Inclusion and Dissent in Deliberative Democracy

By

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Abstract

Normative deliberative theories stress the importance of procedural justice, purport to include all people as equals, and aim to address the problem that marginalized groups pose for democracy. However, normative deliberative theories cannot guarantee that deliberative groups will recognize all normatively acceptable public reasons. When deliberative groups fail to recognize public reasons, they unjustly exclude groups. Members of the marginalized group that deliberants exclude may form protest groups. Because theories of deliberative democracy do not discuss political protest and because marginalized groups form protest groups, theories of deliberative democracy fail to deal adequately with marginalized groups. In order to resolve the tension between communicative democratic theory and political protest, I propose that communicative democrats adopt a dissent-as-difference approach. Dissent-as-difference theory treats legitimate political protest in the same way as communicative democratic theory treats difference and recognizes the democratic legitimacy of the type of marginalized groups that form protest groups.

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Introduction

Marginalized groups pose a problem for democratic bodies. Normative democratic theory requires that people treat each other as equals. An approach to policy formation should reflect normative values and treat members of marginalized groups as equals, yet the democratic majority frequently fails to do so. Instead they impose their own values and practices on differently-situated groups. Theories of deliberative democracy are meant to address this problem because they advocate changing the norm of majority rule (however conceived) to a norm of universal inclusion framed in terms of procedural justice. Theories of deliberative democracy require that all people affected by a particular policy, including marginalized groups, participate in its formation. The participation of marginalized groups is necessary for deliberative theories to achieve democratic legitimacy. Deliberative democratic processes treat members of marginalized groups as equals and ought to create policies that treat all people with equal respect. According to deliberative democrats, a procedurally just approach solves the problem that marginalized groups pose in aggregative democratic processes.

I use the term "marginalized group" to refer to a group of people who, because of a particular set of characteristics and/or preferences, do not fit into the mainstream.[1] These characteristics include the deprivation of rights and freedoms that others have, a lack of recognition, and poor economic circumstances, all of which diminish their efficacy in social and political life.[2] The mainstream does not find the concerns of marginalized groups pressing enough to warrant political attention, and so they are consistently under-represented in public policy. If groups are marginalized, then group members will suffer domination and oppression, which clearly undermines equality.[3] Theories of deliberative democracy require that all people a policy affects participate in its formation. In addition, all deliberants must recognize the public reasons that underlie the policy as normatively acceptable public reasons. The intent of the deliberative

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[1] Melissa Williams argues that marginalized groups "have four characteristic features: (1) patterns of social and political inequality are structured along the lines of group membership; (2) membership in these groups is not usually experienced as voluntary; (3) membership in this group is not usually experienced as mutable; and (4) generally, negative meanings are assigned to group identity by the broader society or the dominant culture." See, *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton: Princeton University Press, 1998), 15-16.

[2] Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 53-54.

[3] Young, *Justice and the Politics of Difference*, 3-14.

democratic process is to ensure that policies and practices do not oppress members of the polity. In this thesis, I assess how well theories of deliberative democracy can incorporate the justice claims of marginalized groups, particularly those that originate outside the deliberative group.

In *Inclusion and Democracy* (2000), Iris Marion Young discusses inclusive political communication, an approach to policy formation that works to uphold normative ideals of democracy and to treat all people as equals. In this approach, all members of a polity are entitled to certain rights and freedoms (and are equally obliged to fulfil duties and meet responsibilities toward others) and must have basic opportunities open to them. Democratic processes must be open, accessible and accountable and must extend fair and equal consideration to all people in a polity insofar as the claims put forth accord to normative democratic values.[4] Inclusive political communication treats all people as equals and, in doing so, works to eliminate the marginalized status of groups. Inclusive political communication prevents both external and internal exclusion. In order to do this, inclusive deliberative models must ensure: 1) that all citizens can access deliberations, and 2) that modes of communication do not unfairly privilege some deliberants at the expense of others, thus rendering certain voices ineffective.[5]

Despite the positive contributions of deliberative democratic theory, it still fails to treat marginalized groups in a manner that is consistent with normative democratic principles. When people engage in deliberative processes they must meet normative democratic criteria. These criteria address the problem of marginalized groups, but the criteria are not always met because the ideals of deliberative democratic theories often do not translate into ideal deliberative democratic practices. This poses a serious problem for theories of deliberative democracy because neither deliberative nor communicative democracy account for dissent. Both approaches assume that because deliberative normative democratic values guide democratic processes, anyone who leaves a deliberative group does so because she rejects these values. In deliberative democratic theory, the oppression of marginalized groups is attributed to the fact that they cannot effectively participate in political processes as equals. Deliberative democrats counter that the remedy to this lies in the inclusive procedures of the deliberative group.

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[4] Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 52-80.
[5] Young, *Inclusion and Democracy*, 52-53.

However, deliberations occur in imperfect conditions. If issues that affect marginalized groups are consistently postponed or discussed in an insubstantial way in deliberative groups, then we cannot reasonably expect marginalized groups to participate in the deliberative process because, in failing to facilitate truly inclusive political communication, the process fails to treat marginalized people as equals and perpetuates their marginalization.

Dissent is an essential component of normative democratic theory, yet it is under-theorized in deliberative democratic literature. Because theories of deliberative democracy require all marginalized groups to participate in a deliberative group, they do not discuss the type of dissent that arises when marginalized groups leave the deliberative group to protest because they cannot effectively participate in deliberative democratic practices. This oversight is particularly problematic for a democratic theory that emphasizes the importance of treating all people as equals. If marginalized groups are unable to effectively participate in a deliberative group and if deliberative democracy does not have a mechanism to deal with dissent, then groups that are marginalized in the deliberative process will be unable to redress this exclusion.

In response to this oversight, I ask if we can treat political protest as a form of difference in the way that Iris Marion Young does in *Inclusion and Democracy*. Young notes the difficulties that deliberative democracy has in treating members of marginalized groups as equals. In response, Young develops a theory of communicative democracy that makes two changes to deliberative democracy. One of these changes is to treat difference as a resource. This entails abandoning the deliberative standard of impartiality and recognizing instead that people within the deliberative group are differently situated and that the partial interests and ways of speaking that accompany this location of people should inform the way that deliberants communicate with one another.

Many dissenters are members of marginalized groups who leave the deliberative group because the group does not recognize their public reasons as normatively acceptable public reasons and, as a result, effectively excludes them. Because marginalized groups constitute many of the dissenters and because communicative democracy establishes the democratic benefits that follow when the deliberative group treats difference as a resource, we re-enforce democratic ideals when we treat dissent as a

form of difference. If deliberative groups treat dissent as a form of difference then deliberative democracy can account for (at least some forms of) dissent. If not, then deliberative democracy cannot claim to offer an inclusive theory of political communication.

Theories of deliberative democracy do not include dissent because they assume that if ideal deliberative procedures are in place then groups with normatively acceptable public reasons will not need to dissent and there will be no need to accommodate political protest. However, deliberative procedures cannot guarantee that deliberants will recognize all normatively acceptable pubic reasons and so the deliberative assumption that they do not need to account for political protest is an inadequate response to the problem that dissent poses. I test theories of deliberative democracy to see if deliberative ideals and practices can account for dissent and thus meet the problem that marginalized groups pose.

In this thesis I look at three democratic theories: interest group pluralism, deliberative democracy and communicative democracy. I argue that communicative democracy is better equipped to deal with the problems of marginalized groups because communicative democracy expands the range of acceptable deliberative dialogue. As a result, communicative democracy is able to treat the difference that is common to marginalized people as a resource and to strengthen the exchange of public reasons. However, because communicative democracy does not discuss political protest, it does not account for dissent and does not meet normative democratic criteria. I argue that communicative democracy ought to extend its policy of treating difference as a resource to legitimate political protesters. If communicative democratic theory treats marginalized groups that leave the deliberative group to protest in order to communicate their public reasons as a kind of differently-situated group, then it can account for dissent. Moreover, it must do so in order to meet its own normative democratic criteria. I propose a theory of dissent-as-difference to enrich a theory of communicative democracy and argue that forms of protest that do not conform to the criteria in interest group pluralism, deliberative democracy and communicative democratic theories nonetheless contribute to the larger goals these models articulate.

In this thesis, I deal with a very specific part of democratic theory. My intent is to show that dissent-as-difference theory enriches communicative democratic theory,

which enriches deliberative democratic theory, which enriches the theory of interest group pluralism. The critical standards in theories of deliberative democracy are not sufficient because they do not account for the problem that dissent poses. I propose dissent-as-difference theory as a way to resolve this problem. I do not address the concerns of those who focus primarily on explanatory theories and who argue that people will generally act in their own interest despite deliberative norms and procedures. I focus upon deliberative approaches as normative theories and argue that communicative democracy is inconsistent because it does not account for political protest.

Structure of the thesis

In chapter 1, I look at three ways of understanding how policy is formed according to theories of interest group pluralism, deliberative democracy and communicative democracy. I focus on the way that the three approaches, the first explanatory and the other two normative, deal with the problem of marginalized groups. I argue that none of these approaches can adequately account for marginalized groups. Styles of civic interaction and the way that an approach defines a public shape our understandings of public reason. The exchange of public reasons is central to the ability of an approach to treat members of marginalized groups as equals. I look at the way that each approach sets out criteria to determine what constitutes an acceptable public reason so that I can see if each theory requires sufficient levels of accountability and democratic legitimacy. Communicative democracy is best able to meet normative democratic values because its approach to difference and its conception of what constitutes acceptable democratic communication address the problems that marginalized groups face when they try to communicate their public reasons. However, as I argue in later chapters, communicative democracy is unable to offer sufficient protection to all members of marginalized groups because its standards are inadequate.

In chapter 2 I establish the importance of political protest as a political tool for marginalized groups. Marginalized groups often function as political protest groups because of the effective exclusions they face within political approaches. Because some marginalized groups depend upon political protest groups to communicate the injustices they face, I look at the ways that interest group pluralism and deliberative democracy deal with political protest. I pay particular attention to the tension between deliberative

democracy and political protest that arises because deliberative democrats do not discuss political protest. Because deliberative democracy has clear criteria that guide the process, deliberative democrats argue that the theory dos not have to – and in fact should not – account for arguments that arise outside a deliberative group; the justification for this is that because they arise outside the deliberative group, protesters form arguments without the protections of the normative criteria that work to uphold democratic legitimacy and are therefore at risk of violating the normative criteria of deliberative democracy. The normative criteria of deliberative democracy state that marginalized groups, if they wish to deliberate, must do so from inside the group where deliberants can ensure that everyone adheres to deliberative criteria. This argument, however, does not withstand normative democratic scrutiny because, as I argue in chapter 1, deliberative democracy cannot deal with the problem of marginalized groups and therefore needs to include a mechanism that deals with the type of marginalized groups that form political protest groups.

As a response to the tension between deliberative democratic theory and political protest I look at the ways that deliberative democrats can deal with marginalized groups if they look outside the deliberative group. I challenge deliberative democracy because the theory does not address marginalized groups that are outside the deliberative group. I offer this critique in order to emphasize the connections between marginalized groups, which deliberative democrats claim to be able to account for, and political protest which deliberative democrats do not discuss and implicitly argue is unnecessary. I look at the protest group ACT UP as an example of a marginalized group that protests outside a deliberative group. I look at ACT UP because its members use public reasons that are acceptable from a normative democratic standpoint. Their public reasons were originally rejected by the government and by many people within civic society, but were, after a period of conflict, eventually incorporated into deliberative policy making procedures because they were later held to be normatively acceptable. The lessons we can take from ACT UP's struggle show that because normatively acceptable public reasons can exist outside officially sanctioned groups the institutional recognition of political protest is essential for the equal and just treatment of marginalized groups.

In chapter 3, I look at the tension between communicative democracy and political protest. Like deliberative democracy, communicative democracy does not

discuss political protest. As in deliberative democracy, communicative democrats adhere to a set of normative democratic criteria and because political protesters advance their arguments from outside the deliberative group, they cannot ensure that dissenters will adhere to the same criteria. Consequently, because communicative democrats argue that the only just way to advance arguments based upon acceptable public reasons is to make them from within the deliberative group, the theory rejects political protest. Neither deliberative democracy nor communicative democracy requires that their theory take political protest into account; the normative consequence of this is a failure to account for all members of marginalized groups as equals. However, communicative democracy takes steps to include marginalized groups that are more likely to facilitate their effective inclusion than those taken by deliberative democracy. First, communicative democrats use difference as a resource, and can thus accommodate members of marginalized groups. Second, communicative democracy expands the deliberative conception of democratic communication to include greeting, rhetoric and narrative. These modes of acceptable communication change the standards that dictate the acceptability of public reasons and thus allow marginalized groups to communicate effectively.

I argue that the revisions communicative democracy makes to deliberative democracy offer the beginnings of a solution to the problem that political protest poses for communicative democracy. I argue that we can resolve the tension between theories of deliberative democracy and political protest if we treat the sort of dissent that marginalized groups create when they leave the deliberative group as a form of difference. Dissent-as-difference is a normative theory that enriches communicative democracy. A conception of dissent-as-difference entails dividing our understanding of deliberative politics into two areas: the deliberative group (which deliberative democrats already use) and the deliberative polity, which I define as the rest of the space within a polity that accepts communicative democratic processes, but a space that exists outside deliberative groups (a sort of civic society that is influenced by communicative democratic political culture). The deliberative polity is the home of dissent-as-difference. When marginalized groups leave the deliberative group to become political protesters they must meet the normative criteria of communicative democracy if they want to engage in dissent-as-difference theory. If political protesters meet these criteria, then communicative democracy and political protest are no longer in opposition and

dissenters can engage with the public reasons of the deliberative group in the hopes they will be able to return to the deliberative group and participate as equals.

In chapter 4 I show that dissent-as-difference theory offers practical solutions to the problems that marginalized groups face as a result of communicative democratic theory's failure to account for political protest. I trace the movement of ACT UP as a protest group in the deliberative polity, where it uses the dissent-as-difference approach, to its entrance into and effective inclusion within the deliberative group in order to show that dissent-as-difference theory can incorporate marginalized groups into communicative democratic processes. Dissent-as-difference theory must meet two challenges if it is able to deal successfully with the problem of marginalized groups. First, dissenters must be able to convince deliberators that their public reasons are acceptable by normative democratic standards. When this happens, political protesters will enter the deliberative group and shed their status as dissenters. Second, the newly-accepted public reasons of these former protesters must factor in policy discussions. Deliberants must be willing to transform their preferences based upon the new information and the resulting policy should be one that all deliberants (including the formerly dissenting group) can accept.

I pose a scenario in the deliberative polity in which a public school board's deliberative group on sex education policy effectively excludes ACT UP. I look at the public reasons ACT UP offers as well as the public reasons that various sub-groups within the deliberative group put forth in order to ask how people in the deliberative polity can measure reasonableness without excluding marginalized groups. I look at what types of claims count as public reasons, demonstrate how a deliberative group ought to move from the identification of public reasons to the formulation of just policies, and argue that dissent-as-difference theory helps communicative democrats to meet normative democratic criteria in a truly inclusive way.

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Deliberative dialogue has the potential to both assist and hinder marginalized groups as they try to secure social justice. Deliberative democratic theory and communicative democratic theory emphasise the integrity and legitimacy of outcomes that are the result of a very careful and inclusive process of deliberations. Theories of deliberative democracy set out criteria that deliberants must adhere to if they are to

participate in the deliberative group. These criteria are supposed to ensure that deliberants treat all people in the deliberative group as equals and make sure the procedure is just. However, theories of deliberative democracy have the normative implication that people who do not participate in the deliberative group are unreasonable. This is a problem because the requirements of deliberative and communicative democratic theory cannot guarantee that deliberants will be able to recognize the normatively acceptable public reasons of all people. If deliberations effectively exclude some marginalized group, then the deliberative aim to treat all people as equals will not only fail, but may even appear to justify the effective exclusion because deliberative processes take considerable steps to be inclusive and emphasize this to the rest of society. Because there is a chance that deliberative processes can lock marginalized groups into their position, it is essential that theories of deliberative democracy recognize the democratic potential in political protest and find a way to incorporate it into a truly inclusive and just democratic theory and practice.

Chapter 1

Political Theories and the Problem of Marginalized groups

In this chapter, I look at interest group pluralism, deliberative democracy and communicative democracy as three ways of understanding policy formation. I examine these approaches insofar as they meet criteria of inclusive political communication, and I do so along three dimensions. First, I look at the style of civic interaction that each approach promotes. In order to be inclusive, this style must treat the polity as a space in which all citizens meet the claims of others with mutual respect – agreeing to disagree (if that is the case) but at the same time stressing "a favourable attitude towards, and constructive interaction with, the person with whom one disagrees.[1] Inclusive civic interaction entails thinking of the polity as a public constituted by a multiplicity of different groups that must reach policy decisions only after careful consideration of all points of view. The style of civic interaction must facilitate the inter- and intra-group dialogue that is necessary to promote mutual respect. Second, I ask how each theory defines a public. As I ask this, I will look for stated and effective barriers to inclusion. A model of inclusive governance must: 1) be open to all people, and 2) ensure that political processes are able to address issues brought forth by all members of society. Third, political dialogue between citizens must adhere to a standard of public reason that respects normative democratic values. The exchange of public reasons is central to the equal treatment of marginalized groups. It is necessary that people use public reasons so they are accountable for their arguments and so that the rest of the polity can monitor the legitimacy of the process.

A public reason is a statement that attempts to clarify a particular standpoint or to justify a ground or motive to members of a public.[2] Public reason frames arguments in a way that aims to make the reasons people have for their beliefs accessible so that differently situated people can understand why particular policy ties and practices impact certain people in certain ways. When people use public reason they present arguments in

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[1] Amy Gutmann and Dennis Thompson. *Democracy and Disagreement* (Cambridge, MA: Belknap Press, 1996), 79.

[2] For literature on public reason, see: Amy Gutmann and Dennis Thompson. *Democracy and Disagreement* (Cambridge, MA: Belknap Press, 1996), Jürgen Habermas, The Inclusion of the Other: Studies in Political Theory (Cambridge, MA: MIT Press, 1998); John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996).

a way that others can understand. This accessibility is central to inclusive political communication. A public reason does not have to result in agreement, but those who oppose the justification of an argument should "nevertheless understand how reasonable persons can affirm it."[3] Following this criterion, a public reason is acceptable if the people offering it reasonably think that the citizens they offer the reason to might also reasonably accept it. People must accept public reasons "as free and equal, and not as dominated or manipulated, or under the pressure of an inferior political or social position."[4] The accessibility and "reasonable people" component of the criteria for public reason are in place to ensure that the subject of a public reason is "the good of the public and matters of fundamental justice."[5]

Justice requires that all people be treated as equals and so the process of policy formation must be open to all. In addition the resulting policies must reflect a just consideration of the partial concerns of differently situated people. In this way, a public reason appeals to normative democratic values. Public reason-giving stresses respect and communication, so even when people disagree they do so with the understanding that those who hold opposing views are not "unreasonable" people and must be treated with respect. Even if an exchange of public reasons cannot always facilitate a political consensus, it works to sustain the deliberative relationship during difficult discussions and in doing so works to sustain democratic values.

I examine the ways that interest group pluralism, deliberative democracy and communicative democracy set out the criteria for public reason because the ways that an approach defines what constitutes an acceptable public reason determine the extent to which marginalized groups will be able to participate as equals within an approach. This is important because the extent to which all people are able to participate as equals in the process of policy formation has a considerable impact on the likelihood that the approach will meet the justice claims of marginalized groups and protect them in law and policy.

Democracy ought to be best understood as a system in which people share political power because they are all equally deserving of resources and respect. Institutions, laws and political processes exert a great deal of force on the way citizens

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[3] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 123.
[4] Rawls, *Political Liberalism*, 132.
[5] Rawls, *Political Liberalism*, 93.

interact with one another. As an explanatory model, interest group pluralism has normative implications; as normative models, deliberative democracy and communicative democracy have practical implications that follow from the normative criteria each model sets out and from the (in)ability of the ideals of the theory to translate into ideal practice. If we wish to realise the potential for inclusive political communication within a polity then we must pay particular attention to the way political institutions view their citizens and the behaviour they expect from them. I examine each approach in succession and argue that while each theory builds on the one before it, none of the theories are able to deal with the problem that marginalized groups pose for democratic bodies.

Interest Group Pluralism

Deliberative democratic theory arose out of the conviction that legitimate law and policy making must come from the public deliberation of citizens.[6] In many ways, deliberative democracy is a response to the way that interest group pluralism fails to address the concerns of marginalized groups. Interest group pluralism requires that the polity disperse power so that no one group is able to make all policy decisions in its own interest. Instead, groups compete and because the composition of groups changes with specific issues, a wider range of people will be able to influence public policy. Interest group pluralism works by encouraging people with similar interests to organize based upon their membership in a particular group in order to advance and develop their interests.[7] Members of an interest group then work together to secure "the equitable representation or reflection of those interests in public policies."[8]

The interest group pluralist style of civic interaction mirrors the adversarial style of debate found in parliament where "deliberation is competition" and where "parties dispute to win the argument, not to achieve mutual understanding."[9] Groups compete for limited resources in a struggle to see which groups "can secure the achievement of

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[6] James Bohman and William Rehg (eds.), *Deliberative Democracy: Essays on Reason and Politics*. (Cambridge, MA: MIT Press, 1997), ix

[7] Avigail Eisenberg, *Reconstructing Political Pluralism* (Albany, NY: State University of New York Press, 1995), 2.

[8] Melissa S. Williams, *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation*, 62.

[9] Iris Marion Young, "Communication and the Other: Beyond Deliberative Democracy." In Seyla Benhabib (ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996), 123.

collective goods."[10] This competition leads to the formation of coalitions between groups so that they can work together to achieve collective goals. These alliances involve a lot of power games between participating groups and have significant effects upon people as members of particular groups.[11]

Interest group pluralism depends upon competition. Although primarily an explanatory theory, interest group pluralism has normative implications that fail to account for the specific needs of marginalized groups. Although interest group pluralism is based, in part, upon coalition-building, the types of successful coalitions that typically emerge often fail to effectively include marginalized groups and as such cannot claim to offer a truly inclusive solution to the problems that a fragmented polity poses. Different social groups will forge coalitions either because they share a common interest or because they strike mutually beneficial political deals with each other. These coalitions are meant to (temporarily) strengthen minorities in order to help them achieve a specific goal. Although the coalitions ought to help marginalized groups, in actuality "power may be, and often is, exercised by confining the scope of decision-making to relatively "safe" issues"[12] that are usually determined by the more powerful members of the coalition.

