development of mosques, and so on (Mecham, 2004, p. 343). As a result, the “Uniformity of Education” law was adopted, hundreds of religious schools were shut down, the recruitment of Muslims to government jobs was halted, restrictions were placed on Islamic dress, and so on (Mecham, p. 344). In June of the same year, the party was asked to step down.

Instead of taking the military head-on in an identity conflict, more recent political attempts have shifted the focus of argumentation towards democratic rights and human needs:

[S]trategic decisions made by party leadership after iterated periods of political learning have transformed the dominant Islamist movement in Turkey into a politically sophisticated, progressive and moderate participant in normal politics. In the process, religious preferences have not been abandoned, but have been reframed to engage the political regime on its own terms (Mecham, p. 340).

The Justice and Development Party (or AK party), formed in August 2001, has achieved broad-scale success. This party does not use a variation of the crescent moon symbol, as previous parties have (it simply has a shining light bulb). The party promised to resolve
the restrictions regarding the wearing of headscarves, and other religious constraints. But this was not attempted by asserting Islamic identity. Part of the success of this party can be attributed to its careful use of political rhetoric, which has steered away from any religious references that could be used against it in court (Mecham, p. 353).

In particular, the issue regarding the wearing of headscarves in schools was not primarily addressed as an identity conflict. Kemalists, of course, generally supported the “Uniformity of Education” law and did not want headscarves introduced to classrooms. But the AK party (and affiliates) continually made the argument that education was a basic human right that young Islamic women needed to have granted in order to have the same opportunities as other citizens. In 2008, for instance, the deputy chairman of the AK party noted that “giving an equal right to education to every citizen is not against the state of law and democracy” (BBC, 2008). This terminology of needs, which largely avoided a head-on collision of fundamentally different value systems, made it harder for secularists to argue that the Muslims’ main agenda was to impose their beliefs on others. Most Turkish citizens also wanted to see Turkey join the European Union, and the AK party has strongly argued that in order to meet membership criteria, legal restrictions must be placed on the military’s ability to interfere with politics (Mecham, 2004, p. 354). This has made it much more difficult for Kemalists to illegitimately take control and bypass public debate on the issue.

Although these moves by the AK party were strategic political moves that occurred within a very limited opportunity set (as a result of military threat), I believe that the success of their approach would only be magnified under ideal deliberative circumstances. If the AK party can switch from “value talk” to “needs talk” and see
results in a political context where so much is stacked against them, then surely minority groups in an authentic deliberative process would likely benefit at least as much when similar issues are up for debate.

To consider how shifting the deliberative focal point away from deeply-seated value differences might advance deliberations, let us briefly consider how this approach might work under conditions of more ideal deliberation. One especially difficult case for this suggestion is abortion, and so we will consider this here. Regarding the topic of abortion, we might break deliberative projects into different sections. First, we probably need to situate the problem of abortion in a broader social context. For example, we know that unintended pregnancies are the leading cause of abortion, and sexual intercourse is the only way such pregnancies occur. There are social factors that impact the number of unintended pregnancies, and there are ways to manage social factors. As in the BC Citizens’ Assembly, there could be explanatory presentations on this subject by experts in relevant fields, such as sociology and psychology.

Second, we might introduce a series of examples, which ask individuals to assess (pre-deliberation) whether abortion is an appropriate course of action. One case might be based on a situation where a girl was raped, another where the mother’s life is in danger, and yet other cases might describe women that want to avoid poverty, pursue a career, or simply go on vacation. These cases might be set up in such a way that dividing values are

50 All previous political attempts to be more accommodating towards religion had been shut down in the name of “securitization”. In Turkey, the marginalized Islamic population is perceived to be a much bigger threat to state values than marginalized populations in most other Democratic nations. This is likely partly because the size of the oppressed group is very large. The minority Kurd population, which makes up part of the religious population, is also itself part of a larger group, divided by several international borders (Iran, Iraq, Turkey, and Syria), which has expressed interest in forming its own Kurdistan (Kymlicka, 2007, p. 256). In the West, there is little or no fear that minority groups and historically marginalized groups will use political power in ways that severely threaten the state’s interests.
in the background, but not directly in the forefront (e.g. stories or personal testimonies). The idea here is to first get people thinking about abortion in a broader social context; we live in an imperfect world with interconnected and complex social problems, and there are a wide range of factors that lead people to seek abortions. Then, with this in mind, people would answer these situation specific questions.