The way that interest group pluralism operates has negative implications for both inter- and intra- group relations. In a context of political competition and limited resources, groups are encouraged to formulate their claims as demands made upon the state. A group's success depends on its ability to push a particular issue onto a limited political agenda and a group has a better chance of communicating its message and having its political "demands" met if it is clear and concise. This typically requires the group to mobilize on the basis of its general and overarching concerns -- often at the expense of complex sub-issues that divide members of the group -- in order to present a simplified set of demands that the government is more likely to meet because the group appears to have the support of all its members. Marginalized groups participate in these coalitions even though they have less power within them in relation to other groups. The participation of marginalized groups in interest group pluralism reinforces values

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[10] Steven Lukes, *Power* (Oxford: Basil Blackwell, 1986), 12.
[11] Lukes, *Power*, 12.
[12] Peter Bachrach and Morton S. Baratz, "Two Faces of Power" *American Political Science Review*, 56/4 (Dec 1962), 948.

and practices that limit the scope of the political process.[13] The sometimes-reluctant support that minorities within an interest group must give in order to protect a "larger interest" illustrates a serious problem with interest group pluralism because it effectively perpetuates the lower status of marginalized groups.

As groups mobilize to lobby the government for policy changes, the process of bargaining and compromise makes it difficult for identity groups, especially the most marginalized, to seek recognition and benefits from the state. Issues of interest and identity are often intertwined, but identity groups have different concerns than interest groups. Groups advance both interest and identity claims through lobby group structures. The dominant language in interest group pluralism is that of interest and negotiation[14] which creates a problem for identity groups because they are more likely to have non-negotiable claims: Indigenous people, for example, do not have an interest in maintaining their identity in the same way as the boy scouts have an interest in asserting demands on the state. The fact that interest group pluralism does not, for practical purposes, distinguish between interest and identity perpetuates the marginalized status of less powerful groups. When interest group pluralism allows interest and identity claims to compete against one another with little concern for the normative value underlying the claims, then the just claims of marginalized groups suffer. I will discuss this in more detail in chapter 3.

Interest group pluralism rewards groups that have clear and straightforward claims and a group is more likely to be successful if their demands are easy to meet. Moreover, interest group pluralism discourages the recognition of multiple and intersecting identities within groups and often forces people to make uncomfortable choices about which part of their identity they choose to emphasize at the expense of others. This is true even if the group is ostensibly an interest group, and is a recurring problem, as seen in the prevalence of sexism in Civil Rights organizations, racism in the women's movement, etcetera. Members of marginalized groups often find that coalitions have difficulty recognizing the diversity of their members. In trying to present

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[13] Bachrach and Baratz, "Two Faces of Power," 948.

[14] Amy Gutmann, *Identity in Democracy* (Princeton, NJ: Princeton University Press, 2003), 2.

a solid, empowering identity of the kind that is typically able to secure resources, groups often alienate members with intersecting identities.[15]

Social change is constrained when groups are pressured to offer a unified voice to the public. Often when they are part of coalitions, people who identify with more than one marginalized group face pressure to set aside their multiple identifications in order to further one part of their identity. This silence, however, perpetuates the marginalization that accompanies other facets of their identity.[16] Interest group pluralism focuses on the ability of an interest group to "win" concessions from the state, and not on the ability of the group to reconcile internal disagreements, or to produce solutions that other groups can accept. Ironically, the choices that doubly marginalized people are asked to make in order to gain recognition often weaken their position with the state and undermine their ability to seek representation as people with multiple identities.[17]

The adversarial way that groups interact affects the way we understand what constitutes a public. The public in interest group pluralism is fragmented because the ways that each interest group focuses almost exclusively upon its own community and its own interests rather than the larger political community shapes an understanding of community interests. In addition, the role of mediating between different interest groups falls to the state. Because the state has limited time and resources and cannot meet all the demands it encounters, the idea of a unified public succumbs to the actuality of a polity composed of many communities, all of whom need to compete with each other. As a result of this competition, interest group pluralism creates several barriers to the equal and effective engagement of all people in public policy making.

The competition in interest group pluralism is said to protect the interests of minority groups because coalitions shift according to the issue at hand. The freedom to move from group to group is said to serve as a system of checks and balances and works on the same principle as democratic government. Although individual groups constitute minorities in a system based upon majority rule, coalition building means that no one

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[15] Alexandra Dobrowolsky, *The Politics of Pragmatism: Women, Representation and Pragmatism in Canada* (Oxford: Oxford University Press, 2000), 75-118.

[16] Sharon Dale Stone. "From Stereotypes to Visible Diversity: Lesbian Political Organizing." In William Carroll (ed.), *Organizing Dissent: Contemporary Social Movements in Theory and Practice* (Toronto: Garamond Press, 1997), 172.

[17] Dobrowolsky, *The Politics of Pragmatism: Women, Representation and Pragmatism in Canada*, 157-188.

group has to remain a permanent minority. Interest group pluralism has normative implications because the strength the theory lends to diverse groups rests upon the assumption that "whereas the individual is relatively powerless to challenge or change state policy, the aggregation of individuals in a group presents to the state a more formidable contender."[18] Through their membership in coalitions, all groups have the ability to form majorities. However, while all groups have the opportunity to influence state policy, interest group pluralism does not aim to protect all minority groups. The absence of this protection is problematic because the benefits that follow from interest group pluralism -- the opportunity for equitable representation for diverse groups and the ability to tap into power that enables groups to develop and advance their interests -- are unevenly available to diverse groups. Interest group pluralism encourages competition for limited resources. Even if minority groups in general have a chance to form a majority, there will always be a hierarchy of influential groups and variegation in social and political recognition. This results in a fragmented polity composed of a multiplicity of conflicting publics and constitutes a clear and unjust exclusion for marginalized groups who suffer the most from these processes.

While interest group pluralism requires that political participation be technically open to all people, there are many effective barriers to inclusion. Marginalized groups may be unable to join a prominent coalition, and even if they do join one, they may find their specific concerns exert little force in the larger group. As a result, they are unlikely to acquire the resources that they need to address their specific interests. This type of exclusion occurred when the women's movement lobbied the Canadian government on behalf of "all women." As they sought inclusion in the Canadian Charter of Rights and Freedoms and the Meech Lake Accord, Native women and lesbians found that the women's movement was willing to endorse a deal that denied them rights as Natives and lesbians because it was able to secure some rights for women.[19]

Although coalition building is an important part of interest group pluralism, expectations as to why groups should work together and for what ends are specifically tailored to the end goal of pushing the state to meet a particular interest. Interest group pluralism does not require an interest group to work with groups that have opposing

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[18] Eisenberg, *Reconstructing Political Pluralism*, 3.
[19] Dobrowolsky, *The Politics of Pragmatism: Women, Representation and Pragmatism in Canada.75-119.*

interests if it is unlikely that they will be able to advance their particular goal in doing so. A society that accepts interest group pluralism adopts a fragmented conception of the public and discourages a wide application of public reason-giving. The normative merit of public reason is to make the reasons people hold accessible to others: to make other groups understand – even if they disagree with – the reasons behind a claim. Such an understanding is necessary if a group is to change its position based upon this new information. This openness to change is an indicator of mutual respect: when groups allow that new information may change previously-held beliefs, they convey that inter-group dialogue does more than present fixed preferences for evaluation. The exchange of reasons creates a situation in which a multiplicity of groups may reach a new level of accommodation and come up with new and stronger reasons and better policy proposals.[20] Interest group pluralism does require that groups to seek out the best policy proposals. Instead, group negotiations aim to produce a workable policy proposal, in which their only concern is that the policy is workable for the groups involved in a particular coalition and not necessarily for all groups affected by that particular policy.

Most of the dialogue that results from interest group pluralism occurs either within an interest group, within a coalition, or between an interest group and the state. Interest group pluralism offers little room for dialogue between the groups who may benefit the most from an exchange of public reason. Typically, the groups that pit themselves against one another in interest group politics are the groups that could benefit the most from interactions that establish mutual respect, particularly where the pursuit of social justice is concerned. The interest group pluralist mode of interaction results in low levels of reciprocity, publicity and accountability, especially in the discussions that take place outside a particular interest group. Reciprocity requires that groups interact in a way that is equally advantageous. Publicity requires that the content of negotiations is open to the public so that people are accountable to one another and that other members of the public are not unjustly disadvantaged. Reciprocity, publicity and accountability are necessary to ensure that people, in their political interactions, treat one another with mutual respect. While members of an interest group need to use public reasons in order to form their policy position, the public they appeal to is limited. Coalition members are drawn to groups because their particular interests coincide and

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[20] Gutmann and Thompson, *Democracy and Disagreement*, 52-55.

there is little motivation for interest groups to offer public reasons to people outside their group.

Interest group pluralism has significant normative implications because it does very little to foster mutually-beneficial relationships between the state and marginalized groups. In order to be successful, a group must be able to garner sufficient support from other groups; the implication here is that those groups who fail to do so have claims that are not sufficiently pressing. The demand and concession way interest groups interact with the state and other groups results in low levels of reciprocity between diverse groups. Mutual dependence only exists between groups when they both benefit from it, and there is little incentive to maintain these ties when a particular lobby action is over. Levels of publicity are low. Many negotiations occur behind closed doors, and this allows arguments and assumptions about the reasons for and the implications of the policy to go unchallenged, hindering the ability of groups who oppose the policy to challenge the legitimacy of the proposed legislation. Accountability is also low. The state deals with many groups and is not expected to accommodate all of them. As a result, marginalized groups are frequently overlooked by the government because it refuses to accept responsibility if marginalized groups fail to achieve any policy changes. Marginalized groups have little recourse if the state does not meet their demands other than court action: a time-consuming and expensive procedure that indicates that an interest group pluralist society is not one that treats all people as equals.

Interest group pluralism explains why power is dispersed between groups. The competition that follows from a multiplicity of groups exercising power leads to a dialogue between groups. However, the terms of dialogue are limited for all participants by an emphasis on the need to present concise solutions to complex situations. The systemic oppression marginalized groups face often leads to total or effective exclusion from the coalitions, and so the groups that engage in this dialogue are exposed to a limited array of reasons. The type of dialogue that occurs is structured in such a way that it only happens when groups can see the way that it will directly benefit them. As a political approach, interest group pluralism does not require a polity to be procedurally just. Groups are less likely to enter into a dialogue with groups that they believe have little in common with them or can be of little use to them, and so they are less likely to understand and learn from each other's experiences. The exchange of reasons takes

place in order to help groups to negotiate. The interest group pluralist system does not ask groups to exchange reasons with the aim of formulating policies that all people in the polity can accept, and so the reasons may be unacceptable to people outside those in the immediate circle of negotiations. Short-term goals and priorities overshadow the possibility of long-term achievements and a deeper understanding of group relations. The results of interest group lobbying are often predictable (groups negotiate in order to "win" predetermined concessions) and lead to inequitable distributions of resources and recognition. These results are the cause of a great deal of frustration and have pushed activists and theorists to look for new ways to pursue social justice that are better equipped to protect the fundamental interests of minority and marginalized groups.

Deliberative Democracy

Deliberative democracy is a normative theory that critiques interest group pluralism because of its intrinsic political competition. Deliberative democrats assert that the interests of justice are best served by a system that requires groups to cooperate, not compete. In the 1980s, deliberative democratic theorists began to contest the legitimacy of adversarial styles of governance and to emphasize the procedural aspect of justice.[21] As an alternative to forms of aggregative democracy, deliberative democratic theory requires that all citizens meet to discuss policy issues. Within this process everyone has the right to offer arguments and all must listen to those put forth by others. Since the 1990s, however, there has been much debate over the values that should guide deliberative democratic processes, and advocates of the theory are divided in their understandings of what deliberative democracy is. Despite this disagreement, there are some – albeit broadly interpreted – common values that tie conflicting theories of deliberative democracy together. According to James Bohman, deliberative democratic policies are legitimate: "if they result from a fair and open participatory process in which all publicly available reasons have been respected" and "if the outcome is such that citizens may continue to cooperate in deliberation rather than merely comply."[22] From this starting point, the problem for deliberative theorists then becomes

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[21] Joseph Besette coined the term deliberative democracy in his article "Deliberative Democracy: The Majority Principle in Republican Government." In *How Democratic is the Constitution?* Robert A. Goldwin and William A. Schambra (eds.), (Washington: 1980), 102-116. See, *Deliberative Democracy: Essays on Reason and Politics* James Bohman and William Rehg, (eds.), xiii.

[22] James Bohman. *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge, MA: MIT Press, 1996) 187.

a question of the way we should understand what is meant by fair and open processes, reflection and non-coercion.

Amy Gutmann and Dennis Thompson take up these questions in *Democracy and Disagreement* (1996) where they address the problem of moral disagreement in deliberative democracy. According to Gutmann and Thompson, the core idea of deliberative democracy is that "when citizens or their representatives disagree morally, they should continue to reason together to reach mutually acceptable decisions."[23] This criterion for decision-making is meant to further mutual respect, which they define as "a form of agreeing to disagree" that goes beyond toleration to require "a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees."[24] Gutmann and Thompson's account of deliberative democracy depends upon three principles: reciprocity, accountability and publicity. Reciprocity requires that all deliberants make claims on terms that others can accept in principle. The job of this mutual exchange is to regulate public reason and to exclude from deliberations "people who reject the aim of finding fair terms for social cooperation," and "those who refuse to press their public claims in terms accessible to their fellow citizens."[25] Publicity is primarily valuable because it supports democratic accountability.[26] The intent of publicity is to deter a politics of pure self-interest. Its main contribution is, in making claims public, to allow citizens to "decide together what kind of politics they want."[27] Accountability asks that the reasons given must be ones that "can be accepted by all those who are bound by the laws and policies they justify," and "should also address the claims of anyone who is significantly affected by the laws and policies."[28] These values, while they begin to address some of the preconditions necessary to ensure a deliberative context of communication, reflection and non-coercion, are still quite broad and can be interpreted in different ways. This is the source of a considerable divide. Indeed, much of the division within theories of deliberative democracy – as well as many of the criticisms levelled against it – stem from understandings of the ways that groups are expected to cooperate.

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[23] Gutmann and Thompson, *Democracy and Disagreement*, 1.
[24] Gutmann and Thompson, *Democracy and Disagreement*, 79.
[25] Gutmann and Thompson, *Democracy and Disagreement*, 55.
[26] Gutmann and Thompson, *Democracy and Disagreement*, 97.
[27] Gutmann and Thompson, *Democracy and Disagreement*, 127.
[28] Gutmann and Thompson, *Democracy and Disagreement*, 129.

As a result of the ways that theorists apply the principles of reciprocity, accountability and publicity, deliberative democracy has split into essentially two camps. This division results from the way that deliberative theorists determine what constitutes an acceptable public reason. Early theories of deliberative democracy held that the only way that public reasons could be accessible to all was if deliberants adhered to a standard of impartiality in which a commonly-held set of rules and way of speaking applied. Later deliberative theorists largely reject this approach and argue that deliberative democracy must work with a more "flexible and pluralistic idea of reason-giving."[29] The later deliberative approach to reason-giving is influenced by difference and diversity theory in response to what these theorists charge is a false and ultimately biased understanding of impartiality. This understanding, they charge, only serves to perpetuate the dominance of those who already hold power, their standard of impartiality working to effectively silence the deliberative efforts made by marginalized groups because they could not fit into these pre-determined guidelines.

I address the split in deliberative theories by referring to the model that adheres to a less-flexible understanding of reason-giving as deliberative democracy, and to a discursive model that merges with difference theory as communicative democracy (after Iris Marion Young's theory). Of course, this division is artificial in some respects, as some deliberative democrats fall somewhere in the middle of the two. Nonetheless, the distinction does serve a useful purpose because it illustrates the considerable effect that making explicit provisions to recognize difference has on the ability of deliberative democratic theories to meet the criterion of inclusive political communication. I refer to Gutmann and Thompson's work as an example of the first type of deliberative democracy and to Young's work on communicative democracy as an example of the latter. I use the term "theories of deliberative democracy" when my remarks refer to the overarching deliberative framework. As I look at the differences between the two, I discuss the ways that they interpret reciprocity, publicity and accountability in order to explain their influence on inclusive political communication.

Theories of deliberative democracy, with their emphasis on constructive interaction between groups, clearly have a different style of civic interaction than interest group pluralism. Moreover, the difference in civic interaction is deliberate because

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[29] Simone Chambers, "Deliberative Democratic Theory" in *Annual Review of Political Science*. 6 (2003), 321.

deliberative democracy is a normative theory. In addition to the expectation that all groups will make claims based upon mutual respect, deliberative democracy stresses the importance of the ability and willingness of deliberants to transform their preferences. Deliberants must revisit their original preferences on the basis of new information that arises within deliberations and remain open to changing them. Deliberative democrats cultivate this flexibility in order to facilitate the ability of citizens to arrive at new understandings. The structure of deliberative democracy exposes people to a wider range of beliefs in order to better reflect a pluralist society and the complexity of social and political issues. Deliberative democrats intend this approach to create an environment in which marginalized groups are more likely to be met with respect and as such deliberative democracy is better equipped to protect their interests.

Deliberative democracy's emphasis on the importance of the transformation of preferences is meant to offer members of marginalized groups a way to exit cycles of domination and oppression. The deliberative requirement that people revisit their preferences allows marginalized groups to advance reasons in such a way that they can interrupt the previously unquestioned (or under-questioned) justifications of the reasons put forth by privileged groups. Although interest group pluralism addresses a multiplicity of groups, the competitive way that interest group pluralism negotiates differences leaves marginalized groups at a distinct disadvantage. In contrast, deliberative democracy asks that differently situated groups formulate mutually acceptable policies: not because the group may benefit from doing so, as is the case in interest group pluralism, but because they are necessary to establish democratic legitimacy. Deliberative democracy requires that groups cooperate in order to formulate policies in which deliberants re-examine their preferences. This cooperation results in a style of civic interaction that is very different from that found in interest group pluralism.

Deliberative democracy calls upon deliberators to speak in their capacity as citizens, framing dialogue in terms of what is common rather than in terms of what separates people in order to sustain the deliberative relationship. If people do not adhere to this criterion then they cannot participate in deliberations. However, because understandings of what is "common" are often predetermined by privileged groups, deliberative democracy has some unintended negative normative implications. Insofar as the values that guide deliberative democracy require that people speak to what is

common, to the (effective) exclusion of their status as people with particular and partial interests and identities, deliberative democracy cannot claim to consider all points of view. Melissa Williams critiques deliberative democracy on these grounds. Williams fears that deliberation will treat members of marginalized groups unjustly[30] and argues that there is a tension between the deliberative democratic understanding of reason and the deliberative conception of legitimacy.[31] Williams has two main contentions with deliberative democracy. Williams' first contention is with the standard of reasonableness and reason-giving, and her second is with the social and political circumstances that affect the effective power of marginalized groups in deliberations.[32] Though she does not explicitly link them together, both contentions have the problem of impartiality as an underlying common factor. This treatment of impartiality affects the type of public reasons that deliberants find acceptable. It also affects the way that deliberants treat differently-situated people and limits the ability of deliberative democrats to deal with the problem that marginalized groups pose to democratic bodies.

The deliberative democratic approach to difference is central to the way that deliberative democracy defines the boundaries of what constitutes a public. Deliberative and communicative democracy have different interpretations of what it means to fully include marginalized groups. Deliberative democracy is unable to address social difference in a truly inclusive way, which is a problem because in failing to account adequately for difference, deliberative democracy fails to meet normative democratic criteria.

In order to meet standards of democratic legitimacy, deliberants must accept all claims that people put forth provided they are consistent with normative democratic principles. The deliberative process must treat all people as equals. All differently situated people must be able to speak as differently situated people instead of trying to fit the mould of an "impartial" deliberator and trying to conform to a predetermined understanding of what citizens can or should have in common. In asking deliberants to address a "common good," the deliberative standard of reasonableness implicitly asks marginalized groups to act "as if" they are situated differently in order to assure that the reasons they give fit into the larger (and distinctively status-quo) understanding of what

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[30] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 134.
[31] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 125.
[32] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 126.

constitutes an acceptable public reason. Asking people to adhere to a "common good" may help deliberative democrats to reach a consensus, but the process it uses suggests: "it may be necessary to work through differences, but difference itself is something to be transcended, because it is partial and divisive."[33] Here, difference is treated as a "problem" that must be "solved" instead of as a resource that can help deliberators to revisit their preferences and transform them in meaningful ways. When deliberative democracy asks marginalized groups to deliberate according to the standard of impartiality, it undermines their partiality – that which makes people different -- and in doing so falters in its ability to treat people as equals.[34]

Williams is unconvinced that the deliberative democratic process will value the reasons of marginalized groups because they may conflict with the premises that deliberative democracy uses as a standard to measure reasonableness. Consequently, Williams doubts that differently-situated people will sufficiently be able to influence deliberative policies, and argues that deliberative democracy does not adequately account for pluralism.[35] In order for a reason to be acceptable to deliberative democrats, it must consist of arguments that appeal to the current understanding of the public good. This is a problem because dominant modes of communication and expression falsely claim to be neutral. So-called "impartial" discourse "can easily mask subtle forms of control."[36] "Impartial" discourse serves a particular purpose in deliberation. Iris Young argues that "the ideal of disembodied and disembedded reason that [impartiality] presupposes is a fiction" and that the rhetoric deliberative democrats are quick to denounce in favour of impartial reasons is in fact an aspect of all discourses."[37] In deliberations, privileged groups determine what is impartial, and conformity to this constructed norm requires marginalized groups to bracket that which makes them different. This demand does not extend to those who already have social power,[38] and so it sets marginalized groups at a disadvantage. Behind the guise of impartiality, privileged groups shape the rules of

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[33] Young, "Communication and the Other: Beyond Deliberative Democracy" 122-126.
[34] Nancy Fraser. *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Routledge, 1997), 78-79; Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1995), 147.
[35] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 125.
[36] Jane Mansbridge, as cited in Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition*, 79.
[37] Young, *Inclusion and Democracy*, 64.
[38] Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition*, 78-79.

discourse in their own image. Insofar as deliberative democracy perpetuates a particular common good, it creates a privileged and unequal ideal of citizenship.

Deliberative democracy further constrains difference in the way it fails sufficiently to address the problems posed by the larger social context. Despite the appeal of the principle of reciprocity, which ensures that marginalized groups are present at deliberations, marginalized voices may be effectively silenced because of the social conditions that permeate deliberations.[39] As many critics point out, marginalization does not disappear when people enter the deliberative arena.[40] In the deliberative exchange, each specific voice is situated in a context where the dominant voice (as defined by those currently most advantaged by societal structures) is responsible (even if unintentionally) for a significant part of the marginalization that minority groups experience. Because existing common premises are the product of a socially unjust society, it is unfair to use them as the basis for an inclusive and just democratic system. Instead, preconceptions of the good must be understood in light of institutionalized and systematic injustice. Despite deliberative claims to address the marginalization that results from aggregative models of democracy, deliberative democracy perpetuates marginalization. Even if marginalized groups claim they are treated unfairly in deliberations, it is difficult to criticize a majority's decision if they reach it through an open and inclusive process. Indeed, although deliberative democratic theory sets out requirements and explains them as a way to achieve democratic legitimacy, these requirements may actually undermine the strength of the objections that marginalized groups put forth and further contribute to their marginalization. Although deliberative theory aims to redress the flaws of interest group pluralism and treat difference as a resource, it has some (unintentional) consequences that limit its ability to treat all people as equals.

Deliberative democracy's conception of what constitutes a public leads it to a similarly limited understanding of what constitutes a public reason. Because deliberation is restricted to "reasonable arguments," it is important to examine what counts as a reason in deliberative democracy. Deliberative democracy asks that people direct their

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[39] Melissa S. Williams. "The Uneasy Alliance of Group Representation and Deliberative Democracy." In *Citizenship in Diverse Societies*, Will Kymlicka and Wayne Norman (eds.), (Oxford: Oxford University Press, 2000), 125

[40] Williams, "The Uneasy Alliance of Group Representation and Deliberative Democracy."

arguments at what the deliberative group has in common. There are two reasons for this. The first reason is to rule out "appeals to divine authority or to controversial understandings of human nature as the ultimate ground of our claims on other citizens."[41] In appealing to what people have in common, the standard of reasonableness is supposed to ensure that deliberators have "a sense of a range of alternatives in belief and action and engag[e] in considered judgement in deciding among them."[42] When deliberants make empirical claims, they must be "consistent with relatively reliable methods of inquiry."[43] A reasonable deliberator will be able and willing to justify both her claims and her actions to others, she will listen to others even if she believes them to be wrong, and she will demand reasons from others and offer arguments that challenge their views. Reasons must be accessible so that deliberants can understand why particular practices and policies impact certain people in certain ways. This accessibility is important because it is essential that deliberants understand the content of public reasons, but it is also limiting because the pubic reasons of marginalized groups are not as easily accessible and may be unfairly dismissed as a result.

The second reason, and the major problem with the deliberative democrat's standard of reasonableness, is the focus on the common good. Because the common good is a product of a pre-understanding between those who currently hold power, the deliberative process may not recognize marginalized groups' reasons "as reasons for (or acceptable to) other citizens."[44] The deliberative understanding of what constitutes a reason narrows the deliberative sphere from within. As a result, it restricts difference and precludes challenges, thus negating internal dissent. These exclusions occur due to a constructed understanding of "unreasonableness." Here, the reasons "others can accept" appear to be little more than a re-articulation of the reasons the majority currently finds acceptable. I agree with Williams as she concludes that, under the terms set out by the "standard of reasonableness," deliberation, under this particular interpretation of reciprocity, publicity and accountability, will ultimately have an

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[41] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 127.
[42] Iris Marion Young, "Activist Challenges to Deliberative Democracy." *Political Theory* (29/5, October 2001), 675-676.
[43] Gutmann and Thompson, *Democracy and Disagreement*, 56.
[44] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 134.

exclusionary and marginalizing effect. People interpret reasons in many ways and some of them are unduly restrictive.

Deliberative democracy fails to meet standards of inclusive political communication in two ways. Firstly, the particular "standard of reasonableness and reason-giving" makes it difficult for marginalized groups to effectively communicate their reasons as acceptable reasons. In essence, deliberative democracy controls a sphere of "acceptable" deliberation, which is set out by "the powerful" and fails to take into account the partial concerns of differently situated people. The second and related concern comes from the current social and political circumstances of marginalized people.[45] These two challenges are linked through the problem of impartiality and a concern that marginalized groups will not be able to communicate the injustice behind their marginalization within the deliberative framework. If marginalized people do not assist in formulating the ground rules, they cannot ensure the rules are unbiased. The principle of reciprocity will not result in the equal treatment of all people if the rules that determine acceptable reciprocal behaviour are created by and favour the majority. With the effective silencing of marginalized people, deliberative democracy creates barriers to membership in a deliberative public. Deliberative citizenship is conditional, and the restrictions reveal a refusal to accommodate a wide spectrum of difference. Deliberative democracy does not offer a viable way out of pre-deliberative modes of thinking, and because of this all policies that follow from deliberations will be tainted by the original bias.

Communicative and Discursive Democracy

John Dryzek and Iris Marion Young respond to some of the flaws of deliberative democracy that are directly attributable to its limited conception of what constitutes inclusive political communication. At the beginning of *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (2000), Dryzek presents himself as "a proponent of deliberative democracy who nevertheless rejects some of the directions in which deliberative democracy has been taken."[46] Young, too, in *Inclusion and Democracy* (2000) notes that she is refining deliberative democracy while at the same time "criticizing

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[45] Williams, *Voice, Trust and Memory: Marginalized Groups and the Failure of Liberal Representation*, 126.
[46] John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: OUP, 2000), v.

certain interpretations" of the model.[47] Dryzek and Young argue that the solutions to the downfalls of deliberative democracy lie in a more radically democratic approach to deliberation in which the idea of political equality itself is revisited. In this version of deeper democracy, political equality occurs when "all participants in a process have an equal chance of affecting the outcome."[48] In order for their voice to be effective, deliberants must be able to communicate using the dialogue that forms a central part of their lives, as opposed to drawing from unfamiliar discourses in an attempt to present their claims as legitimate and relevant. Communicative democracy not only asks groups to form policies that are mutually acceptable, but states that citizens can do so in a number of legitimate ways, which increases the chances that differently situated groups will be able to effectively communicate their public reasons to the deliberative body.

Dryzek and Young expand the scope of inclusive political communication and come up with the theories of discursive democracy and communicative democracy respectively. Young highlights two major problems with deliberative democracy: 1) the standard of reasonableness usually employed in deliberative democratic theories carries a cultural bias, and 2) deliberative democracy assumes that a particular type of unity is necessary in order to carry out deliberations, but this type of unity effectively excludes differently situated people. Both problems undermine deliberative democracy's stated goal of inclusion. In response, communicative democracy makes two revisions to deliberative democracy. Firstly, communicative democracy uses difference as a resource in order to emphasize plurality. Secondly, it expands the conception of democratic communication in order to redress the biases inherent in currently accepted modes of speech and argument. Instead of bracketing difference, deliberators speak in a way that acknowledges that differences do exist and do not need to be overcome in order to engage in a successful deliberation. Dryzek notes similar problems: he supports "deliberation across difference"[49] and an expansion of deliberative forms of communication that support rational arguments.[50]

The changes that Young and Dryzek make have significant normative implications. Communicative and discursive democracy enrich deliberative democracy

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[47] Young, *Inclusion and Democracy*, 6.
[48] Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, 172.
[49] Dryzek,, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, 4.
[50] Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, 5.

and are better equipped to treat members of marginalized groups as equals. The style of civic interaction is significantly different amongst deliberants in this approach. Communicative democracy incorporates greeting, rhetoric and narrative as reasonable methods of engaging in discourse.[51] The communicative approach to difference goes beyond just acknowledging that not all people speak in the same way. Communicative democracy recognizes the positive functions that greeting, rhetoric and narrative have because they enable minority and marginalized groups to offer public reasons that reflect their concerns and still meet the deliberative standard of reasonableness. The purpose of greeting is to publicly acknowledge deliberants, to recognize subjectivity and to foster trust so that deliberations will be more inclusive.[52] The purpose of rhetoric is to call attention to points deliberants raise and to situate "speakers and audience in relation to one another."[53] Rhetoric is a response to the supposedly "impartial" deliberative democratic standard of reasoning. Through explicitly recognizing the partiality of different modes of communicating, Young argues that rhetoric will further inclusion in two ways: firstly, it will expose the implicit values in "impartial" discourses, and secondly it will legitimize the modes of communication that differently situated people need to communicate their claims effectively. The purpose of narrative is to help marginalized groups to communicate their arguments by legitimizing specific modes of dialogue. When deliberators use narrative they aim to reach a set of shared understandings so that all deliberants can pursue arguments with shared premises, or at least arguments that appeal to shared experiences and values. Dryzek adopts similar categories (storytelling and testimony, greeting, and rhetoric) with similar purposes, though he spends less time pursuing these forms of alternative political communication.[54] These changes affect the way that deliberants interact with one another. They expand the definition of reasonable communication and in doing so are better equipped to treat members of marginalized groups as equals.

The expanded understanding of what counts as legitimate deliberative participation not only changes the style and dynamic of civic interaction, but also does a considerable amount of work to change our understanding of what constitutes a public.

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[51] Young, *Inclusion and Democracy*, especially chapter 2, "Inclusive Political Communication."
[52] Young, *Inclusion and Democracy*, 53, 57-62.
[53] Young, *Inclusion and Democracy*, 53.
[54] Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, 67-70.

Communicative democracy asks deliberants to relate to each other in a different way. Communicative democracy rejects impartiality because it results in effective exclusions, and acknowledges that greeting, rhetoric and narrative help a wider range of people to speak effectively within the deliberative process.

Communicative standards of deliberation make it easier for marginalized groups to initiate dialogue because they can do so in a plethora of ways. Moreover, the styles of legitimate communication make it much more likely that minority claims will influence deliberative policies because the ways that groups are able to initiate claims also works to forge common understandings. These common understandings contribute to the ability of deliberators to transform the ways that they understand themselves and others, which makes them more likely to formulate policies that accommodate a wider range of preferences and interests – or at least recognize that there are a wider range of valid concerns that warrant legislative attention. Because deliberative democrats insist on impartiality and a particular standard of reasonableness, they limit the types of arguments that deliberants can effectively discuss and they also limit the quality of those arguments because they take place without the benefit of points of view that the deliberative criteria excludes. As a result, deliberative democrats impede an imaginative and fundamentally more just conception of a "common good," loosely defined.[55]

To the extent that it is possible to understand part of what it is like to be differently situated as a result of listening to differently situated individuals offer their reasons and perspectives, the point of communicative democracy is to utilize the fact of plurality and create a deliberative environment in which people can "understand more of what the society means or what the possible consequences of a polity will be by each situating his or her own experience and interest in a wider context of understanding."[56] People's understandings and preferences can thus undergo a transformation. Marginalized groups are longer constrained by a need to bracket difference, and all deliberants are exposed to different beliefs and values. While the intent to include

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[55] I use the term "common good" not to endorse the notion as deliberative democrats do, but (a) to suggest that insofar as deliberative democrats do believe in a "common good" it is a limited and imperfect one (not to mention exclusionary and unjust) but also (b) to allude to the necessity of an overarching conception of a "good" set of guidelines to improve the quality of deliberation and the lives of all who find themselves occupying the same space and deliberating with one another.

[56] Here Young paraphrases Hannah Arendt. Young, "Communication and the Other: Beyond Deliberative Democracy." 127.

difference itself is not new, the way in which people are asked to confront it is. Consequently, exposure to difference in the communicative setting transforms understandings about the self and others.

The notion of public reason in communicative democracy differs from that found in deliberative democracy. Because the conception of public reason uses the partial concerns and specific experiences of differently situated individuals, communicative democracy is able to use difference as a resource and is better equipped to facilitate social change than deliberative democracy. Three factors contribute to this change. First, confrontation with differently situated individuals teaches the deliberator the partiality of her own interests. Second, the knowledge that claims and arguments are going to be challenged (and need to meet the standard of publicity) forces an individual to transform "her expressions of self-interest and desire into appeals of justice." Finally, the process "adds to the social knowledge of all participants," which enables them to "understand something about the ways proposals and claims affect others differently situated."[57] The amendments that communicative democracy makes to the deliberative standard of public reason ensure that people present arguments in ways that all deliberants can understand (through the use of rhetoric and narrative). At the same time, communicative democracy sets criteria so that all deliberants should be able to understand how reasonable people may affirm a reason even if they personally disagree with its merit. These steps, because they use difference as a resource, allow deliberants to accept (or reject) reasons as free and equal people, and do a lot of work to significantly reduce experiences and effects of domination or manipulation[58] and therefore work to protect marginalized groups in the deliberative group.

Communicative democracy makes many strides in its attempt to meet the criteria of inclusive political communication. Communicative democracy's style of civic interaction, its definition of the public and its understanding of what constitutes a public reason all work to break down real and effective barriers that obstruct marginalized groups when they try to participate in deliberative democratic processes. The steps that communicative democracy makes to ensure that deliberations are open to all people and

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[57] Young, "Communication and the Other: Beyond Deliberative Democracy." 128.

[58] It is unrealistic to assume that domination and manipulation will disappear entirely, for reasons I will explore later on in the paper. However, communicative democracy does offer an inclusive and fair environment for deliberants to further eliminate the effects of domination and manipulation.

that political processes are able to address issues brought forth by all members of society succeed in treating difference as a resource. These are all necessary steps that enable communicative democracy to enrich the theory of deliberative democracy and to better address the concerns of marginalized groups.

* * *

Interest group pluralism, deliberative democracy and communicative democracy deal with the problem that marginalized groups pose in different ways. Each approach has a different understanding of the way people should form policy according to democratic ideals, and each approach has a different understanding of what constitutes an acceptable public reason. Because interest group pluralism is primarily an explanatory theory, people do not have to offer public reasons. This has normative implications: because the state cannot accommodate all groups and so different groups must compete. This competition results in a fragmented public and low levels of reciprocity, publicity and accountability. Because the exchange of public reasons is not a priority in interest group pluralism, the approach cannot account for marginalized groups.

Deliberative democracy is a normative theory that emphasizes the importance of the exchange of public reasons and does so in an attempt to include marginalized groups in the process of policy formation. Deliberative democrats exchange public reasons because the resulting knowledge is supposed to facilitate the transformation of preferences that will lead to the formation of mutually acceptable policies. Policies that deliberants form on this basis are necessary to establish democratic legitimacy. However, the deliberative democratic conception of what constitutes an acceptable public reason effectively excludes the partial concerns of differently situated people because the standard of impartiality treats difference as a problem that must be solved. As a result, the deliberative democratic process effectively excludes marginalized groups.

Communicative democracy makes two changes to deliberative democracy that are meant to address the failure of deliberative democracy to meet democratic ideals. Both changes contest the justice of the standard of impartiality. The first amendment asks deliberants to treat difference as a resource, and the second asks deliberants to expand the conception of democratic communication. Both amendments enable differently situated people to communicate in more effective ways and make it much more likely that deliberants will be able to recognize the pubic reasons of members of

marginalized groups as normatively acceptable public reasons. For this reason, communicative democracy enriched deliberative democratic theory and is the approach best suited to the fair and just treatment of marginalized groups.

A truly inclusive approach to policy formation must address all types of effective exclusion that marginalized groups face, provided, of course, that these exclusions are unjust from a normative democratic standpoint. Members of marginalized groups are the most likely people to offer normatively acceptable public reasons yet to be excluded from deliberations because the merits of their public reasons are most likely to go unacknowledged.

Despite the measures that communicative democracy takes to treat members of marginalized groups as equals, this approach has its flaws. Communicative democrats assume that because the communicative deliberative body uses difference as a resource, deliberants will be able to recognize the reasons of marginalized groups as acceptable public reasons. Although communicative democracy redefines democratic criteria so that this should be the case, the theory does not address the possibility that deliberants may be unwilling or unable to recognize the merit of some normatively acceptable public reasons. Consequently, deliberants may determine that certain pubic reasons are insufficiently important to warrant deliberative attention and may unjustly exclude members of marginalized groups.

While communicative democracy takes important steps to treat all people as equals and enriches the theory of deliberative democracy, it does not discuss political protest and has no mechanism to deal with it. Because marginalized groups can still be unjustly excluded in communicative democratic processes, it is likely that these marginalized groups will protest their exclusion from the deliberative group as dissenters in the larger polity. The exclusion of this type of political protest thus poses a challenge for communicative democracy as it tries, but ultimately fails, to offer an inclusive and just approach to policy formation.

Chapter 2
Political Protest and Deliberative Democracy

In chapter 1, I discuss the ways that interest group pluralism, deliberative democracy and communicative democracy deal with the problem that marginalized groups pose for democratic bodies. I look at the requirements (or lack thereof) that each theory sets out in order to ensure that marginalized groups can initiate political dialogue and that the public reasons people offer are evaluated according to democratic ideals and not against a biased understanding of what is in the best interests of the status quo. Because interest group pluralism is an explanatory theory, it does not expect that all marginalized groups are able to participate effectively in the political system, nor does this happen. Deliberative democratic theory and communicative democratic theory assume that marginalized groups are able to participate effectively in the political system. From a normative standpoint, each approach should involve marginalized groups in a way that transforms their status from marginalized group to a group that has the same level of social and political recognition and power as the other groups. However, this is not the case. Marginalized groups pose a unique problem for all approaches. When a group is marginalized, its members are often unable to participate within political systems as equals. It is not enough for an approach to require that all people participate as equals if some people, because of their marginalized status, cannot assert the same authority as non-marginalized people.

Although the three approaches try to actively include marginalized groups in their political processes, they are not always able to accommodate them sufficiently. Communicative democracy develops the democratic content of deliberative democracy, which in turn improves on interest group pluralism. Although theories of deliberative democracy move closer toward normative democratic standards because they emphasize procedural justice, it is naive to focus on fitting marginalized groups into a policy approach that was designed without their input. Such an approach inevitably excludes marginalized groups in certain respects and this exclusion is especially troubling from a normative standpoint if it means that we ignore some of the other ways that marginalized groups can seek redress within the polity. Political protest is an effective

mechanism whereby marginalized groups can give voice to their concerns and arguments in ways that the three approaches do not account for.

If a theory is to redress the way it effectively excludes marginalized groups, it must include a mechanism to address political protest. Political protest is necessary whenever people's claims do not receive adequate attention within a political process and where social justice is undermined as a result. Public reasons that are acceptable from a normative democratic standpoint have often gone unrecognized in society. Many marginalized groups have been excluded from effective participation in a political system because the majority claims that minority arguments are not based upon acceptable public reasons. The repeated failure of governments to recognize the normatively acceptable public reasons that marginalized groups offer should serve as a better warning sign to democratic theories. It is naive to construct a theory that purports to be inclusive but that neglects to offer a way to deal with dissent, especially when dissent traditionally serves to highlight injustices.

None of the three approaches protect marginalized groups in cases where the political system fails to treat the public reasons of marginalized groups as public reasons worthy of respect. Consequently, interest group pluralism, deliberative democracy and communicative democracy fail to meet the criteria of inclusive political communication. Although circumstances where normatively acceptable public reasons are not treated as such should not occur in deliberative groups, this does not negate the fact that they can. When faced with the possibility that groups with just claims may not receive sufficient attention in a political process, a normative theory must form a position on the way it will treat political protestors.

In this chapter I look at the ways that interest group pluralism and deliberative democracy deal with political protest. My focus in this chapter is on the way that deliberative democracy deals with political protest. I will address the way that communicative democracy deals with political protest in chapter 3 because the theory treats marginalized groups differently and this has an impact on the way it can treat political protest. Deliberative democrats claim that their approach is better equipped to meet the criteria of inclusive political communication than interest group pluralism because their cooperative approach to policy formation is better suited to deal with marginalized groups. I argue in chapter 1 that deliberative democracy cannot meet the

needs of marginalized groups. In this chapter I explore further the normative implications of this failure of deliberative democracy to deal with marginalized groups.

Deliberative democratic theory does not discuss political protest. Deliberative criteria state that people either participate within the deliberative group or forgo the opportunity to impact policy formation. Consequently, deliberative democracy does not have a mechanism to deal with political protest. This is a problem because deliberative theory essentially excludes the type of marginalized groups that form protest groups. There is a tension between deliberative democracy and political protest because some marginalized groups mobilize as protest groups. A marginalized group may leave a deliberative group if its members cannot participate as equals within it. This move is an active objection by the group to its marginalized status. The move from the inside to the outside of a deliberative group does not change the nature of the marginalized group as a marginalized group: the same unjust deprivation of rights, freedoms, recognition and resources still defines the group, the members of which still suffer from oppression and domination. The move does, however, change the way that marginalized groups can interact with the deliberative group because the criteria that guide a political approach no longer apply to political protesters, whereas they constrain deliberants. I examine political protest with the concerns of marginalized groups in mind in order to ask how deliberative democracy can deal with marginalized groups who leave the confines of deliberative groups. The political protest that I am concerned with assumes that protesters wish to enter the political system, and are working, albeit from outside the political system, to change the way that the deliberative group interprets their public reasons in such a way that deliberants are able to recognize the normative democratic values that underlie their reasons. When protesters accomplish this, they will re-enter the deliberative group. At this point, the deliberative group will finally be able accommodate members of the marginalized group as equals.

Political protest

There are three forms of political protest: dissent, civil disobedience and resistance, and there are legitimate and illegitimate forms of all three. Dissenters leave the deliberative group because the group does not accept their normatively acceptable public reasons. Once they are outside the group, dissenters challenge the public reasons of the deliberative group and offer their own. Protesters who engage in civil

disobedience leave the deliberative group for the same reasons as dissenters and also challenge the public reasons of the deliberative group. However, in civil disobedience, protesters communicate their public reasons by deliberately violating laws and practices that are based upon the public reasons that are under dispute. While resisters leave the deliberative group because they also reject the groups' public reasons, their intent, unlike that of dissenters and civil disobedients, is to replace the deliberative group, not to change the conditions so they can participate in it. If political protesters are to convince a deliberative group that their claims are just and deserve to be part of the deliberative agenda, then they must be able to offer acceptable public reasons. Deliberants, in turn, must be able to identify these reasons as public reasons so that they can modify the political system to include differently situated people. As I discuss political protest, I focus upon legitimate instances of dissent and civil disobedience because both are capable of communicating public reasons that are compatible with normative democratic principles. While legitimate dissent and civil disobedience possess different characteristics, they pose the same problem to deliberative democracy because both are means by which marginalized groups that have been unjustly excluded (according to normative democratic principles) can seek inclusion in the deliberative group. Legitimate forms of resistance do adhere to normative democratic guidelines, but they do not seek inclusion in existing deliberative groups and so they pose a different challenge to deliberative democracy that is beyond the scope of this thesis. Illegitimate forms of dissent, civil disobedience and resistance pose yet another challenge to deliberative democracy. Their values and/or their tactics conflict with democratic principles, and so I will set them aside because, again, a discussion of this is beyond the scope of the thesis.