It would also be helpful to include thought experiments in the list of questions. Thought experiments provide a layer of abstraction that would allow participants to think about abortion more indirectly. One example is Judith Thompson’s famous violinist argument (Thomson, 1971, p. 48-49). Imagine that the society of music lovers has decided only you can save the life of a famous violinist—by being hooked up to him for nine months. The society needs to act quickly, so they rush into your house when you are sleeping and attach him to you. Upon awakening, you become aware of what has happened, and want to unhook him. However, the famous violinist is an actual person, with the right to life. Would it be morally wrong to get up and walk away? Not necessarily, the argument goes, because you never consented to this setup and the burden placed on you is extraordinary. You might be a good person for obliging, but it is at least not obvious that it is morally required of you.

Another famous example, again from Thomson, is the “people seeds” scenario (Thomson, 1971, p. 59). In a parallel universe, imagine that “people seeds” float around in the air like pollen. If one floats in and takes root in your carpet or furniture, you will end up with a child that needs to be taken care of. Since you do not want children, you have the option to shut your windows altogether, or open them with a fixed screen in place. Since you enjoy fresh air, you open the windows with the screens in place.
However, once in awhile there is a manufacturing defect in a screen, and a seed floats in. Because you knowingly took a small risk by enjoying the fresh air, does the seed have a right to stay in your house? It is not clear that this logic follows.

Once in small groups, input may be asked regarding questions that are not likely to highlight deep value differences. For instance, how can the number of unwanted pregnancies be reduced? Perhaps more financial assistance could be given to single mothers, contraceptives could be made more available, research could be undertaken to develop more effective contraceptives, or sex education programs could be improved. Presumably both parties could agree on taking certain preventive measures so the tough cases arise less often. And this might set a more constructive atmosphere for the rest of the deliberation.

When discussion inevitably shifts to the specific cases of abortion and the thought experiments, conflicting values will emerge. But hopefully the pre-deliberation exercise would make some participants question just how rigidly they hold their value commitments, and this might make them more open to discussion. The question exercise might expose inconsistencies in people’s value systems without being directly confrontational. If, for instance, some people believed “abortion is murder” going into the question exercise, but found they deeply sympathized with the psychological needs of a rape victim, they might reassess (implicitly) whether they really believe this. After all, the moral status of the fetus is independent of the external circumstances. On the other hand, a person maintaining that abortions should be readily available without any mandatory wait period or counselling might be emotionally affected by the story of a woman who wished she never had an abortion. During discussion, others might notice inconsistencies
in their answers to the specific abortion cases and parallel though experiments, and this might leave them questioning why this discrepancy exists. They might implicitly realize that certain stigmas or biases are clouding their thoughts when abortion is directly discussed. Of course, when dealing with such a difficult issue, we cannot expect that everyone is going to be more open to discussion after a process like this. But even if just some people are more willing to openly discuss, listen, and entertain the possibility that they are mistaken, this would be a significant improvement.

3.5 The limits of the citizen route

Unfortunately, there will be situations where the citizen route is not suitable. There is no general or universal way to determine when the legal route becomes preferable, but there are some factors to consider when making such a decision in a particular context. First, the legal route may be necessary when individuals or groups central to the debate are unable to advocate for themselves. This could be for a variety of reasons. A group might be so marginalized and/or structurally disorganized that it cannot feasibly make any impact in a deliberative forum. A person might be physically or mentally disabled to the point where it is questionable whether their real needs or intentions can be known. A person might also be a minor, raising questions regarding whether she can make informed decisions. Extreme circumstances could also lead to questions regarding a person's ability to make an informed decision.

Further, law can sometimes offer a better analysis on an issue when private files and documents are needed that would provide significant insight regarding certain claims in a debate. For example, medical records, bank/tax information, juvenile records, and
social work files can all be requested by judicial authorities, but for obvious reasons are protected from general public access (Beaman, 2008, p. 31). Discussing a person’s health history might be highly relevant to a case, but this is not appropriate material for public debate.

As a case in point, let us briefly consider one of the many legal battles involving the Jehovah’s Witnesses policy against receiving blood transfusions. Bethany Hughes of Calgary, AB (Canada) was diagnosed in February 2002 with acute myeloid leukemia. She was 16 years old. As part of her treatment, physicians told her she would be receiving blood transfusions in combination with chemotherapy. Bethany refused the treatment because of her religious beliefs. Her father consented to the treatment, however, and an order eventually went through the provincial court that forced Bethany to receive the treatment. This decision was appealed by Bethany and her mother. In the end, Bethany was forced to receive numerous blood transfusions against her will, and died shortly after (Beaman, 2008, p. 20).