As I discuss political protest in relation to deliberative democracy, I distinguish between deliberative groups and the deliberative polity. The first type of deliberative space is the deliberative group. The size of the deliberative group may change depending on the issue. In the deliberative group, citizens discuss policies that will apply to all people within the polity. The deliberative group forms the polity's political institutions and is the space that most deliberative theorists are concerned with. The second type of deliberative space is the deliberative polity. I use this term to refer to a state that adopts deliberative values. The deliberative polity encompasses dialogue that follows deliberative criteria and which occurs both within deliberative groups and within the

civic sphere. Dialogue within the civic sphere includes dialogue within political protest groups and between political protesters and deliberative democrats. This is the deliberative space that I am primarily concerned with when I discuss the tension between theories of deliberative democracy and political protest.

Why theories of deliberative democracy must address political protest

Deliberative democracy's failure to address political protest comes at a significant risk to its democratic legitimacy. I argue that in order to meet normative democratic criteria, deliberative democrats must address political protest. However, deliberative democrats must also exercise caution in the way they deal with political protest because deliberative support of illegitimate protest will undermine the legitimacy of the democratic process. In order to avoid this problem, deliberants must ask whether protesters offer public reasons for their positions. People who engage in legitimate political protest use reasons that can be (though currently are not) accepted in the deliberative sphere. Deliberants must base these reasons upon the normative democratic principles that guide deliberative democratic theory.

Political protesters reject laws and policies that a democratic majority determines, but they do so in different ways and to different degrees. We can best understand legitimate dissent and civil disobedience as forms of protest that cannot (effectively) engage in a dialogue within a deliberative group, but that aspire to do so through the pursuit of social and political justice claims outside a deliberative group. It is this aim, coupled with their use of public reasons, that make dissent and civil disobedience compatible with normative democratic principles and thus capable of fitting into a larger deliberative framework that includes political protest. Illegitimate protesters do not use public reasons, and as such they fail to meet normative democratic principles. Deliberative democrats should not refuse to address arguments just because they originate outside a deliberative group if they contain democratic merit. If dissenters and advocates of civil disobedience follow normative democratic guidelines in both their goals and protest actions, then an inclusive democratic system will benefit from finding a way to incorporate political protest into deliberative politics.

Legitimate political protest arises when people disagree on a fundamental level with the premises of other deliberators and cannot accept the public reason(s) that members of the deliberative group offer. Disagreement on the premise of a debate is

problematic. If deliberators do not argue from a common and mutually agreeable premise then they will not be able to evaluate what counts as an acceptable public reason. As a result, people with conflicting premises cannot engage in a legitimate deliberative dialogue. There are two possible outcomes if deliberants cannot agree on the premise(s) of a debate or identify a good reason. The first outcome is the one typically found in theories of deliberative democracy. When deliberants disagree with the premises of other deliberants or are unable to accept their public reason(s), the more powerful section of the deliberative group will reject the arguments put forth by these (unsuccessful) deliberants. The marginalized deliberants will then be either physically or effectively excluded from the deliberative group and the successful deliberants will formulate public policy despite their objections. In being excluded, the arguments of marginalized groups suffer a loss of legitimacy. If the deliberative group rejects public reasons of marginalized groups, then the deliberative group is no longer obligated to take any arguments these groups offer from outside the deliberative group into account. Because they fail the test of public reason, as the deliberative group applies it in practice, the arguments that political protesters offer violate what deliberants uphold as the normative criteria of deliberative democracy. Consequently, deliberants argue they can legitimately exclude these marginalized groups. As a result, expelled marginalized groups can no longer take part in legitimized deliberative proceedings: unless, of course, they change their public reasons to fall in line with the deliberative group – a move that could effectively remove the ability of marginalized groups to participate as differently-situated people. If marginalized groups take this action because it is a precondition to deliberate (in deliberative practice) then it undermines the ability of deliberative democracy to treat all people as equals and deal with the problem that marginalized groups pose to democratic bodies.

Alternatively, the second possible outcome when the deliberative group does not recognize the normatively acceptable public reasons of a marginalized group is for the polity to find a way to bridge the gap between deliberators and protestors even though protesters are no longer part of the deliberative group. This approach acknowledges that deliberants are not obliged (according to deliberative criteria) to attempt to bridge a seemingly irreconcilable difference. However, this approach recognizes that although deliberants base the exclusion of these marginalized groups on evaluations of public

reason, the deliberative evaluation may fail. I argue that we cannot count on deliberative groups to correctly identify all public reasons as normatively acceptable or not. Consequently, an attempt to bridge the gap between deliberants and protesters and strengthens the legitimacy of deliberative democracy because it offers marginalized groups recourse when the deliberative group fails to identify their public reasons. I will look at the ways that such a bridge could occur in greater detail in chapters 3 and 4. In this chapter I look at political protest in order to show that the second approach is warranted and to stress that normative democratic values require the continued pursuit of deliberations even when the differences between deliberants and protesters appear irreconcilable.

On a basic level, all forms of legitimate political protest pose the same problem to deliberative democracy: they denounce the legitimacy of deliberative bodies and contest the justice of deliberative agreements. Whether protesters engage in dissent, civil disobedience or resistance, they contest the supposedly "mutually acceptable" public reasons a deliberative group upholds. Beyond this, however, there are some important differences between the three forms of protest. Advocates of dissent and civil disobedience believe in the possibility of reforming the system and then re-entering the deliberative group, and their actions are meant to facilitate this inclusion. The problem with deliberations, according to the political protesters is that the deliberative group does not effectively include all affected people: the deliberative group is not a definitively deliberative one. In contrast, protesters who advocate resistance insist that there is something fundamentally wrong with the system. In their opinion, it is not enough to change the system: they must replace it. In this sense, resistance poses a more complex challenge to theories of deliberative democracy.

Although dissent and civil disobedience share many of the same characteristics and often involve similar protest actions (marches, sit-ins, teach-ins, etc), the intent behind the action distinguishes the two. The purpose of dissent is for marginalized groups to refuse to participate in an unjust system. Instead, dissenters protest to initiate a dialogue that addresses issues that the deliberative group currently rejects. The purpose of civil disobedience is to break laws in order to highlight injustice within a system and to force concessions from the government. In breaking unjust laws, protesters aim to force the government to enact (and enforce) just laws. The law-

breaking aspect of civil disobedience suggests that acts of civil disobedience are more "extreme" than the actions of dissenters, but this may not be the case. The law-breaking aspect is significant, however, because public reaction to the fact that people break laws plays an important part when deliberative democrats discuss charges of instability that arise in cases of dissent and civil disobedience. Nonetheless, the aim of both acts of dissent and civil disobedience is to force deliberative concessions by pushing for a dialogue in which both sides communicate in terms of mutually acceptable reasons. In this sense, dissent and civil disobedience pose the same problem to deliberative democracy.

Protestors who advocate resistance wish to replace, not enter, the deliberative sphere. As a result, it is difficult to reconcile their approach with theories of deliberative democracy. On one level, resistance is incompatible with deliberative democracy. Resisters have fundamental problems with the existing form of deliberative government. Resisters do not wish to enter into any form of deliberation with those in a deliberative group, even if deliberants significantly rework the group. However, resistance does not have to stand in opposition to deliberative democratic theory. If a deliberative group is not a definitive deliberative one and resisters protest because of the exclusions within the deliberative group, then it is plausible that resisters wish to implement an entirely new deliberative group. Resisters may disagree with dissenters and advocates of civil disobedience on the issue of salvaging the deliberative group, but not on the overall desirability of a deliberative form of government. Of course, resisters may want a non-deliberative form of government. The purpose of my brief discussion here is not to assess the probability that resisters will advocate a fully inclusive form of deliberative democracy, but to approach resistance in a way that recognizes that not all forms of resistance stand in opposition to theories of deliberative democracy. That being said, I will set resistance aside because it does pose a different challenge to theories of deliberative democracy.

The tension between deliberative democracy and political protest

Many of the critiques levelled at political protest have their roots in the desire to ensure a stable and just political system. Because deliberative democracy depends upon reciprocity, publicity and accountability in order to secure democratic legitimacy, deliberative democrats are suspicious of dialogue that occurs primarily or exclusively

outside deliberative groups. Deliberative democrats charge that people who argue from outside deliberative groups bypass deliberative rules and shirk the criteria that are meant to ensure fair democratic processes. Protesters cannot claim the degree of legitimacy that people who offer reasons within deliberative groups can. Deliberative criteria imply there is something suspect in refusing to subject claims to deliberative evaluations. If a set of arguments are just and can withstand deliberative scrutiny, then their proponents should participate in official deliberative processes. Because protestors do not participate in the requisite way, their claims are questionable according to deliberative democratic criteria on two counts. Firstly, political protesters circumvent procedural justice and in doing so threaten the possibility of achieving substantive justice. Secondly, the claim that deliberative democrats can legitimately advance a dialogue that purports to address justice claims from outside deliberative groups threatens the stability of deliberations. Deliberative democrats fear that more groups may follow the lead of protesters and decide it is "easier" to assert their claims outside the deliberative group. If deliberative democracy sanctions this then deliberative groups may appear optional which could threaten to undermine the entire deliberative process.

Although political protest could undermine democratic values and destabilize governance this is only true if deliberative democrats treat all forms of political protest in the same way. The danger that illegitimate political protest poses is not a good reason to justify the blanket exclusion of all forms of political protest. In order to resolve the tension between deliberative democracy and political protest we must look toward normative democratic criteria. Deliberative groups cannot guarantee the full and effective inclusion of all people who make just claims; consequently, it is dangerous to assume that a system of deliberative democracy will be just and to use this assumption as a reason to fail to address the potential exclusions of deliberative groups. If deliberative democrats make this assumption it negates their ability to recognize new injustices and prevents their redress. The reason for deliberative democratic criteria is to treat all people as equals. It is unlikely that the actual practices of deliberative groups, particularly early ones, will be able to live up to their theoretical vision. Consequently, it is especially important during the early stages of implementing a system of deliberative democracy that the theory addresses political protest. Early deliberative groups are likely to have difficulty recognizing the implicit ways that contemporaneous power structures constrain

the movement toward inclusive political communication.[1] If deliberative democrats wish to satisfy the spirit of normative criteria, they must find a way to include all marginalized groups, even those who offer public reasons from outside the deliberative group.

As I discuss the space for political protest in the deliberative democratic framework, I understand dissent in a specific way. The type of dissent I explore goes beyond disagreement; simply holding a different opinion on a particular policy issue does not qualify one as a dissenter. If this were the case, theories of deliberative democracy would be weak, and a practical application of deliberative values unworkable. Three things distinguish dissent from disagreement: disagreement about what counts as an acceptable public reason, disagreement about the premises of a debate, and disagreement about efficacy within deliberations. A wide range of disagreement can occur within deliberative groups as long as deliberants use acceptable public reasons and believe that they have sufficient power to effect change within the deliberative group. While disagreement and political protest are two different forms of dialogue with different roles to play, democratic legitimacy requires governments to respect both. Some of the public reasons that people offer from outside deliberative groups have the potential to build upon deliberative principles and show people within deliberative groups the way that deliberative democracy fails to live up to the normative ideals of deliberative democratic theory. Deliberative theorists show a great oversight in their failure to discuss political protest.

Disagreement within deliberative groups

Deliberative democrats expect disagreement. Deliberative democratic theory does not assume that all participants will like or fully endorse all policies or believe a particular outcome is the best one available. If they expected such agreement then the charges of instability that people level at political protest would carry more weight because deliberative groups would be more likely to exclude people who disagree with the majority's policy decisions and more marginalized groups would mobilize as protest groups. All deliberative theory asks is that deliberators accept the public reasons of others. There are certain cases – most notably with the issue of abortion – in which agreement is impossible even if deliberants do recognize the public reasons of other

[1] Many of the critiques aimed at deliberative democracy cite this problem as a reason to denounce the viability of a properly deliberative political system.

deliberants. Nonetheless, while deliberative democrats recognize that there are certain problems their theory cannot resolve, they recognize the benefits that follow from dialogue that tries to make others understand their viewpoint even though they may vehemently disagree with it. Deliberation cannot solve all problems: it can, however, make it easier for people holding oppositional views to live together because the process pushes citizens to treat each other with mutual respect.[2]

Dissent involves more than disagreement. Dissenters leave a deliberative group when other deliberants do not recognize their public reasons. When deliberants do not recognize the public reasons as public reasons, people within a deliberative group do not have a common ground to deliberate from. As a result, an exchange of reasons is not effective because the deliberative group does not address the concerns of a particular group. The conflict that arises when people within a deliberative group fail to identify public reasons as public reasons is fundamentally different from the type of irrevocable disagreement about the merit of a public reason that can occur wholly within deliberations. An issue such as abortion places opposing public reasons in conflict with "no mutually acceptable position from which either can be rejected."[3] The disagreement is fundamental because people "differ not only about the right resolution, but also about the reasons on which the conflict should be resolved."[4] Disagreement about the merit of a public reason, however, can work within the context of deliberative democracy. Even though deliberators disagree with the reasons that an opposing group offers, they recognize these reasons are acceptable public reasons, and as such, deserve deliberative attention.

In the abortion example, deliberators disagree, but in doing so both sides can (but do not always) recognize that the other side offers an acceptable public reason for their position. A deliberator who opposes abortion will reject the position that a woman's control over her own body should take precedence over the continued life of the foetus, but she can still recognize that the ability of a woman to control her own body does count as a public reason. Similarly, a deliberator who supports the availability of abortions can recognize that a person's right to life is a public reason even though she

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[2] Gutmann and Thompson, *Democracy and Disagreement*, 9.
[3] Gutmann and Thompson, *Democracy and Disagreement*, 60.
[4] Gutmann and Thompson, *Democracy and Disagreement*, 73.

does not agree with the application of the reason in this context.[5] If deliberators on opposing sides of the abortion debate recognize that the other side argues from the standpoint of an acceptable public reason, then a debate can continue within the deliberative group. If, however, people on either side of the debate offer assertions such as "because God said so," then the debate no longer occurs on the basis of public reasons, namely ones that can be supported through "standards of logical consistency" and by "reliable methods of inquiry."[6]

If opposing groups of deliberators both have acceptable public reasons then there is no need for their disagreement to create dissent. Dissent as I approach it is more problematic than a fundamental disagreement between people with different public reasons. The claims of dissenters fall outside the realm of acceptable deliberative dialogue because their reasons are not recognized as public reasons and as such deliberative democrats deem them illegitimate. In cases of fundamental disagreement, as in the abortion debate, where opposing sides have strong views on the content of the *policy* and disagree over which public reason is the "correct" one; however, deliberants still agree that the *issue* is of great significance and should be subject to policy debate within the deliberative group. Dissent is markedly different than disagreement because the public reasons that dissenters offer fail to register as acceptable public reasons and are thus not found to be of sufficient importance to merit inclusion in a deliberative group.

Political protest and marginalized groups

In order to examine the problem that political protest poses for theories of deliberative democracy, I look at the protest group AIDS Coalition To Unleash Power (ACT UP) and a selection of their direct actions between 1987 and 1990. ACT UP employed a range of different protest actions in the face of governmental inaction, ranging from legal, "standard" protests to illegal and high-risk. Members of ACT UP launched their actions because the US government did not accept the public reasons offered by AIDS activists and offered very little in the way of leadership or support to

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[5] These are just two positions, and while they serve as a good example of the fundamental deliberative disagreement, the larger debate surrounding abortion is much more problematic, especially when take one of these valid reasons as a justification for attacking abortion doctors. I will not pursue this debate in this paper, except to note that this type of action clearly falls in to the realm of illegitimate dissent and cannot be supported by normative democratic values.

[6] Gutmann and Thompson, *Democracy and Disagreement*, 56.

people living with AIDS (PLWAs). ACT UP launched a battery of dissent and civil disobedience actions at federal and local governments and made the tension between the government's and their own public reasons highly visible. As a result of ACT UP's political protest, various governments and private organizations changed their policies regarding AIDS and AIDS-related issues. Members of ACT UP welcomed these changes, and governments came to accept the public reasons of AIDS activists.

ACT UP was at its most active in the late 1980s, and while many chapters still continue to protest governmental inaction today, a great deal of ACT UP's achievements came in their early years. There is a time sensitivity that is important to this study of ACT UP as a protest group. Today, many of the reasons that members of ACT UP structure their demands around are, or would be, accepted in deliberations and most of the existing problems stem from the relatively few deliberations that address AIDS-related concerns and not with a fundamental incompatibility between deliberative democracy and ACT UP. I acknowledge the continued importance of ACT UP today, but I limit my discussion of the group to the protest actions that occurred in the 1980s in order to examine the specific ways that deliberants and dissenters used public reasons.

I look at ACT UP because the protest actions its members employ do not conform to the criteria that deliberative democracy sets out. However, ACT UP's protest contributes to the larger normative democratic values that guide deliberative democratic processes. Although members of ACT UP did not do what the deliberative model says they should do, the group opened up the deliberative debate and contributed to more inclusive deliberations. As the actions of ACT UP show, radically democratic protest groups have considerable deliberative potential. The protest actions of ACT UP led to a reconciliation of conflicting public reasons. The contributions of ACT UP highlight the importance of seeking out institutional ways to reconcile the tension between theories of deliberative democracy and political protest.

Why AIDS activists were ACTing UP

ACT UP formed during a time of conservative Republican government and entered a political environment where interest group lobbying was the most effective way to change government policies. AIDS activists and doctors had been lobbying the government for funding ever since a few gay men were diagnosed with "gay cancer" in 1981. While AIDS activists were able to secure some funding, it trickled in quietly and

only after a cautious process of "legislative acrobatics." Governmental allocations failed to meet the level of funding requested by scientists[7] and the lack of resources frequently stalled research efforts.

Interest group lobbying resulted in very little policy change or funding despite the efforts of early AIDS activists. In the years of the AIDS epidemic preceding the formation of ACT UP, 12,000 Americans were dead or dying of AIDS and hundreds of thousands more were infected.[8] In May 1984, one month after a *Newsweek* cover story prompted widespread coverage, AIDS was declared the administration's "top health priority."[9] However, the government was still virtually silent on the issue. The only public heath advisory came from San Francisco's public health department.[10] Although Surgeon General C. Everett Koop stressed the importance of an aggressive, national response to AIDS, and, in his 1986 *US Surgeon General's Report on AIDS*, insisted that AIDS education "should start at the earliest grade possible,[11] a year later the US government had still failed to launch a coordinated education campaign.[12]

AIDS advocacy groups had been unable to impact governmental policies in the way they needed to do, and the marginalized status of PLWAs made it appear unlikely that AIDS groups would be able to exert the necessary influence through lobbying actions. ACT UP formed as a protest group in response to the weakness of AIDS advocacy groups in the interest group politics environment and because its members could not accept the public reasons that supported the American government's response to the AIDS epidemic. Reagan did not mention sex or condoms in his "major" AIDS speech delivered in the spring of 1987.[13] His response to AIDS amounted to little more than the assertion that "[p]arents should explain to their children the goodness and blessings of chastity before marriage, of a solid family life, and of a drug-free way of

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[7] Randy Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic* (New York: Penguin Books, 1998), 297.
[8] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic* xxi-xxii.
[9] Shitls, *And the Band Played On: Politics, People and the AIDS Epidemic*, 298.
[10] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic*, 325.
[11] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic*, 587.
[12] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic*, 589.
[13] Ronald Reagan, "Remarks at the American Foundation for AIDS Research Awards Dinner: May 31, 1987." United States. Government and Printing Office. *Public Papers of the President of the United States* 1987; Vol. 1. (Washington: Office of the Federal Register, National Archives and Records Service, 1989) .585-86.

life."[14] The premise behind these assertions is that infection follows from an immoral lifestyle, and implicit in this is that the majority of people living with AIDS/HIV "deserve" their condition.[15] ACT UP challenged Reagan's response because his "solution" ignored reality and, moreover, presented PLWAs – particularly homosexuals, "promiscuous" people and intravenous drug users -- as immoral and set out a hierarchy that clearly sees some people as "more equal" and deserving than others.

The Reagan administration and ACT UP argued from different premises. The American government relied upon the assumption that treatment of people as equals is contingent upon a specific (and narrowly defined) view of "appropriate" behaviour. ACT UP had a different conception of equality, and refused to differentiate between a "deserving" constituency of PLWAs – haemophiliacs, children and wives of cheating bisexual men – and the "undeserving" gay, intravenous drug-using and sex-trade worker constituency. Because ACT UP and the US government could not agree upon what counts as an acceptable public reason, a productive dialogue could not take place and so ACT UP began its political protest actions.

AIDS Coalition To Unleash Power (ACT UP) was founded in New York on March 12, 1987 as a response to the institutional inaction surrounding AIDS. On March 10, Larry Kramer, founder of the Gay Men's Health Crisis, gave a speech at the Gay and Lesbian Community Center in New York City in which he focussed upon the government's failure to address AIDS. Citing remarks made by Koop, Kramer insisted that it was necessary for his audience, most of whom belonged to marginalized groups, to embarrass the President in order to force official attention on AIDS and AIDS-related issues.[16] Kramer's remarks were directed primarily at gay men, and he warned the gay and lesbian rights groups in attendance that, if they wish to mobilize successfully against governmental inaction, they could "no longer afford to operate in separate and individual cocoons."[17] Two days after Kramer's speech, 300 people attended another meeting and established ACT UP, drawing members from many of the existing gay and lesbian rights groups.

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[14] Reagan, "Proclamation 5892: National AIDS Awareness and Prevention Month, 1988: October 28, 1988." In *Public Papers of the President of the United States* 1988-89, Vol 1. p.1415.
[15] "[t]o prevent the further spread of AIDS and HIV infection, we must heed lessons taught by medicine and morality alike." See, Reagan "Proclamation 5892." 1415.
[16] Larry Kramer, *Reports from the Holocaust: The story of an AIDS Activist* (NY: St. Martin's Press, 1994), 136.
[17] Kramer, *Reports from the Holocaust: The story of an AIDS Activist*, 135.

In order to combat governmental inaction, activists and PLWAs formed ACT UP as "a diverse group of individuals, united in anger and committed to direct action."[18] ACT UP deemed political protest necessary because of the "perception that existing AIDS organizations were too close to the system to confront it."[19] Governmental funding brought with it governmental control. Members of ACT UP contested the legitimacy of governmental policies devised by a powerful few, and argued that both justice and their ability to combat AIDS required a direct challenge to the existing power structures. Faced with inaction, members of ACT UP pushed for an effective role in devising and implementing policies that directly affected them.

The original purpose of ACT UP was primarily to agitate for better access to AIDS medications. In their first protest action, held on March 24 on Wall Street, members of ACT UP demanded that the federal Food and Drug Administration (FDA) release experimental drugs at affordable prices and end double-blind drug studies in order to make AIDS treatments accessible. Although the tactics of early ACT UP focussed primarily on this "drugs into bodies" strategy, ACT UP has always addressed a range of issues surrounding AIDS-related discrimination. The Wall Street protest included a list of demands, two of which ("Immediate massive public education to stop the spread of AIDS" and "Immediate policy to prohibit discrimination in AIDS treatment, insurance, employment, housing."[20]) foreshadowed the increasingly diverse focus of the group. Through lobbying and direct action, ACT UP attempts to change public policies and societal attitudes towards AIDS, and advocates for a variety of AIDS-related issues including education and recognition.

ACT UP has three characteristics: it is a democratic and open group, it uses direct action as a means to achieve its goals, and it is diverse in both its membership and issues. These characteristics situate ACT UP in a democratic theory and practice that tries to meet the criteria of inclusive political communication. As a marginalized group that is frequently silenced in official institutions and in public spaces, political protest is a necessary part of ACT UP's strategy. One of ACT UP's main challenges is to attain visibility, which either involves pushing for coverage by the traditional media or

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[18] http://www.actupny.org

[19] Dennis Altman. *Power and Community: Organizational and Cultural Responses to AIDS* (Bristol, PA: Taylor & Francis, Inc., 1994), 111.

[20] http://www.actupny.org/documents/1stFlyer.html

bypassing these official means of communication in favour of their own highly visible guerrilla media approach -- one that is considerably enriched by the large numbers of ACT UP members that have a background in graphic art. ACT UP employs dissent and civil disobedience as forms of political protest because, as the group asserts, "governmental power is often maintained through oppression and the tacit compliance of the governed," and "[a]ny significant withdrawal of that compliance will restrict or dissolve governmental control."[21] In withdrawing their consent from the way officially sanctioned governmental bodies deal with AIDS, by acting up as a means to empower themselves, and by urging those outside the group to do the same, ACT UP deliberately challenges the state.

Because they challenge the legitimacy of the government, ACT UP threatens the stability of the state, which leads the government to object to many of their direct action tactics. However, ACT UP challenges the state in a very particular way. ACT UP questions the authority and viability of governmental AIDS policies and demands the inclusion of PLWAs into the decision making processes that inform the national AIDS strategy. ACT UP does not seek to undermine the legitimacy of the state, but to force a particular government that fails to respect the equality of citizens to be accountable to marginalized groups, thus calling for the state to display a greater degree of democratic legitimacy. Members of ACT UP push for a government that allows citizens to cooperate in the formulation of public policy instead of merely complying. Their goal is to see all citizens be able to initiate discussion[22] on the issues they deem important, and to have this dialogue unfold in a way that combats the "mobilization of bias" within a society that favours dominant values and political institutions that perpetuate the exercise of power over marginalized groups.[23]

ACT UP formed with the understanding that while "AIDS is a medical emergency . . . it is foremost a political crisis."[24] The political climate in the 1980s was largely unreceptive to arguments put forth by AIDS activists. Members of ACT UP declared AIDS a political crisis because institutional responses were hindered by a hands-

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[21] www.actupny.org/documents/Cddocuments/HistoryNV.html
[22] James Bohman. *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge, MA: MIT Press, 1996), 187.
[23] Peter Bachrach and Morton S. Baratz. "Two Faces of Power." 950.
[24] www.actupny.org/documents/start_chapter.html

off approach as officials cautioned themselves not to "offend the gays" or "inflame the homophobes."[25] There was a considerable gap between the public reasons of AIDS activists and the public reasons of the Reagan administration coupled with a lack of governmental policies that would protect against AIDS-related discrimination. Because there was not a shared sense of reasonableness, few deliberations occurred. In one attempt to deliberate, the US Public Health Service set up an Ad Hoc advisory committee on AIDS and met with concerned groups. However, the groups in attendance had their own agendas and were conscious of the implications that certain admissions or concessions could have on their organizations, whether in terms of public relations or federal funding. As a result, the meeting concluded without any agreed upon course of action or recommendations and the main issues went unaddressed.[26] ACT UP took to the streets, determined to change this.

ACT UP and interest group pluralism

Because AIDS activists ran into many obstacles in their attempts to initiate public policy and influence the official AIDS agenda, they engaged in dissent as the logical next step. Members of ACT UP conducted their direct actions armed with a battery of information. Combining facts and emotions, ACT UP drew attention to AIDS in order to communicate their reasons for bypassing the traditional interest group lobbying channels. One of the main obstacles ACT UP faced was convincing the government and the public that AIDS is a problem that affects all Americans and not just a selection of "at-risk" groups. As a step in combating the belief that AIDS is a gay disease, ACT UP challenged the Centre for Disease Control's (CDC) definition of AIDS. The CDC's definition did not include a list of opportunistic diseases common to women, and as a result the number of AIDS cases in women were significantly underrecorded, misrepresenting the extent to which AIDS was spreading throughout the "general population" and preventing HIV-positive women from receiving treatment. ACT UP launched its dissent because the CDC did not have the necessary data to show the causal link between female symptoms and HIV infection and moreover, this data could not be

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[25] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic*, 69.
[26] Shilts, *And the Band Played On: Politics, People and the AIDS Epidemic*, 220-223.

generated because "women of childbearing potential" -- most of the women who could participate -- were largely excluded from clinical trials.[27]

Changing the CDC's definition, however, was not a priority for the government or even for some members of ACT UP. In order to force attention on the issue, the women's caucus of ACT UP/NY staged legal protests (a mass display of dissent that doubled as an education campaign at Shea stadium) and an act of civil disobedience (a sit in at the National Institute of Allergy and Infectious Diseases). After ACT UP's protest, CDC changed the definition of AIDS to include opportunistic diseases common to women. Two things are particularly noteworthy in this achievement. Firstly, the failure of CDC to change the definition earlier on does not appear to be because they rejected the public reasons that members of the ACT UP caucus advanced, but from a tendency for CDC officials to temporize discussion on the epidemic until they were pressured to take action. Secondly, the fact that the women's caucus of ACT UP managed to change the definition of AIDS without having to conform to a particular view of group identity within ACT UP contradicts the insistence on the part of interest groups that they need to present a united front if they wish to maximize the effectiveness of their voice. Unlike interest groups, ACT UP does not approach internal conflict as competition. As the interaction of the women's caucus with the CDC shows, this move away from the competitive nature of interest group politics can empower marginalized groups, particularly those with multiple identities.

Not all of ACT UP's public reasons were as easy for others to recognize as ACT UP's grievances with the CDC. ACT UP is best known for its acts of civil disobedience, all of which members launched as a direct response to inaction and the failure of institutions to respect principles of reciprocity. One of ACT UP's major and long-running acts of civil disobedience is its grassroots needle-exchange program that ran in direct opposition to the government's public reasons surrounding the prohibition of drug use. As ACT UP launched the needle-exchange program, the Reagan administration was fighting a "war on drugs." The nation's discourse condemned drug abuse because it posed a grave threat to the public. The administration labelled

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[27] Steven Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley: University of California Press, 1996), 288.

"narcoterrorism" as "public enemy number one,"[28] and media focus centred upon drug-related violence instead of the root causes of drug abuse or the rehabilitation of addicts.[29] The Reagan administration reaffirmed the criminalization of drug use, which presented a problem for members of ACT UP. Because of the criminalization of drug use, the government would not implement effective HIV/AIDS preventative measures and education campaigns because to do so contradicted their stance on drug use as an illegal activity.

ACT UP rejected the administration's public reason on the grounds that, in precluding harm-reduction in the midst of an epidemic, governmental policy ran counter to "the good of the public."[30] Because the government refused to consider a harm-reduction approach to drug use, ACT UP used two strategies to combat the spread of AIDS in the intravenous drug-using population. The first consisted of a series of educational zaps, as members of ACT UP embarked on a poster campaign – pasted over subway posters in violation of city bylaws -- that gave step-by-step instructions on how to sterilize syringes.[31] The second approach involved "direct action public health and civil disobedience." Activists set up the first syringe-exchange programs in New York, taking clean syringes and sharps containers onto the streets. [32] After initial opposition and frequent arrests,[33] ACT UP's syringe exchange program led the New York City Health Department to implement the nation's first government-sponsored needle exchange program for drug addicts.[34]

The administration's position on the public benefits of discouraging drug use did not change, but the conflict between ACT UP and the administration was resolved along the lines of public reason. The administration ultimately balanced the values it thought to be reasonable with the public reasons offered by ACT UP. Although the administration maintained its opposition to drug use, mounting evidence of the threat to

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[28] Michael Schaller. *Reckoning With Reagan: America and it's President in the 1980's* (New York: Worth Publishers, Inc., 1993), 73.
[29] Schaller, *Reckoning With Reagan: America and it's President in the 1980's*, 87.
[30] Rawls, *Political Liberalism*, 93.
[31] Crimp, "How to have promiscuity in an epidemic." 265-267.
[32] Alan Greig and Sara Kershner. "Harm reduction in the USA: a movement toward social justice." In *From ACT UP to the WTO: Urban protest and community building in the era of globalization* Benjamin Shepard and Ronald Hayduk (eds.), (New York: Verso, 2002), 362.
[33] Altman, *Power and Community: Organizational and Cultural Responses to AIDS*, 56-57.
[34] Victor F. Zonana, "N.Y. Begins Giving Needles to Addicts in AIDS Battle." *Los Angeles Times*. (November 8, 1988) s. 1, p.1. http://www.aegis.com/news/lt/1988/LT881107.html

the public good that ensued from the continuation of intravenous drug injection with contaminated needles led them to understand that ACT UP was reasonable in calling for public health regulations that did, out of necessity, condone an illegal action.

By deliberately locating itself outside government-supported channels of interest group lobbying, ACT UP was successful in communicating the value of previously rejected public reasons. This is an important achievement in itself, yet equally important is the way that ACT UP pushed for changes in governmental policies. As deliberative democrats assert, procedural justice is an essential part of social justice. Although ACT UP's dissent and civil disobedience actions led to considerable success in preventing the closure of various organizations that offered support to PLWAs during a time of cutbacks in New York City, their successes frequently came at the expense of other groups that were unable to exert a similar amount of (public) pressure on governmental officials because they were mired within an environment of interest group politics.

Interest group politics often results in zero-sum results. This makes ACT UP's victories problematic from the standpoint of social justice. At the same time the New York city government met some of ACT UP's demands, youth centres and homeless shelters across the city closed down due to a lack of funding. Activists involved in multiple social movements noted this limitation and organized to pursue political coordination between marginalized groups that would go "past the dominant, but ineffective, coalition model of the time."[35] Lisa Daugard, a founder of the homeless society StreetWatch, and Esther Kaplan, a member of ACT UP, offered one response. Daugard and Kaplan organized the A25 project: a mass direct action held on April 25th, the day before Mayor Giuliani was scheduled to release the city's budget. The A25 project had two goals. The first was "to confront directly the disunity among New York City's activist communities," and the second to escalate the seriousness of resistance to the social cuts in New York.[36] The A25 action linked independent acts of civil disobedience while still allowing maximum autonomy for each of the organizations. Participants came up with a common press strategy "to guard against one 'hot' action drawing all the attention," and individual groups offered their story to the press only if

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[35] Esther Kaplan. "This city is ours." In *From ACT UP to the WTO: Urban protest and community building in the era of globalization*, 43.
[36] Kaplan, "This city is ours." 45.

they agreed to cover every site of protest.[37] The A25 action offers an alternative vision for coalitions that stands in contrast with the coalitions found in interest group politics. Instead of competing for positions within a coalition, participants in the A25 project managed to cooperate and communicate a series of different messages while presenting a united front (of sorts) to the New York City government.[38]

ACT UP and deliberative democracy

The deliberative democratic emphasis on impartiality works to the disadvantage of ACT UP and other marginalized groups. When deliberative democrats ask that deliberants frame dialogue in terms of what is common rather than what separates people, they limit the ability of marginalized groups to communicate their message properly because their effectiveness depends upon their ability to communicate their partial concerns. The majority to which ACT UP appeals may not share or understand ACT UP's pubic reasons, and the deliberative criterion of impartiality prevents marginalized groups from being able to convey that their reasons are not only good reasons, but that their partial way of communicating these reasons is an integral part of the claim itself.

For many marginalized groups, the fact that they are "different" is the cause of much of their marginalization. When deliberative groups ask marginalized groups to speak using the default status quo language, they make it difficult for groups to articulate their public reasons. This greatly diminishes the likelihood that the deliberative group will be able to recognize the public reasons of marginalized groups as normatively acceptable public reasons. This is problematic, even by deliberative democracy's standards. Deliberative democrats demand impartiality as the basis for legitimate reason-giving, but they also stress mutual accountability for policy formation rather than consent to predetermined policies. When deliberative democrats apply their definition of impartiality to the way they determine which arguments accord to the principle of accountability, they are much more likely to fail to recognize the validity of arguments made by differently-situated people. Because deliberative democracy requires that deliberants adhere to the standard of impartiality, deliberative groups are sometimes unable to facilitate the transformation of preferences.

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[37] Kaplan, "This city is ours." 45.
[38] Kaplan, "This city is ours." 44.

It makes little sense for deliberative democrats to emphasize collective decision making as a means to an inclusive democratic process if their collective is, in effect, little more than a reflection of the dominant views within a deliberative group. Deliberative democracy's normative criteria ask marginalized groups to participate "as if" they are situated differently: a requirement that is incompatible with ACT UP's agenda. Differently-situated groups are unable to participate effectively because they are often unable to establish that their arguments do, despite objections from deliberants, consist of acceptable public reasons. As a result, marginalized groups often find that it is necessary to protest outside deliberative groups in order to effectively communicate their public reasons.

ACT UP expresses its main acts of dissent in protests and activist art campaigns. Many of ACT UP's poster campaigns break laws because they often distribute posters without permission and without renting space. There is a lot of overlap between dissent and civil disobedience in relation to the use and "misuse" of space.[39] To get their message across, members of ACT UP throw flyers into the streets and cover newspaper vending machines, traffic lights and other empty spaces with their activist art. These actions – while they may, depending upon the location, violate bylaws – are relatively tame and the government is most likely to regard them as a public nuisance. Activist art that appears unpaid and without permission on privately owned buildings or that replaces (paid or government sanctioned) advertisements is likely to meet greater resistance.

ACT UP engages in a significant number of high-risk actions that include massive demonstrations in front of governmental buildings, mock graveyards, die-ins, sit-ins in busy locations and involve hanging banners from prominent locations and spray-painting messages on streets and sidewalks.[40] In the late 1980s, artist Richard Deagle created a series of AIDS education posters designed to replace subway and bus advertisements with AIDS messages. While authorities repeatedly removed the activist posters, they had the advantage of blending in with the other advertisements, thus

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[39] Lesley J. Wood and Kelly Moore "Target practice: community activism in a global era." In *From ACT UP to the WTO: Urban protest and community building in the era of globalization*, 28.

[40] For other "high-risk actions" in ACT UP's guide to civil disobedience, see www.actupny.org/documents/DA.html

reaching a captive audience and eluding immediate discovery by subway personnel.[41] This type of guerrilla activist art is not only used to convey a set of messages that the government does not support, but also to challenge the ability of the government to conduct its business because the posters interfere with paid advertisements in public spaces. The strategic benefits of civil disobedience are very important to ACT UP, both in ACT UP's ability to pressure the government and in its ability to reach a large audience in an effective way. Members of ACT UP draw the attention of the government and the public to their exclusion from deliberative groups when they break the law in these highly visible ways. The aim of this attention is to contest the legitimacy of governmental policies and to force a re-evaluation of the public reasons that a deliberative group deems acceptable.

While civil disobedience helps to amplify the voices of members of ACT UP, the risks involved are potentially alienating to some members and to potential supporters. Non-citizens, people with outstanding warrants, and people who may want to apply for jobs involving the government, security, or child care face additional consequences if they are charged for acts of civil disobedience. A deliberative democratic theory that aims to incorporate political protest into its framework must acknowledge the risks that political protesters face. This is especially important because the reason for incorporating political protest into deliberative theory is to satisfy the criteria of inclusive political communication, which it clearly cannot satisfy if the risks that political protest involve are so great that they constitute another stage of effective exclusion from the deliberative process.

ACT UP acknowledges the risks involved with political protest[42] and arranges its actions with them in mind. Smaller affinity groups within ACT UP often plan "mini-actions" that involve acts of civil disobedience and which take place at the same time as larger, officially-sanctioned, protests.[43] ACT UP's protest at City Hall in New York City on March 28, 1989 included a legal picket and isolated acts of civil disobedience. The

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[41]Tedd Gott, "Where the Streets Have New Aims: The Poster in the Age of AIDS." In Allan Klusacek and Ken Morrison (eds.), *A Leap in the Dark: AIDS, ART and Contemporary Cultures* (Montreal: Vehicule Press, 1992), 194.

[42] "Civil disobedience and who should avoid it."
http://www.actupny.org/documents/deemomanual/planningdemo.html

[43] Jim Eigo, "This city as a body politic/ the city as a body unto itself." In *From A CT UP to the WTO: Urban protest and community building in the era of globalization*, 180.

event drew 5000 people[44] and 200 of those were arrested.[45] Because ACT UP offered a safe environment, it was able to encourage public participation and support, while the separate space for acts of civil disobedience allowed ACT UP to communicate strictly on its own terms. The ability to divide acts of dissent from acts of civil disobedience is central to ACT UP's efficacy as a protest group because it helps members to negotiate the fine line between inviting public involvement in a safe environment and avoiding cooptation by preserving a space where the terms of communication are not imposed on them by people who failed to understand the partiality of their concerns.

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Political approaches that do not offer ways to deal with legitimate political protest fail the test of democratic legitimacy because they ignore the link between marginalized groups and protest groups. An approach must address political protest because the way that marginalized groups interact with a coalition or the state in interest group pluralism or with a deliberative group changes when members of the marginalized group form a protest group and challenge the political system. Because interest group pluralism and deliberative democracy cannot guarantee the effective inclusion of marginalized groups within the approach, these approaches must have a mechanism to deal with political protest if they are serious about including all marginalized groups that have normatively acceptable public reasons.

As the protest actions of ACT UP show, political protest can redress effective exclusions in models of interest group pluralism and deliberative democracy. ACT UP saw a void in interest group pluralist and deliberative democratic practices. By ACTing UP, this protest group succeeded in remedying many of the policy gaps in these two approaches. Filling the policy gaps in this way, ACT UP was able to improve the treatment of marginalized groups in the political approach.

Although the criteria of interest group pluralism and deliberative democracy explain the incorporation of some of ACT UP's public reasons into their policy-making processes, both approaches are unable to treat all members of marginalized groups as equals. It is necessary for an approach to include a mechanism to deal with political protest because political protest groups often consist of marginalized groups. However,

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[44] Douglas Crimp and Adam Rolston, *AIDS Demographics* (Seattle: Bay Press: 1990), 94.
[45] Crimp and Rolston, *AIDS Demographics*, 98.

the fact that an approach can address some instances of political protest does not solve the problem of the effective inclusion of marginalized groups. Members of marginalized groups must be able to speak as differently situated people from within an approach and have that approach treat them as equals. As I show in chapter 1, neither interest group pluralism nor deliberative democracy can meet this criterion.

I look at the ways that interest group pluralism and deliberative democracy deal with the protest group ACT UP because the successes of ACT UP show that marginalized groups can offer public reasons from outside a political approach. While the fact that protest groups are capable of doing this strengthens the position of marginalized groups insofar as they form political protest groups, it does not redress the failure of interest group pluralism or deliberative democracy to deal with marginalized groups because it does not change the way that these two approaches define what counts as an acceptable public reason or the modes of speaking that the approach deems acceptable.

As I show in chapter 1, communicative democracy does a better job of incorporating a wider range of acceptable public reasons into deliberations. As I will show in the next chapter, however, it too is susceptible to similar oversights that ultimately result in the deliberative exclusion of marginalized groups who do, by normative democratic standards, offer acceptable public reasons. If communicative democracy can find a way to bridge the gap between deliberators and political protesters, then, because it does not run into the same problems as the other approaches insofar as it defines what is reasonable and which ways of speaking are reasonable, it will be able to incorporate marginalized groups into the approach and satisfy the criteria of inclusive political communication. The challenge for theories of deliberative democracy, is to see if some of communicative democracy's improvements on deliberative democracy can result in normative democratic theory that incorporates legitimate forms of political protest. I take up this challenge in chapter 3.

Chapter 3
Communicative Democracy, Difference, and Dissent

In the previous chapter, I look at ACT UP as an example of a type of marginalized group that forms a protest group. I argue that in order for an approach to meet the normative criteria of inclusive political communication, it must discuss political protest and incorporate it into the theory. Protest groups can communicate previously rejected public reasons to people within the policy making body of a particular approach in a way that convinces them of their legitimacy as public reasons. Despite the democratic legitimacy that interest group pluralism and deliberative democracy gain from incorporating the public reasons of dissenting groups into public policy discussions, neither approach can deal with the problems that marginalized groups pose because their recognition of political protest does not change the approaches' inadequate explanation of what constitutes an acceptable public reason or the acceptable ways that people can deliberate.

In this chapter, I turn my attention to communicative democracy in order to examine the way that this approach deals with marginalized groups and with political protest; I ask if through some combination of the two, communicative democracy is able to adequately address the concerns of all marginalized groups. Ideally, legitimate dissent should not exist in a polity that adheres to communicative democracy. All people should be able to initiate discussion within a deliberative group in a timely manner and participate as equals; this should lead to just policy outcomes that all people – even those who disagree with the outcome – can accept because the deliberative group takes all public reasons into account. If these conditions are in place there is no need for communicative democratic theory to figure out how deliberative groups should handle political protest in order to ensure the theory is consistent with the normative criteria of inclusive political communication. This "ideal type" of communicative democracy allows that *illegitimate* forms of political protest may exist. However, these illegitimate forms of protest pose a different problem because, unlike legitimate dissent, illegitimate dissent is not justified according to the normative democratic principles that guide

communicative democracy and therefore its exclusion does not challenge communicative democratic criteria.[1]

A "perfect" system of communicative democracy, however, appears an unlikely achievement. Moreover, even if we can realize a "perfect" or close-to-perfect ideal, this would happen only after a long struggle through imperfect communicative democratic groups. Political protest will occur in the transition to communicative democracy. Some marginalized groups will then be left with the choice of either deliberating at a disadvantage within this work-in-progress communicative democratic polity, or with leaving a deliberative group in order to voice their concerns in a way that holds true to their ideals. Democratic legitimacy requires that communicative democratic theories ensure that members of marginalized groups can speak effectively within deliberative processes. Policies and processes cannot marginalize groups, either inside or outside deliberative groups, and claim democratic legitimacy. Legitimate political protest will occur. This protest will involve marginalized groups, but communicative democracy does not discuss it nor does it have a way to deal with it. Unless communicative democratic polities can formulate a viable way to manage legitimate political protest, they will not be able to treat members of marginalized groups as equals and will fail to meet normative democratic criteria.