Independently of whether the right decision was made, there are some things about the case would make it even more difficult for the citizen route to handle. First, there is a basic question regarding whether Bethany was operating within a sufficient context of choice to make an informed decision. She was very young, and appeared to be mainly influenced by her mother. Her life experience was quite limited and she was likely easily impressionable. Bethany never had the chance to go to University, travel abroad, and experience a wider range of different cultures. The citizen route, then, would not help Bethany if her instincts were not really in her best interest. Further, information

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51 As a matter of religious conviction, Jehovah’s Witnesses believe the Bible condemns blood transfusions, and vow to live their lives accordingly.
relevant to making an assessment of the girl’s competence (e.g. social work files) would have been private and non-accessible via the citizen route.

3.6 Conclusion

In the end, it is unreasonable to expect that a full consensus will be reached every time or even most times divisive issues are discussed. As nearly all deliberative democrats admit, voting will be necessary to reach decisive outcomes on most issues. And not all issues will be manageable in deliberative forums. Private information, which is not suitable for public discussion, will sometimes be needed to resolve a dispute. And the citizen route might not be beneficial for those groups or individuals who do not know their best interests. Despite these potential exceptions, I hope to have shown that there is some reason to expect that a deliberative model could work in many cases where deeply divisive issues are on the table. By ensuring adequate representation of all relevant social perspectives, indicating that outcomes are always provisional, and focusing discussions away from deeply divisive values where possible, there is a potential for a deliberative model to deal with divisive issues in pluralistic societies.
Conclusion

In the foregoing chapters, we have drawn upon evidence which suggests that a model of deliberative democracy can be structured to deal with challenges that threaten its credibility in specific practical settings. To summarize, we considered the failures and successes of the Oregon experiment, Canada’s xenotranslation project, and the BC Citizens’ Assembly (Chapter 2). The Oregon experiment was our starting point, and proved to be susceptible to the *agenda setting problem* and concerns regarding its use of self-selection to represent community members. However, it demonstrated that citizens had potential for dealing with complicated policy issues. The other two examples in this section reflected this successful element, and had further structural elements built into them that dealt with the agenda setting problem and concerns regarding adequate representation. Considering this, several lessons were taken from the examples. Along with an adequate model of representation, we noted that *transparency* allows for external review of the process, reflexivity importantly allows for both top-down *and* bottom-up approaches to setting the agenda, adequate *time* ensures citizens fully absorb new information and a direct *impact on policy* limits or eliminates the chances for manipulation by elites.

A considerable challenge still remained unconsidered, however, with the *depth of disagreement* objection (Chapter 3). Here a defense was offered for the *citizen route* as a feasible and preferable approach to dealing with divisive issues. The citizen route, we noted, uses deliberation, compromise, and negotiation to sort through deep disagreements. Quebec’s kirpan controversy was used to demonstrate that the citizen route is at least sometimes preferable to the legal route, which uses the court system to
sort out disagreements. In this case, the citizen route effectively produced the same result as the legal route. Given the advantages of the citizen route, such as its potential for fostering a mutual understanding of each other’s positions, it seems more appealing here.

We also considered some suggestions that would enhance the citizen route’s ability to deal with deep disagreement. An adequate model of representation, once in place, ensures that important social knowledge will not be overlooked that could help resolve social problems. If deliberative outcomes are provisional, this might encourage citizens to be more open in discussions concerning divisive issues. The kirpan controversy and a similar case from Turkey also provided some support for the idea that a divisive issue can be framed and repackaged so conflicting values take a backseat to what opposed parties can agree upon: shared values, the basic needs of certain individuals, and so on. In these examples, this repackaging was done by marginalized groups that strategically framed their argument to make it acceptable to more dominant groups. In a deliberative forum, this approach would instead be implemented in the agenda, as was demonstrated with the hypothetical outline for a deliberation on abortion.

Returning now to the question posed in the first chapter regarding the plausibility of Gutmann and Thompson’s basic deliberative model, we can say with some confidence that there are some solutions to major practical challenges. The above suggestions are only a starting point, and by no means represent an exhaustive list of additions to a model of deliberative democracy that make it immune to further practical challenges. I hope, however, to have provided an argument that succeeds at enforcing the plausibility of a deliberative model being effective in difficult and challenging circumstances.


*Planned Parenthood v. Casey.* (1992). USSC 112; 505 U.S. 833; 112 S.Ct. 2791; 120 L.Ed.2d 674;Nos. 91-744, 91-902