Communicative democracy and marginalized groups

As I discuss in chapter 1, the theory of communicative democracy makes two revisions to he theory of deliberative democracy. These revisions draw attention to the implicit ways that "traditional" accounts of reason and reason-giving reinforce very particular and exclusionary ways of perceiving society. The first revision – utilising difference as a resource – works to counter the exclusionary interpretations of reciprocity, publicity and accountability. The second revision -- an expanded conception of democratic communication that includes greeting, rhetoric and narrative – offers a concrete way that communicative democrats can realise the first revision because it helps to change current exclusionary standards of what is "acceptable" in deliberations.

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[1] This does not mean that communicative democracy should not outline a way that to deal with illegitimate dissent: forms of illegitimate protest are unlikely to disappear, and communicative democrats will have to legislate on the ways they will deal with acts of illegitimate protest, particularly if they cause harm for others. However, it is beyond the scope of this paper to outline the ways that communicative democrats should handle acts of illegitimate dissent.

Communicative democracy makes the different ways that differently-situated groups communicate an accepted part of deliberations and, in doing so, directs deliberative attention to the content of the public reasons of marginalized groups. Whereas deliberative democracy often overlooks the reasons of marginalized groups because the ways marginalized groups communicate them are "unacceptable," the revisions communicative democrats make enable deliberative groups to treat members of marginalized groups as equals. The proviso to this, however, is that members of the deliberative group will then be able to recognize the public reasons that marginalized groups offer; communicative democracy, however, cannot guarantee this. The push to use difference as a resource and to recognize the legitimacy of a wider range of discourses makes it more likely that members of marginalized groups will be able to participate effectively within deliberative groups. It cannot, however, ensure that marginalized groups will always be able to communicate as equals and convince deliberants that they have acceptable public reasons.

Communicative democrats expand the range of acceptable communication in an attempt to examine the reasons that marginalized groups offer more thoroughly and to make it more likely that deliberants will be able to identify and exchange public reasons. In order to facilitate this more inclusive environment for a better exchange of public reasons, communicative democrats advocate the use of greeting, rhetoric and narrative. Because greeting recognizes subjectivity,[2] it prepares deliberants to expect a wider range of public reasons and premises, all of which are worthy of deliberative consideration. The incorporation of difference makes it less likely that deliberants will automatically reject certain public reasons and premises just because they are different. Rhetoric builds upon this attention to difference. An examination of rhetoric draws attention to the values that are implicit in the dominant discourse. The way that communicative democrats approach rhetoric draws attention to the fact that all ways of speaking are partial[3]; this better equips deliberants to look for the merit of people's public reasons instead of criticizing arguments on the basis of the way people try to communicate their reasons. Narrative allows differently-situated people to exchange reasons and to reach an understanding when they have different (but not necessarily conflicting) premises.

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[2] Young, *Inclusion and Democracy*, 53, 57-62.
[3] Young, *Inclusion and Democracy*, 53, 63-69.

Narrative and storytelling facilitate a shared set of understandings.[4] If a deliberative group pre-emptively dismisses the modes of communication that are typically associated with differently-situated people as inappropriate and "illegitimate," then deliberative groups implicitly and unfairly dismiss the claims of marginalized groups without subjecting them to a full and equal deliberative debate.

Greeting, rhetoric and narrative help marginalized groups put the issues that are important to them on the deliberative agenda. The expanded range of acceptable communication found in communicative democracy offers members of marginalized groups tools to communicate in ways that make it more likely that other deliberants will recognize their public reasons. The amendments that communicative democracy makes to deliberative democracy clearly benefit marginalized groups and strengthen the democratic content of deliberations. Communicative democrats, however, fail to take full advantage of the revisions they make. The acceptable types of communication that communicative democrats embrace can, if we adapt communicative democratic theory, help marginalized groups that are outside a deliberative group to speak more effectively. However, communicative democrats fail to seize this opportunity because they do not concede that political protesters can meet the democratic criteria that guide communicative democracy. Consequently, the revisions that communicative democracy makes, it cannot fully deal with the problem of marginalized groups.

Communicative democrats have so far failed to see further beneficial uses for the type of inclusive political communication they advocate. Greeting, rhetoric and narrative enable communicative democracy to use difference as a resource, and help it to be more inclusive than deliberative democracy. Despite these improvements, communicative democratic practices are not fully inclusive. Ideal situations do not exist, and communicative democratic theory cannot guarantee that deliberative groups will be able to treat all people as equals. To make this flaw worse, communicative democracy does not discuss dissent nor include a mechanism to deal with the types of legitimate political protest that occur when marginalized groups leave deliberations because deliberative groups fail to treat them as equals. Marginalized groups that challenge deliberators from outside a deliberative group are differently-situated. In this chapter, I argue that communicative democracy must find a way to treat this type of difference in a similar

[4] Young, *Inclusion and Democracy*, 53, 70-77.

way as they approach the differently-situated groups who, prior to communicative democratic revisions, could not communicate effectively in deliberative democracy.

Dissent and marginalized groups

Difference and political protest are both, in principle, acceptable and desirable from a normative democratic standpoint. Members of marginalized groups engage in dissent to highlight social injustice. If a deliberative group does not allow for political protest it cannot claim to be fully inclusive or sufficiently democratic. If communicative democracy does not make any provisions for political protest and does not distinguish between legitimate and illegitimate forms, then it allows for a polity in which marginalized groups can be fully excluded even if they hold public reasons that are acceptable from a normative democratic standpoint. Legitimate political protest is important because it promotes inclusive political communication and has the potential to strengthen communicative democratic processes. Because of its normative democratic merit, dissent that aims to restore "the conditions of direct communication in order to make mutual understanding in public dialogue once again"[5] should be part of the deliberative polity. If dissenters voice their claims according to the normative criteria that underlie communicative democratic theory, then the theory should account for dissent as a form of difference and treat it in the same way as a deliberative group treats differently-situated deliberants.

Difference does a great deal of the work in communicative democracy. The amendments that communicative democracy makes to deliberative democracy recognize that partiality is a necessary prerequisite for any theory that wishes to treat all people as equals. All groups have partial interests and groups are differently-situated because of them. Members of a group possess a particular set of characteristics and preferences that, while they may vary from person to person within that group, work to define the group as a whole. Some of these partial interests are self interests and do not address the public good, but the partial interests that I am concerned with are fundamental interests that are central to the identity of people as members of groups. These partial interests merit protection in deliberations because they are fundamental interests and constitutive of the group's identity. If deliberative groups ask members of differently-situated groups to put their partial interests aside, they can lock differently-situated people "into the very

[5] Bohman, *Public Deliberation: Pluralism, Complexity and Democracy*, 205.

structures they are trying to dislodge."[6] This is particularly true for members of marginalized groups because their partial interests are even further removed from the interests of the dominant group and thus more likely to be dismissed as insignificant or irrelevant in deliberations. Many of the problems that marginalized groups face follow from the trouble that marginalized people have in trying to communicate that their partial interests are fundamental interests and are compatible with, and necessary in order to protect, the public good. It is precisely because of the problems that marginalized people encounter when they try to deliberate as members of a marginalized group (and thus using public reasons rooted in partial interests) that some marginalized people leave deliberations. This is why the recognition of difference is so important.

If communicative democrats treat dissent as a form of difference they can offer extra protection to the (non-self-interested) partial interests that are associated with marginalized groups. Communicative democracy is then better equipped to treat all people as equals. Exploring, not constricting, dissent by treating dissent as a form of difference will strengthen the public reasons offered by dissenters. Dissenters will "anticipate some of the weaknesses and pitfalls that attend any particular perspective"[7] because they are accountable for their ideas and actions in a larger deliberative polity. Dissenters will be more effective because in order for them to take into account the impact that particular protest actions will have upon others, they will need to pay greater attention to the political climate before and after a particular action. This will force protesters to see their actions as one stage in a dialogue as opposed to a series of isolated events, which will, in turn, push deliberative groups to address the public reasons of these marginalized groups.

Communicative democrats should include dissent in the deliberative process on the same terms as they include difference. Communicative democratic processes are legitimate only if they incorporate difference as difference – that is, communicative democracy can only adhere to its stated goal of treating all people as equals if it allows differently-situated people to speak as differently situated people. When marginalized groups are unable to exercise an effective voice within deliberative bodies, pursuing a deliberative dialogue as dissenters in a larger societal context allows the excluded issues

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[6] Phillips, *The Politics of Presence*, 147.
[7] Williams, "The Uneasy Alliance of Group Representation and Deliberative Democracy," 132.

to unfold in a way that explores their premises and reasons. It is important that the deliberative polity respect dissent because, historically, a great deal of positive social change and recognition of difference made its way into the institutional fabric of the state after going through a period of "illegitimate" and, often illegal, protest. The same normative principle that requires communicative democracy to hear the voices of all differently-situated people (and thus respect difference) provides the impetus to incorporate dissent into its framework. Communicative democracy should evaluate the claims of dissenters according to the same principles that guide the evaluation of the claims differently-situated people make.

Approaching dissent as a form of difference is, I think, the best (legitimate) way to ensure that people listen to the reasons of differently situated individuals. A dissent as difference approach to democratic theory is designed to discourage understandings (and actions) of dissenters as "interest groups," a term that frames protest as selfish and is often narrow in scope. Instead, an emphasis on the normative claims of dissenters coupled with a new institutional response that encourages those effecting and affected by dissent to deliberate should displace many of the negative connotations that surround dissenters. Insofar as social justice is concerned, time is important. Greater steps toward social justice should not and do not have to wait for an as-yet-unrealized communicative ideal. Approaching dissent as a form of difference is about doing as much as possible to engage democracy fully and legitimately *now*.

Dissent is often celebrated in theory, yet reluctantly accepted in practice. Protesters, particularly those who stray beyond the confines of relatively quiet and orderly marches, often find themselves defending their actions, but oddly not so much on the grounds of the issues they advocate, but because of the way they choose to communicate their concerns. I say oddly because I assume as given that dissenters must justify themselves: they must explain their issues, ensure their reasons are just, and their actions responsible. A great deal of contemporary protest is under-productive because it has difficulty changing social conditions and makes little progress reaching the hearts and minds of other citizens. Dissenters will not stop protesting, nor should the aim of democratic societies be to discourage this. Protesters provide critical opposition and push for stronger public reasons. Unfortunately, what could be a very constructive force – one that pushes governments to strengthen their public reasons – is often lost because

when people discuss dissent in contemporary society they tend to discuss the tactics and "demands" of protesters and do not engage with their public reasons. Dissent has a lot of deliberative potential and a theory that aims to meet normative democratic criteria must acknowledge this.

As a normative theory, communicative democracy is unable to change the unsatisfactory way the polity deals with dissent. Communicative democracy makes important changes to deliberative democracy because it uses difference as a resource and does so in a way that strengthens the legitimacy of democratic practices. Differently-situated people offer their public reasons and the rest of the deliberative group must then re-evaluate their reasons in light of them. If these new reasons reveal flaws in the accepted public reasons of the deliberative group or in current or proposed policies, then the deliberative group must re-evaluate their policy decisions with this new information in mind. An exchange of reasons that results in the transformation of preferences reflects well on the ability of a deliberative group to treat all people as equals. Difference does a great deal of work in deliberative groups because it allows for an exchange of public reasons on fair and inclusive terms. Communicative democracy's recognition of difference works to protect marginalized groups but the protection only extends to the marginalized groups within deliberative groups. Communicative democracy should utilize difference as a resource even when the difference in question occurs in dissenting actions in order to avoid the inadequate way that contemporary political approaches deal with dissent.

In order to meet normative democratic criteria, we should evaluate dissent on the basis of two criteria: on the content of the issue at stake and upon the actions dissenters take to communicate their public reasons. In this respect, the difference within the dissent-as-difference approach is very much like the difference within deliberative groups because respect for normative democratic principles guides the deliberative response to both forms of difference. Normative evaluation of any difference claim should rest upon the ability to meet these two criteria. The fact that a deliberative group discusses a public reason (as opposed to a protest group advocating one) should not colour the merit of the public reason. Communicative democrats must measure public reason in a way that satisfies normative democratic criteria; a set of normative democratic principles govern communicative democracy precisely so deliberative groups cannot exclude

members of marginalized groups that meet normative democratic criteria. It is these principles, rather than the specific time and space where people exchange public reasons (traditionally within a deliberative group) that makes the exchange of public reason legitimate.

If the public reasons protesters advance outside a deliberative body satisfy the same normative criteria, then a deliberative group cannot legitimately deny a voice or an audience to these dissenters. This means that communicative democrats should neither immediately dismiss political protest from the deliberative polity nor immediately incorporate it. Instead, communicative democratic theory should evaluate political protest in terms of the democratic criteria that guide deliberative democratic processes. I offer recommendations that are both theoretically and practically helpful to communicative democrats when I discuss the dissent-as-difference response to political protest.

Communicative democracy and political protest: dissent in deliberative literature

There is very little discussion of political protest in communicative democratic literature because the theory is supposed to eliminate the need for marginalized groups to protest outside the deliberative group. While communicative democratic literature rarely addresses political protest directly, it frequently makes reference to a lot of the tactics and actions associated with dissent; however, it does so without acknowledging that the tactics are often the ones that political protesters use. The amendments that communicative democracy makes to deliberative democracy draw inspiration from consciousness-raising, private and civic associations, art, music, theatre, and non-profit services and associations.[8] These activities and associations generally offer avenues for fairly tame protest against governmental actions or inaction, but nonetheless they communicate dissent with the system of government. The success of these activities helps to justify the communicative democratic call to treat difference as a resource and to expand the deliberative conception of democratic communication. These non-deliberative actions inspire deliberative processes. However, because political protest occurs outside the deliberative group, communicative democracy automatically dismisses it even though it can enrich deliberations. Protest actions have considerable overlap with

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[8] Young, *Inclusion and Democracy*, 164-167.

the types of communication that communicative democracy finds acceptable due to the theory's acceptance of greeting, rhetoric and narrative.

In "Activist Challenges to Deliberative Democracy" (2001), Young constructs a dialogue between a deliberative democrat and an activist in order to accomplish two things: to highlight limitations of some of the interpretations of deliberative democratic norms, and to draw attention to some of the neglected democratic benefits of non-deliberative practices.[9] Young classifies activism as a non-deliberative practice because activist tactics, according to deliberative democrats, "confront rather than engage in discussion."[10] As Young notes, activism often comes under attack because deliberative democrats equate activist challenges with the type of interest-based politics that the deliberative democrats replace with deliberative processes. According to deliberative democrats, activist tactics further selfish interests with little regard to the rest of society; Activist tactics differ from deliberative democrat tactics in their willingness to listen and their drive to "defeat their opponents" because they feel "no obligation to discuss issues with those with whom interests conflict to come to an agreement they can all accept."[11]

It makes sense for Young to classify activism as a non-deliberative practice. Most protest is not deliberative and does confront institutions, nor do deliberative democracy or communicative democracy discuss political protest. However, neither category of deliberative group or activist/interest group works neatly. There is no clear and absolute correspondence that sees "deliberative" restricted to deliberative democrats or "interest group" refer only to activists. Young's classification neglects the possibility that certain activist challenges could meet the criteria of deliberative democracy, though obviously notwithstanding the decision to operate within the deliberative group. Similarly, it is possible to conceive of deliberants who, at times, assume typical activist characteristics and make demands they do not base upon acceptable public reasons. This problematizes a neat separation between activists and deliberative democrats.

Young concedes that deliberative democrats and activists are more likely to differ significantly over the *content* of negations, and are usually "rather close" conceptualizing how a just *process* of deliberation should unfold. Young acknowledges that deliberative democrats and political protesters are (often) both concerned with social justice and with

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[9] Young, *Inclusion and Democracy*, 670.
[10] Young, *Inclusion and Democracy*, 670.
[11] Young, *Inclusion and Democracy*, 674.

treating people as equals. Young, however, does not pursue the potential for reconciliation between deliberative democracy and political protest and concludes that deliberation and activism "cannot usually occur together."[12]

Communicative democratic theory appears incompatible with political protest in two ways. First, because deliberative theory must exclude people who do not adhere to deliberative criteria, deliberative democrats imply that the exclusion of protesters is just. I contend that this criticism fails because legitimate protest does meet deliberative criteria. Illegitimate protesters do not treat people as equals or uphold basic rights and freedoms; consequently, this type of protest cannot fit within the theory of communicative democracy because the deliberative group must exclude all people who violate normative democratic criteria. Communicative democracy does not require that deliberants take any form of political protest into account. The silence in communicative democratic theory automatically and unfairly conflates legitimate and illegitimate forms of protest. Second, and relatedly, communicative democracy does not incorporate political protest because the theory's criteria imply that dissenters stand in the way of just policy making even when they are outside the deliberative group because they interrupt deliberative procedures.

Because communicative democratic theory does not discuss political protest, it does not take any steps to improve the inadequate way that society deals with dissent. Typically, dissenters protest outside – and in opposition to – deliberative meetings. Because their intent is to interrupt deliberations, dissenters incur the anger of deliberants and prevent them from making what they believe to be just policies. This is a strategic goal on the part of dissenters because the interruption offers a way to communicate the injustice of the deliberative proceedings to the rest of society. The interruption draws attention to deliberations that unfold on the basis of premises that dissenters disagree with. By interrupting, dissenters send the message that the basis for deliberative talks is illegitimate and that, due to their effective exclusion, any resulting policies cannot hold moral force.

Despite the moral reasoning behind dissenters' refusal to endorse (through their participation or silence) objectionable deliberative discussions, society often dismisses dissenters as counterproductive. Not only do dissenters criticize existing policies, but

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[12] Young, *Inclusion and Democracy*, 689.

they rarely recommend new (specific) policies – or if they do society generally dismisses them as "unworkable."[13] Society criticizes dissenters on the grounds that they hinder deliberative progress and contribute little, if anything, of constructive value. While there are problems in the way that many dissenters protest, many of these problems are due in large part to the institutional environment that protesters are in. Despite the normative implications of communicative democratic theory, communicative democracy and political protest are not fundamentally incompatible.

I refute the first way that communicative democracy appears incompatible with political protest because communicative democracy can misidentify arguments that meet normative democratic criteria and confuse them with illegitimate protest. I refute the second apparent tension because criticisms that automatically assume that dissenters cannot contribute to just policy formation unfairly characterize dissent as disruptive in a purely negative sense. Critics look at the ways that most dissenters protest in contemporary society and because they look at dissent this way they fail to see the ways that dissenters can protest under the right circumstances. Communicative democracy and political protest do not lie in tension; in fact, they draw from the same normative democratic criteria. Communicative democracy needs to strengthen these ties, not sever them in a misguided attempt to preserve deliberative purity.

Dissent as difference: can political protest meet deliberative standards?

As Young discusses the tension between deliberative democracy and political protest, she outlines a set of normative ideals that underlie communicative democracy. The criteria that Young sets out are meant to ensure the legitimacy of deliberative democratic processes and require that deliberants do the following six things: propose solutions to their problems and offer reasons for them; appeal to justice and frame their reasons in terms others ought to accept; criticize other proposals and remain open to criticism; show concern for the interests of others and be open to their point of view; bracket the influence of unequal power; and bring all potentially affected people together to make decisions.[14] These criteria, taken together, go a long way to meet normative democratic criteria. Unlike Young, however, I argue the criteria do not have to be met exclusively in a deliberative group in order to fulfil normative democratic ideals. While

[13] Recommendations for Aboriginal self-government in sovereign territories are dismissed as an unviable solution.

[14] Young, "Activist Challenges to Deliberative Democracy," 672.

the procedural aspect of communicative democracy is important insofar as it includes all affected groups and better equips the theory to meet democratic ideals, the criteria are important not because they structure democratic processes in a particular way (i.e. because they establish deliberative groups), but because the normative ideals are valuable in and of themselves.

The criteria that Young sets out emphasize the importance of public reason, which has as its subject "the good of the public and matters of fundamental justice."[15] Public reasons are a central part of communicative democracy. Because they provide justification for deliberant's arguments, public reasons make dialogue accessible so that all people will have the opportunity to deliberate effectively. The exchange of public reason is legitimate only when deliberants are situated "as free and equal, and not as dominated or manipulated, or under the pressure of an inferior political or social position."[16] This poses a problem for theories of deliberative democracy because not all deliberants are able to participate from an equal social position. As a result of this difficulty, some marginalized groups leave the deliberative process and protest their effective exclusion through acts of dissent. Communicative democrats should not be able to use the difficulties that marginalized groups face in communicating their acceptable public reasons as a reason to justify their exclusion from deliberative processes. Communicative democracy makes many advances toward fulfilling normative democratic criteria and, through its willingness to treat difference as a resource, strengthens the quality of public reasons. However, deliberative groups are not always able to recognize public reasons. Because of this, deliberative groups have a democratic obligation to take the criticisms of political protesters seriously.

The desire to treat all people as equals offers a clear link between communicative democracy and legitimate political protest. Communicative democracy, as it struggles to better meet the requirements of public reason, should expand its conception of the public. Deliberative groups can still demand that people meet deliberative criteria, but should not dismiss the fact that protesters still form part of the public, nor should they dismiss the possibility that protesters may have public reasons that, although the deliberative group rejects them, may be acceptable according to normative democratic

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[15] Rawls, *Political Liberalism*, 93.
[16] Rawls, *Political Liberalism*, 132.

criteria. Dissent, when we view it as a form of difference, is a legitimate and necessary part of deliberative democratic politics as long as the dissent in question upholds these normative ideals.

Legitimate political protest can meet the criteria on Young's list. The protest group ACT UP, like communicative democracy, uses difference as a resource and offers an expanded conception of democratic communication. ACT UP uses greeting, rhetoric and narrative in their political protest actions because they enable the group to communicate more effectively. Members of ACT UP are able to target their campaigns to specific audiences with tailored languages that enable them to express their partial concerns in effective ways. The effectiveness of greeting, rhetoric and narrative in ACT UP's protest hints at other possibilities that lie in communicative democracy's expansion of acceptable deliberative communication. As I go through the normative criteria of communicative democracy, I find that the protest actions of ACT UP meet the requirements. Dissent can meet the normative criteria because it fits into the deliberative framework in much the same way as difference. Consequently, communicative democrats must treat dissent as a form of difference if they wish to uphold normative democratic criteria.

The normative criteria of communicative democracy

i) Deliberants must propose solutions to their problems and offer reasons for them

It is important that deliberators take constructive steps to redress the problems they identify. This is why the first deliberative criterion asks deliberators to propose solutions to their problems. Deliberants must support these solutions with public reasons so the deliberative group can make sure that the solutions are just. It is important that members of a group that identifies problems offer solutions because they are best able to explain the particular injustices they face. The familiarity of marginalized groups with the issue(s) makes them best suited to propose solutions because they can foresee consequences that people who do not share their experiences may not be able to. It is important to the communicative democratic process that differently-situated groups assume this role and propose solutions to the problems that affect them. Differently-situated people need to be able to participate as equals, and proposing solutions is a good way to avoid the problems that occur when the deliberative majority speaks for a marginalized group.

It is equally important that political protesters meet this criterion. Many people in contemporary society assume a negative view of dissent and believe that today's political protest actions contribute little to society. Currently, dissenters spend a great deal of their time and energy trying to communicate injustices; consequently, they often have little impact upon policy formation. It is fair to critique dissenters and question their effectiveness on these grounds. Undoubtedly, dissent would be more effective if protestors went to greater lengths to propose workable solutions and offer clear public reasons for them. Despite the difficulties political protestors face because they communicate from outside a deliberative group, they can (and do) offer solutions and public reasons for the problems they identify.

The American Foundation for AIDS Research (Am FAR) launched *On the Road* in 1989; in this art installation, contributors offered recommendations as to how governments and citizens could combat the epidemic and its accompanying discrimination. Just as importantly, AIDS activists made these recommendations in a way that critiqued official responses and citizens' reactions while remaining open to public debate. *On the Road* raised awareness on two levels. The public nature of the posters and billboards spoke directly to citizens and served as a way to encourage people to change attitudes and practices – an appeal that was particularly important in the face of the government's reluctance to address "controversial" issues of sex and homophobia in a direct and effective way. Simultaneously, the public presence of the artwork intentionally provoked a response from those in power. Gran Fury, the unofficial art branch of ACT UP, contributed the piece *Kissing Doesn't Kill: Greed and Indifference Do.* The instalment consisted of photographs of three couples: one heterosexual, one gay, one lesbian and all interracial. Gran Fury intended the piece "as a comment on prejudice and government inaction in New York City." [17] The *Kissing Doesn't Kill* instalment received media coverage across the country and provoked a debate in the Illinois State Senate over the representation of gays and lesbians,[18] thus successfully raising the profile of AIDS and AIDS-related issues in the government at a time when lobbying attempts were slow and often overlooked. *On the Road* provided a critical voice through the use of public art and challenged the reasons and motives of those in power. In this respect, *On*

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[17] Grover, "Public Art on AIDS: On the Road with Art Against AIDS," 62.
[18] www.actupny.org/indexfolder/granfury.html

the Road's instalment critiqued the public reasons that dominated deliberations on AIDS and was able to carry on a dialogue with the state.

This criterion, however, misses an important part of political protest. Many protestors disrupt normal governmental activities to raise awareness as a necessary first step in solving a greater problem.[19] These disruptions alert people to their effective exclusion and call for a more inclusive discourse. Communicative democrats should not dismiss this type of consciousness-raising: the observation that something is wrong does not necessarily lead people to propose solutions, but it is an important contribution. If dissenters offer public reasons when they discuss the problems they identify, then they should meet this first communicative democratic criterion. The spirit of this criterion is to engage the deliberative group in a discussion based upon public reasons. This criterion asks the groups that a particular problem affects to play an active part in its solution and dissenters do this when they identify problems. The solution to a particular problem will come later, and it should involve the particular marginalized group – whether this group is within the deliberative group or participating as a protest group. Communicative democratic criteria should not exclude marginalized groups because they do not know how to solve a particular problem. Communicative democrats should amend this criterion to recognize the democratic importance of consciousness-raising as a necessary step to meeting the spirit of this criterion.

The ability for people to initiate dialogue is of great importance to deliberative theories and we must take it into account when we evaluate the criterion that asks deliberants to propose solutions and offer reasons. If the range of people who propose solutions and offer reasons does not cover all groups that are affected by a particular law or policy, then the deliberative process cannot claim to be inclusive. Part of what it means to propose solutions is the ability to identify problems that require solutions. This makes agenda setting an important consideration when we evaluate the legitimacy of deliberative procedures. Marginalized groups are more likely to face problems when they try to set the deliberative agenda. This is problematic because if particular groups

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[19] "One of the activist's goals is to make us *wonder* about what we are doing, to rupture a stream of thought, rather than to weave an argument." See Young, "Activist Challenges to Deliberative Democracy," 687.

consistently fail to set part of the deliberative agenda, then the power structure of the deliberative group is unfair and the process cannot claim legitimacy.[20]

Political protesters play an important role when they pressure deliberative groups to put certain issues on the agenda. Many AIDS activists lobby through acceptable political channels and insist that officials talk about AIDS in ways that are consistent with social justice. When this lobby activity failed to impact the political agenda in the 1980s, members of ACT UP launched protest actions. Because ACT UP's protest commanded widespread attention, they were able to pressure the government and private corporations to take action and were much more successful in affecting the course of public policy. ACT UP drew attention to areas of inaction and discrimination. ACT UP's acts of dissent and civil disobedience pushed the Food and Drug Administration to release experimental drugs to PLWAs; developed (and subsequently defended) a condom distribution plan for use in New York City schools; implemented a program distributing clean needles which then led the New York City Health Department to implement the nation's first government-sponsored needle exchange program for drug addicts[21]; forced the Center for Disease Control to expand the definition of AIDS to include opportunistic infections common to women; pushed pharmaceutical companies to lower prices on medications [22]; and staged a protest that led Northwest Orient Airlines to reverse their policy of refusing passage to PLWAs.[23] If part of what makes deliberative democrats effective is their ability to advocate processes and action that allow policies to be successfully implemented in the current (imperfect) democratic context,[24] then we must recognize dissenters such as ACT UP for their constructive efforts.

The fact that dissenters make few proposals at the moment is indicative of a flaw in the larger political system that frames dissent as oppositional instead of constructive. If protesters identify problems but lack solutions, they do not oppose the deliberative process in this negative sense. Those dissenters who are at the stage where they can

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[20] Bohman, *Public Deliberation: Pluralism, Complexity and Democracy*, 110, 113, 121; Simone Chambers. *Reasonable Democracy: Jurgen Habermas and the Politics of Discourse* (Ithaca, NY: Cornell University Press, 1996), 99.

[21] Zonana, "N.Y. Begins Giving Needles to Addicts in AIDS Battle," 1.

[22] http://www.actupny.org/documents/newmem.html

[23] http://www.actupny.org/documents/cron-87.html

[24] Young, (2001) 672.

offer solutions have a difficult time communicating them because the current political environment does little to encourage the type of dialogue that allows dissenters to communicate constructive policy proposals. While the current system does not negate the ability of protesters to act in constructive ways -- as ACT UP illustrates -- it does highlight the institutional barriers that make it much more difficult for protesters to do so. This is why communicative democrats need to view dissent-as-difference instead of viewing it as something that is incompatible with the normative ideals that underlie deliberative processes.

While the tactics that many protesters currently use are often problematic, ACT UP's protest actions reveal the communicative possibilities inherent in dissent. They also offer a good illustration of the way that protest groups can meet all aspects of this criterion (identify a problem, offer a solution to that problem, and support both with acceptable public reasons). ACT UP saw a problem in the lack of attention the government devoted to AIDS. Because rates of infection were increasing and PLWAs suffered discrimination, AIDS clearly posed a collective problem. ACT UP's solution was to launch a large-scale educational campaign. The intent behind this was to help HIV-negative people prevent infection and to encourage a sympathetic and supportive response from a panicked "general public" towards HIV-positive people. ACT UP's responses (raising awareness and encouraging the use of condoms and clean needles) and their public reasons (arguing that this action is necessary in order to minimize the spread of AIDS as much as possible and to improve the quality of lives and remove stereotypes for those with the virus) offer clear solutions and meet communicative democracy's normative criteria.

If deliberative groups do not recognize the urgency of particular issues as they arise in society – such as the governments in the 1980s that were slow to recognize the urgency of AIDS education and research – then political protest will serve a vital role as it alerts deliberative groups to the importance of neglected issues. If we strengthen the channels of communication between protesters and deliberators then both groups will have greater access to information and will be better equipped to deal with issues as they arise. Because the aim of dissent-as-difference is to have deliberators and dissenters offer each other public reasons in response to those made earlier in the discourse, the

lines of communication surpass the weaker forms of discourse found in interest group pluralism.

Members of ACT UP provided public reasons for the problems they identified in governmental policies and offered solutions to a collective problem. ACT UP made large steps in actually convincing society that AIDS is a collective problem[25] because they communicated their objections and offered their solutions in a way that reinforced the importance of the exchange of public reasons, thereby showing that political protesters can act in ways that are consistent with this communicative democratic criterion.

ii) Deliberants must appeal to justice and frame their reasons in terms others ought to accept

Deliberants must frame their arguments according to this criterion in order meet the conditions of mutual respect.[26] This criterion is meant to ensure that deliberants use public reasons that are acceptable from a normative democratic standpoint so that all concerned parties can participate effectively in deliberations and the deliberative group can sustain an inclusive dialogue. If political protesters make appeals that accord to the same normative principles that regulate deliberative groups, then they fulfil this requirement of justice and should be accepted as a beneficial part of the deliberative polity. Unfortunately, most dissent currently does not unfold in accordance with deliberative principles, nor does society expect it to.

The types of claims that people bring to deliberations undergo evaluation to ensure that deliberants' interests are compatible with justice.[27] This normative criterion means that deliberators must recognize that certain issues surrounding equality, freedoms, and rights are to take precedence over deliberation that seeks to satisfy individual preferences. This stands in contrast to interest group pluralism, which does not make a distinction between selfish interests and normative claims.[28] In interest group pluralism, people may support things not because they believe in them, but because they strike a bargain and it is in their best interest to do so. Marginalized groups have fewer choices available to them and are more likely to sacrifice more of their

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[25] AIDS received little attention and coverage when it first surfaced largely because it was seen as "contained" to gay men and intravenous drug users. It was not until AIDS hit the "general population" in the mid-late 80s that the media and government began to expand their educational and prevention campaigns.

[26] Gutmann and Thompson, *Democracy and Disagreement*, 43.

[27] Young, "Activist Challenges to Deliberative Democracy," 672.

[28] Young, "Communication and the Other: Beyond Deliberative Democracy," 72.

interests when they enter into coalitions. If communicative democracy is to avoid marginalizing and effectively excluding people, then the deliberative process must have safeguards in place to ensure that the more powerful participants do not unfairly set the agenda or undermine the voices of marginalized groups.

Dissenters must appeal to justice and frame their reasons in terms that others ought to accept if they wish their arguments to gain legitimacy and fit the dissent-as-difference model. In order to do this, dissenters must ensure they focus upon the premise(s) and public reason(s) that underlie their claim(s). This approach will help to dispel the conception that dissenters are merely "special interest" groups and their demands superfluous. If protestors focus on the larger normative values, this will help deliberators recognize the validity of dissenting claims and strengthen the case dissenters make for asking that deliberative groups address their issues.

The deliberative democratic requirement that all people appeal to justice is problematic because people often have conflicting understandings of what this entails. In fact, many of the problems with the application of communicative democracy happen because various groups within the polity cannot agree on what constitutes an acceptable public reason. In practice, the line between what is just according to normative standards and what is legal can blur, and marginalized groups bear a disproportionate burden of the problems that follow from this. When this happens, protestors call attention to issues that conflict with current understandings of what is just, but as they do so they often use public space in ways contrary to societal norms. As a result, the polity often dismisses dissenters and their messages on the grounds that they lack respect for the country's laws and have little respect for justice in general. However, I contend that certain actions that communicative democrats do not typically think of as deliberative [such as non-violent forms of vandalism (graffiti, unauthorized protests, etc)] are normatively acceptable as communicative democratic tools if their intent is to engage a deliberative group in a dialogue that respects basic principles of democratic justice. It is this type of "grey area" protest that can enrich our understanding of communicative democracy. Most people agree that killing to further a goal is wrong (or at least highly undesirable), yet acknowledge that a great deal of the currently acceptable protest actions are unable to effectively convey messages and propose solutions. There is a large

spectrum of possibility for different types of protest actions and with dissent-as-difference I hope to tap into it and use the possibilities to further social justice.

iii) Deliberants must criticize other proposals and remain open to criticism

Both parts of this criterion are necessary for deliberations to take place. If a group refuses to engage with the arguments put forth by another group, or if a group fails to address criticism directed at their arguments, then the process will no longer be deliberative. The interaction between groups that this criterion calls for demands that people are accountable to each other. The rationale behind this is that if deliberators know they will be held accountable for their claims, they will be more likely to advance reasons that appeal to justice rather than to offer selfish justifications.[29] The arguments that deliberants offer must be subject to public examination so that the deliberative groups can determine if people base their arguments on acceptable public reasons. Once a deliberative group determines this, it can go on to evaluate the public reason and see how well it meets normative democratic criteria.

Deliberants must be able to accept that the public reasons of others count as acceptable public reasons even if they disagree with the merit of a particular reason. Deliberants can determine if an argument meets the criterion of an acceptable public reason if all "empirical claims in political argument [are] consistent with reliable methods of inquiry."[30] People in a deliberative group can test the public reasons other deliberants put forth and can apply the same test to the public reasons of dissenters. In order to meet this deliberative criterion, people must engage with the claims of others and be willing to support their own claims by providing accessible public reasons.

Communicative democratic theorists must pay attention to the dialogue that can and should take place between deliberators and dissenters. It is important to remember that communicative democracy is about engaging people in a dialogue through the exchange of public reasons because the deliberative sentiment can get lost amidst the process and compromise that drive deliberators to reach agreement. There is the danger that deliberants will simplify issues in order to reach policy decisions; this often has negative consequences because intersecting identities and complex issues cannot be simplified to this extent without also being trivialized. If a deliberative group does not

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[29] Gutmann and Thompson, *Democracy and Disagreement*, 95-127.
[30] Gutmann and Thompson, *Democracy and Disagreement*, 15.

give sufficient attention to important issues that pertain to a particular group, then members of these groups are justified in exiting deliberations. Deliberative groups must offer public reasons when they criticize other arguments and offer details as to why that particular argument is, in their opinion, unjustified. In addition, deliberative groups must remain open to the reasons members of the other group may counter with because the exchange of public reasons is the basis for deliberative processes.

Deliberants cannot claim to be open to all criticism if they automatically dismiss the arguments of dissenters because they do not arise in a deliberative group. It is in the best interests of communicative democrats to test the strength of their own arguments by evaluating them in light of internal and external criticism. It is also important that deliberators explore the circumstances that lead dissenters to leave the deliberative group. If deliberants refuse to exchange reasons with protest groups, then they fail to meet communicative democratic criteria. Exchanging reasons with dissenters will help deliberators better understand the concerns of marginalized groups, strengthen the standard of publicity, and foster the circumstances necessary for a truly inclusive deliberation.

Criticizing other proposals and remaining open to criticism are an important part of communicative democratic criteria because these are two steps are necessary for groups to engage in a dialogue. It makes sense that after political protesters succeed in initiating a dialogue that addresses their public reasons (as *On the Road* did in the Illinois State Senate), they should go on to find ways to sustain this dialogue. Political protesters, like dissenters, should continue the dialogue in a way that addresses criticism because a proper analysis of opposing arguments is necessary in an exchange of public reasons. Members of ACT UP meet the first part of this criterion. Members of ACT UP criticize other proposals when they propose solutions to a problem, and they criticize them in a way that meets deliberative criteria because their arguments appeal to justice and they frame them in terms of normatively acceptable public reasons.

Deliberators may concede that dissenters initiate dialogue, but they will likely counter that while dissenters are very good at offering criticism, they are unable to take it themselves. As a result, dissenters, although they claim to engage democracy by providing critical opposition to a state's practices, cannot legitimately claim to be part of a dialogue. Instead, dissenters become "participants in a somewhat one-sided

conversation."[31] If this criticism is true, then dissenters are ultimately guilty of what they charge the state – with not listening to the opposition and of an unwillingness to significantly rework their policies. In order for protest to meet deliberative criteria, dissenters must meet the second part of this criterion and remain open to criticism from others.

In order to remain open to criticism, groups need only to address the criticisms others direct at them. A group does not need to convince others that opposing arguments are invalid, nor does its members need to cede the merit of their public reasons in the face of this criticism. Instead, groups need only to explain to their critics why they reject particular arguments and to use counter arguments that they frame in terms of acceptable public reasons. Protesters will be better equipped to meet the second part of this criterion if they ask a series of questions that focus upon their audience. Dissenters must know how (or if) their actions affect societal attitudes so that they can use this information to sustain a dialogue with the deliberative group.

Members of ACT UP engage in a great deal of self-analysis in order to evaluate the effectiveness of their campaigns. ACT UP has a list of evaluative criteria and encourages members to examine their actions at all protests in light of this. The list is extensive and takes into account a campaign's goals (both short and long term), participants, opponents, preparation and reactions from the public. ACT UP analyses protest actions according to their impact (physically and in terms of the message). Most of ACT UP's evaluation process involves self-criticism, and pays attention only indirectly to external criticism. ACT UP asks if consciousness has been raised and if members of ACT UP contacted opponents and attempted to reason with them.[32] Beyond this, however, the analysis – while fairly comprehensive and valuable – does not pay enough attention to criticism from "the general public." I do not want to be overly-critical and claim that ACT UP (and other dissenters) do not -- or more importantly cannot -- pay particular attention to external criticism. However, it is important to stress that we can and should increase the extent to which ACT UP and other dissenters listen to external criticisms.

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[31] Jane Mansbridge, "Everyday Talk in the Deliberative System," in Stephen Macedo (ed.), *Deliberative Politics: Essays on Democracy and Disagreement* (Oxford: Oxford University Press, 1999), 220.
[32] www.actupny.org/documents/CDdocuments/Campaigns.html

Assertions that dissenters cannot or will not present their ideas for external critical evaluation only perpetuate the discord between deliberators and dissenters because they constantly prepare societies to expect stubborn opposition from dissenters. As a result, governing bodies frequently meet resentful protestors. In this negative environment, neither governmental bodies nor dissenters expect to engage in a productive dialogue and ultimately do little to prepare for one. In the current political environment, dissenters do not deliberate fully and constructively because they are not expected to – at least not on terms mutually acceptable to deliberators and dissenters. To advance a deliberative dialogue we need a different understanding of what it means to engage democracy. Dissenters need to be willing to work towards deliberative goals even if deliberative groups fail to do so. This means that dissenters must respond to deliberative critiques of their actions and messages. The media criticizes dissenters, and so even if deliberators respond only indirectly to the protest actions of dissenters, dissenters will still be able to measure at least part of the deliberative reaction and incorporate a response into their next protest action. In this way, dissenters can remain open to criticism. By taking the initiative to further debate with those outside their group, dissenters can meet the deliberative criteria for engaging in a dialogue.

iv) Deliberators must show concern for the interests of others and be open to their point of view

This criterion is important because deliberations must take place in a context that allows participants to transform their preferences as a result of the information and arguments they are exposed to. If a group is unwilling to consider the possibility that their public reasons are unable to address injustices then they fail the second deliberative criterion. When protest groups engage in a dialogue with deliberants, they must remain open to criticism in a way respects the public reasons that others advance. Deliberants must be willing to revisit the merit of their public reasons in light of the exchange of public reasons. If they do not, then the exchange is meaningless and the group will not be able to deliberate legitimately.

In order to meet deliberative criteria, dissenters must remain open to arguments that challenge the merit of their public reasons. They too must be willing to re-evaluate their arguments in light of new information. In order to do this, dissenters must pay close attention to the way they operate because checks on the reflexivity of their arguments are not as easily available as they are for those in deliberative groups.

Dissenters are in a unique position when they engage in deliberations with a deliberative group. Although, in dissent-as-difference, dissenters must meet the same deliberative criteria as deliberators, dissenters are not necessarily exposed to the range of arguments that members of a deliberative group are. Because they are located outside the deliberative group, dissenters are subject to the potential dangers of group polarization, a phenomenon that occurs when like-minded people group together and "predictably move toward a more extreme point"[33] in their views as a result of this intra-group deliberation. Group polarization presumes that group members go without sustained exposure to competing views, which leads Cass Sunstein to ask if the type of deliberation that occurs in isolated groups should count as deliberation at all.[34] The danger here is that dissenters will be unwilling or unable to look beyond their own public reasons to see the ways that the policies they recommend impact other people. If dissenters do not participate in an exchange of public reasons that take the point of view of others into account, then they fail this deliberative criterion.

Sunstein's observations could have grave implications for dissent-as-difference theory because protesters can limit their exposure to arguments from outside their group. Fortunately, Sunstein outlines both the negative and positive effects of enclave deliberation[35] and concludes that the democratic value of deliberation depends greatly upon social context. Group polarization can be managed with alterations in institutional arrangements.[36] Dissent-as-difference requires a social and political context that changes the way people interact with the state and each other. The deliberative polity, because it makes sure that legitimate dissenters adhere to deliberative criteria, protects against the isolation that leads to group polarization. Communicative democracy calls for new institutional arrangements, as does dissent-as-difference. The deliberative polity requires that dissenters and deliberators engage in an exchange of public reasons. This space in the deliberative polity extends beyond the deliberative group and plays an important role because it consists of institutional arrangements that confer legitimacy on public reasons only if they undergo public scrutiny. The deliberative polity aims for the type of

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[33] Cass R. Sunstein. "The Law of Group Polarization." *The Journal of Political Philosophy.* 10/ 2 (2002), 176.
[34] Sunstein, "The Law of Group Polarization," 186.
[35] Enclave deliberation "is, simultaneously, a potential danger to social stability, a source of social fragmentation or even violence, and a safeguard against social injustice and unreasonableness." See Sunstein, "The Law of Group Polarization," 177.
[36] Sunstein, "The Law of Group Polarization," 195.

effective deliberation that Sunstein argues for, and so it guards against the negative effects of group polarization.

v) Deliberants must bracket the influence of unequal power

This criterion presents a huge challenge to communicative democracy and the difficulties in facilitating equal and effective participation result in a lot of criticism of communicative and deliberative democratic theory.[37] If deliberants have unequal power, and if the distribution of this power systematically marginalizes particular groups, then the deliberative group will not be able to evaluate the merit of public reasons fairly. All groups will not be able to participate as equals and the deliberative process will not be inclusive. However, we can minimize barriers that stand in the way of inclusion if we implement a set of institutional rules, such as the two amendments that communicative democracy makes that allow differently-situated people to speak as differently-situated people instead of trying to force all deliberators to speak in very particular and exclusionary ways that mimic the proceedings of current institutions.

Dissenters must take the same steps as deliberators to bracket unequal power. As Sunstein warns, any body of people who meet to discuss ideas and values runs the risk of subjecting participants to the marginalizing consequences of exclusionary structures. Deliberative groups have a slight advantage over dissenting groups insofar as their deliberations must be (at least technically) open to all. This makes it more likely that deliberative groups will listen to the concerns of a wide variety of people, even if they do so only because they are under scrutiny. Because dissenting groups operate apart from deliberative groups, there is no official way to make sure that the internal processes of dissenting groups are just, and therefore no truly effective way to ensure their compliance with values that guide a deliberative polity that incorporates dissent-as-difference. The best motivation for protesters to adhere to deliberative criterion is the knowledge that deliberative groups will only treat dissent-as-difference if deliberative groups model their actions on deliberative criteria.

Dissenting groups can act in exemplary ways. ACT UP's composition and priorities show a conscious move to stress inclusion and diversity within the group.

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[37] Boris DeWiel, "Book Review: Inclusion and Democracy." From *National Constitution Centre: Citizen's Connection* (January 20, 2002). http://www.constitutioncenter.org/sections/citizens/article.asp?ID=124 ; Jeff Spinner-Halev. "Review of Inclusion and Democracy" in *The Canadian Journal of Political Science* 35/4 (2001), 892.

Although it has been called a "gay white male group," ACT UP includes women and people of colour and has done so since its inception.[38] ACT UP uses radical democratic practices. Meetings are held every Monday night and are open to anyone who wishes to attend. Meeting facilitators are elected and rotating, all financial decisions involving more than $100 must be authorized by a majority vote,[39] and activist art is often planned and created in ACT UP committees and presented at the Monday meetings for discussion and approval.[40] ACT UP reaches decisions by consensus, which they interpret as "in coming to a decision, no one felt that his/her position was misunderstood or that it wasn't given a proper hearing."[41] In addition, ACT UP works with people outside their organization to coordinate some of their actions and to measure the impact of their efforts on the rest of society. As ACT UP shows, marginalized groups may be relatively small and lie outside the deliberative body, but this does not mean that their actions cannot respect deliberative criteria and sometimes inspire democratic processes.

vi) Deliberants must bring all potentially affected people together to make decisions

The normative values that guide communicative democracy state: "decisions ought to be made by processes that bring all the potentially affected parties or their representatives into a public deliberative process."[42] Communicative democrats use this requirement to associate full participation with legitimacy. Deliberants assert that claims are only valid if people present them in a deliberative group. The rationale behind this is that only a fully inclusive debate can bestow legitimacy upon public policies; this debate must occur in a deliberative group where deliberants can ensure that participants meet deliberative criteria. Arguments that come from outside a deliberative group are illegitimate according to communicative democratic criteria. In opting out of the deliberative group, dissenters refuse to communicate with others and this decision to leave makes dissenters unreasonable.

Communicative democratic theory asserts that if dissenters have legitimate concerns and can support them with normatively acceptable public reasons, then the force of their argument will be sufficient to convince the rest of the deliberative group of

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[38] www.actupny.org/documents/earlytactics.html
[39] www.actupny.org/documents/start_chapter.html
[40] Douglas Crimp and Adam Rolston, *AIDS Demographics* (Seattle: Bay Press: 1990), 56.
[41] www.actupny.org/documents/Cddocuments/Consensus.html
[42] Young, "Activist Challenges to Deliberative Democracy." 672.

the immediacy of their concerns. Dissenters who claim that a deliberative group unjustly overlooks their public reasons overestimate the significance of their concerns. There are practical limitations to the issues a deliberative group can effectively discuss and the group must make choices when they set the deliberative agenda. Dissenters cannot leave and expect special treatment because they do not like the deliberative decision. If this were so, then the deliberative process could fall apart. It is enough that deliberative groups listen to the initial arguments of soon-to-be dissenters: communicative democratic theory does not require deliberative groups to make decisions according to the public reasons of marginalized groups if their arguments do not convince deliberants.

While I agree that there are limits to the issues a deliberative group can address at one time, the "sufficiently convincing" issue-screening process is not the best way to further democratic ideals. On the contrary, communicative democratic procedures assert that a deliberative group will consistently know which issues merit addressing and which do not, and maintain that the only acceptable public reasons are those that people are willing to subject to deliberative examination. However, when deliberative examination occurs on the basis of what the majority of deliberators deem to be "correct," this attitude works against marginalized groups, whose claims the deliberative group may listen to, but not really hear. Marginalized groups have a difficult time getting their voice to be heard in deliberative settings. If marginalized groups were able to convince a majority of the importance of their claims the first time they explain an issue to them, then there would not be as many marginalized groups as there are today.

Realistically, social change will not occur overnight. Placing added restrictions upon marginalized groups is counter-intuitive and does not provide the tools necessary for all differently-situated people to be able to speak as differently-situated people in a way that convinces the rest of the deliberators of the merit of their public reasons. Deliberative regulations do not do enough to empower marginalized groups. Arguing that the deliberative process could fall apart if groups leave and ask for "special attention" misses the point. Groups who are able to make their voices heard within deliberative groups stand a greater chance of influencing policy decisions. Dissenters are removed from the centre of political decision-making, and while their decision to locate themselves outside deliberative groups works best for them, deliberators must remember that this is the only way dissenters can speak as differently-situated people. The only

"special attention" dissenters receive in a dissent-as-difference approach is the ability to speak as differently-situated people while they are outside the deliberative group. Dissent-as-difference enables dissenters to do this until the deliberative group recognizes their public reasons and treats them in the same way as they treat differently-situated people within the deliberative group.

If dissent-as-difference pushes deliberants to pay greater attention to public reasons that arise outside the deliberative group, then dissenters will have sufficient motivation to fashion their protest actions in accordance with communicative democratic principles. Even if deliberative groups do not solicit dissenter's arguments by embracing dissent-as-difference, dissenters can benefit by adhering to communicative democratic criteria. If dissenters do this, they can force the deliberative group to defend its exclusion of dissenting arguments to the rest of society. It will be difficult for a deliberative group to defend exclusions if its members wish to maintain their reputation as an inclusive democratic body because protest actions draw attention to the ways the deliberative group fails to bring all potentially affected people together and thus fail to meet communicative democratic criteria.

Communicative democrats treat the deliberative agenda as a limited and linear proceeding. Deliberations occur in designated places with the "official" stamp of approval. This is an "all or nothing" - or to be a bit more generous, a "now and then maybe later" -- approach to policy formation. The exclusion set out by communicative democrats – that people play by the collective rules or they do not play at all – fails to see that the recognition of legitimate political protest is another way to "bring all the potentially affected parties or their representatives into the deliberative process."[43] Dissent-as-difference theory recognizes that practical constraints exist, but contests the way that deliberative and communicative democrats set the deliberative agenda to the exclusion of (some) marginalized groups.

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In chapter 1 I show that communicative democracy is the approach best suited to treat members of marginalized groups as equals. However, as I discuss in chapter two, communicative democracy cannot sufficiently address the problem that marginalized groups pose because communicative democratic theory cannot guarantee

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[43] Young, (2001) 672.

that deliberants will recognize all normatively acceptable public reasons. In chapter 2 I look at political protest as tool that marginalized groups can use in order to appeal to deliberative groups that reject their public reasons. I argue that because political protest has traditionally enabled marginalized groups to influence public policy, a political approach that purports to uphold democratic ideals should address the democratic potential of political protest.

In this chapter, I look at the relationship between communicative democracy and political protest because communicative democracy is more successful than interest group pluralism and deliberative democracy in effectively including members of marginalized groups. Communicative democracy should, according to the theory, be able to address all normatively acceptable public reasons that marginalized groups put forth in the deliberative group, thereby eliminating the need for legitimate dissent. Because communicative democracy should negate the need for the type of political protest that marginalized groups engage in, the theory does not address political protest. Communicative democratic practices, however, cannot guarantee that a deliberative group will be able to recognize all public reasons as normatively acceptable public reasons. In cases where deliberative groups do not recognize the public reasons of marginalized groups, the marginalized group may form a political protest group. Because marginalized groups form protest groups, communicative democracy must address political protest if it is to treat all members of marginalized groups as equals.

In this chapter I show that political protest can meet deliberative criteria and argue that dissenters can engage the deliberative polity in a constructive dialogue. Moreover, I argue that sometimes this is the only way that marginalized groups can make their voices heard. Dissenters are capable of engaging in an exchange of public reasons and can meet the normative values that underlie communicative democracy. But for their physical presence in a deliberative body, dissenters would fulfil communicative democratic criteria. I argue that excluding legitimate dissent on the ground that dissenters fail to meet the last deliberative criterion undermines the spirit of communicative democracy. If democratic theory wants to shed the political competition that inevitably pits the strong against the weak, then democratic theories must change the way they view dissent.

For these reasons, I propose that deliberants treat dissent as a form of difference. Dissent-as-difference works with communicative democratic theory and offers a better way to realize the theory's ideals. If we want to raise the standard of democratic legitimacy and enable all differently-situated people to speak as differently-situated people, then we must treat dissent that accords to normative deliberative criteria the same way we (should) treat difference.

Communicative democratic theory reveals flaws with the scope of deliberative democracy[44] and offers suggestions to make the deliberative process more inclusive; it finds new ways to listen to participants in deliberative groups and is able to respect difference. I agree with the communicative democratic critique of deliberative democracy, but I do not think it goes far enough. Although deliberative rules explicitly and purposefully exclude dissenters on the grounds that inclusive and effective communication cannot occur when people position themselves outside a deliberative group, this rule is misguided. I take the communicative democratic criticism – criticism that emphasizes the democratic importance of enabling marginalized groups to initiate dialogue -- further, and argue that we must enlarge our understanding of deliberative space in order to accommodate dissent. Communicative democratic theory limits deliberative space with a narrow conception of what it means to deliberate, and the "proper" ways to do so. Dissent-as-difference expands the conception of the deliberative public into the wider deliberative polity. The emphasis that dissent-as-difference theory places on the deliberative polity offers deliberants and those who engage in dissent-as-difference as political protesters another arena in which they can exchange and recognize public reasons.

We do not live in an ideal world under perfect deliberative conditions. Relations between groups are often messy and marginalized groups are frequently treated as insignificant. If we are serious about pursuing social justice then we need to take action and do as much as possible to engage democracy fully and legitimately *now*. The largest obstacle standing in the way of inclusive democratic practice is our current understanding of what it means to engage democracy. Dissent-as-difference theory builds upon communicative democratic theory shows that our problem is a lack of imagination and not one of resources.

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[44] Young, "Communication and the Other: Beyond Deliberative Democracy," *Inclusion and Democracy*

Chapter 4
Dissent-as-Difference

In chapter 3 I show that communicative democracy cannot treat marginalized groups justly if the theory does not address legitimate forms of political protest. This inability to treat members of marginalized groups as equals undermines the democratic legitimacy of communicative democracy. It is important that communicative democracy addresses the type of marginalized groups that form protest groups when a deliberative group fails to recognize the merit of their public reasons because the intent of communicative democracy is to treat all people with acceptable public reasons as equals. Because communicative democratic theory does not conceptualize a scenario in which a deliberative group exchanges public reasons with legitimate protest groups, it fails to meet the spirit of its own normative criteria. I argue that when deliberative groups exclude the type of protest groups that members of marginalized groups form, they fail to meet the criteria of inclusive political communication. I argue that communicative democracy should treat legitimate political protest groups in a way that is similar to the way the theory treats differently-situated groups within deliberative groups. From this normative basis I argue that we should understand dissent as a form of difference and incorporate it into the deliberative polity.

In chapter 3 I argue that political protestors can, contrary to the assertions of communicative democrats, meet the normative criteria of communicative democracy. The ability of protesters to meet these criteria refutes the claims made by communicative democrats that, in order for deliberation to be effective and legitimate, it must occur in a deliberative group. In response to the failure of communicative democracy to treat all members of marginalized groups as equals, I propose that we treat dissent as a form of difference as a way to incorporate legitimate political protest into the approach. When a deliberative group recognizes dissent-as-difference it protects marginalized groups because it extends some of the protections the deliberative group offers marginalized groups into the deliberative polity. When a deliberative polity treats dissent as a form of difference, it meets the criteria of communicative democracy and equips itself to justly evaluate all public reasons. Without these protections, marginalized groups have little recourse if the deliberative majority fails to recognize their public reasons.

I critique communicative democracy because it fails to account for some of the realities of actual policy formation. My aim in chapter 4 is to show that dissent-as-difference does not fall into this same trap. Dissent-as-difference offers practical solutions to the problems that marginalized groups pose to democratic bodies. Dissent-as-difference changes the way the deliberative group applies communicative democratic criteria. In addition, dissent-as-difference changes the nature of the deliberative polity because this approach necessarily involves the civic sphere in a way that communicative democracy alone does not. Dissent-as-difference draws from the same criteria as communicative democracy, but does so in a way that does not expect deliberative processes to function ideally. Because dissent-as-difference operates with the expectation that deliberative groups will unjustly exclude some marginalized groups with normatively acceptable public reasons, dissent-as-difference makes provisions to include marginalized groups in the deliberative polity notwithstanding their exclusion from the deliberative group. Deliberative groups fail to meet the normative criteria of communicative democracy when they are unable to recognize the normatively acceptable public reasons of marginalized groups within the deliberative group setting. Dissent-as-difference reacts to the probability that the deliberative group will not recognize all normatively acceptable public reasons. Dissent-as-difference contests the communicative democratic expectation that all members of marginalized groups will succeed in participating in the policy making process as equals. Instead, dissent-as-difference incorporates the problems that marginalized groups will most likely face into its normative theory. In doing so, dissent-as-difference avoids the normative implications that arise in communicative democratic theory when marginalized groups are unable to participate effectively in the deliberative group.

A better approach needs effectively to include all marginalized groups that offer normatively acceptable public reasons, even if these marginalized groups are protest groups. Dissent-as-difference not only meets normative democratic criteria, it exposes a flaw within communicative democratic theory and serves to redress it by incorporating the democratic benefits of legitimate political protest. Dissent-as-difference amends the flaws in communicative democratic criteria so that the criteria apply to the larger deliberative polity and are able to include all members of marginalized groups.

In this chapter, I look at what has to change if we adopt dissent-as-difference. In order to illustrate what dissent-as-difference means and to show how it works, I look at the way that a dissent-as-difference approach contributes to public policy. I show that dissent-as-difference can include marginalized groups that communicative democracy cannot, and I show how this theory can do so as I look at the way that a deliberative group and a protest group develop a sex education policy for public schools that meets the normative guidelines of communicative democracy. As I illustrate how dissent-as-difference works in this context, I show the ways that the debate changes in the different approaches. I pay particular attention to the exchange of public reasons and focus on the ways the exchange facilitates the inclusion of the type of marginalized groups that communicative democratic theory overlooks.

The ability of communicative democracy to meet normative democratic criteria depends upon the effective participation of all people who hold acceptable public reasons. In communicative democratic theory, the only just grounds on which deliberative groups can exclude people is their refusal to offer pubic reasons and listen to the public reasons put forth by others. However, as I show in chapter 3, the way that deliberative groups interpret acceptable public reasons is often problematic. Although communicative democracy draws from a more inclusive understanding of what constitutes acceptable political communication than do deliberative democracy or interest group pluralism, it is not immune from the democratic oversights that occur when deliberants fail to recognize public reasons.

In dissent-as-difference, the deliberative polity is a space that allows deliberants to screen the arguments of people who leave the deliberative group in order to see if these dissenters use normatively acceptable public reasons. Dissent-as-difference serves as a second front in the deliberative polity when marginalized groups try, and fail, to assert their public reasons within a deliberative group. Dissent-as-difference calls for two deliberative realms: deliberative groups and a nation-wide deliberative polity in which deliberators and dissenters can communicate. The deliberative polity has two main purposes: to emphasize that dissent is legitimate if it accords to certain normative criteria, and to ensure this dissent is constructive by creating the necessary conditions for a discourse between deliberators and dissenters

Dissent-as-difference enables marginalized groups to interrupt hegemonic discourse using their own language. The purpose of recognizing dissent-as-difference is twofold: it offers dissenters a voice in a larger deliberative polity and it simultaneously allows them to remain dissenters. Dissent-as-difference does not absorb dissent into deliberative groups because to do so would co-opt dissenters – drawing them back into the deliberative group only to make protesters deliberate using the public reasons they find objectionable. Since dissenters aim to change the way deliberators carry out their dialogue, they must do so from outside the deliberative body so the criteria that govern deliberative dialogue do not prevent them from speaking as differently-situated people. At the same time, however, dissent-as-difference aims at a form of incorporation. Dissent-as-difference encourages dialogue that necessitates that deliberators and dissenters participate in a larger deliberative process.

Normative democratic criteria:

Dissent-as-difference must meet the normative democratic criteria that underlie communicative democratic theory. I set out communicative democratic criteria in chapter 3 and show that they require deliberants to do the following six things: propose solutions to their problems and offer reasons for them; appeal to justice and frame their reasons in terms others ought to accept; criticize other proposals and remain open to criticism; show concern for the interests of others and be open to their point of view; bracket the influence of unequal power; and bring all potentially affected people together to make decisions.[1] In chapter 3 I argue that deliberative groups cannot meet these criteria because the "public deliberative process" communicative democrats refer to only occurs in the deliberative group,[2] and the deliberative group effectively excludes marginalized groups.

The criteria that guide dissent-as-difference, therefore, must be different from communicative democratic criteria. However, dissent-as-difference need not abandon communicative democratic criteria entirely because they make some important steps toward meeting normative democratic criteria insofar as they enable marginalized people with (identified) public reasons to participate in the deliberative group as equals. I propose a set of amendments to communicative democratic criteria that better equip

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[1] Young, "Activist Challenges to Deliberative Democracy," 672.
[2] Young, "Activist Challenges to Deliberative Democracy," 672.

deliberative groups to recognize the normatively acceptable public reasons of all marginalized groups.

The normative criteria of communicative democracy, revisited

i) Deliberants must propose solutions to their problems and offer reasons for them

As I discuss in chapter 3, groups that face a particular problem need to be able to propose solutions in the deliberative group because they are in the best position to explain the way that a particular policy or lack of policy affects them and to suggest what the polity might do to redress the problem. This criterion allows members of marginalized groups to initiate dialogue in the deliberative group and to set the agenda so that it includes issues that concern marginalized groups. The purpose of this criterion is to ensure that all normatively acceptable public reasons, including those of marginalized groups, are accessible so that deliberations will effectively include all people.

As I show in chapter 3, protest groups can meet this communicative democratic criterion (the *On the Road* installation and the series of policy changes that occurred as a direct result of ACT UP's protest). The ability to meet this criterion is necessary as deliberative groups try to effectively include all people, but meeting this criterion is not sufficient to ensure that full inclusion happens. Proposing solutions and offering reasons for them are important steps, but they suggest that marginalized groups must have a solution to their problem(s) before they can legitimately participate in the deliberative process. Dissent-as-difference contests this part of the criterion and I argue that marginalized groups should not need to have a solution as a prerequisite to legitimately participate in a deliberative group. Dissent-as-difference theory must change this criterion to include the recognition that it is also important to identify the problems a particular group faces. This amendment alters the criterion so that it offers further protection to members of marginalized groups, particularly the types of marginalized groups that form protest groups.

If, as communicative democratic theory suggests with this criterion, deliberants need a solution in order to engage in an exchange of public reasons, this criterion cannot account for consciousness-raising. This poses a problem because marginalized groups, and especially the types of marginalized groups that form protest groups, frequently use consciousness-raising Groups need to be aware of the ways that they are oppressed before they are able to identify the exact nature of the problem. If deliberative groups

are to encourage the effective inclusion of all people, then the normative criteria that guide the process must recognize the importance of consciousness-raising. If marginalized groups express hesitation about a particular policy, deliberative groups should encourage the type of discussion that can lead members of marginalized groups to articulate their reservations in a way that enable them to identify a problem.

Dissent-as-difference theory incorporates political protest because political protest has a history of enabling oppressed groups to influence the social and political agenda in beneficial ways. Normative democratic values require that political approaches address dissent because deliberative groups are not always able to identify all normatively acceptable public reasons. If dissenters continue to offer public reasons from outside the deliberative group and if the deliberative group exchanges public reasons with legitimate protest groups, then the deliberative group does not close itself off from these normatively acceptable public reasons. Dissent-as-difference theory offers members of marginalized groups an opportunity to enter the deliberative group and to effectively participate in policy formation.

ii) Deliberants must appeal to justice and frame their reasons in terms others ought to accept

Communicative democrats need this criterion to make sure the reasons that deliberants offer meet normative democratic criteria. The interests that people express in their arguments must be compatible with normative democratic criteria and the reasons that deliberants offer must be public reasons that are accessible to other deliberants. Without this criterion the deliberative process is neither inclusive nor legitimate. As I point out in chapter 3, this criterion poses a problem for communicative democracy because people within a deliberative group have conflicting understandings of what it means to appeal to justice and of the terms on which other people ought to accept public reasons.

I argue that political protesters meet this criterion in chapter 3 and highlight some of the ways the interpretation of this criterion prevents communicative democratic theory from effectively including all marginalized groups. As dissenters protest in order to raise the consciousness of deliberants, they sometimes break the law. Dissent-as-difference theory accepts the communicative democratic requirement that deliberants must appeal to justice and frame their reasons in terms that others ought to accept. However, I argue that communicative democracy fails to meet this criterion to the best

of its ability because it does not discuss political protest. Consequently, communicative democratic theory has certain implications for the way the deliberative group treats acts of dissent and civil disobedience.

Because dissenters do not exchange reasons within a deliberative group, this affects the way that deliberators respond to their actions and public reasons. Because communicative democratic theory cannot guarantee that deliberants will recognize all normatively acceptable public reasons and because the theory does define a sufficiently wide range of acceptable courses of action, the theory has the normative implication that some marginalized groups will leave the deliberative group because they cannot effectively communicate the injustices they face. Effective exclusion on this basis makes it difficult for dissenters to assert that they have normatively acceptable public reasons because are outside the group. Consequently, it is particularly difficult for marginalized groups to convince the deliberative group that their public reasons and protest actions do not violate principles of justice and reasonableness found in this criterion.

The failure of communicative democratic theory to discuss political protest makes this criterion problematic. As I show in chapter 3, protest groups meet communicative democratic criteria. However, the ability of protesters to meet this criterion has little practical value if communicative democracy does not have a mechanism to deal with political protest. The potential for discrepancy between what is just from a normative standpoint and what the polity decides is legal has considerable implications for the effectiveness of political protest. I argue that some protest actions – the "grey area" protest actions I discuss in chapter 3 that include non-violent forms of vandalism – that communicative democratic theory does not classify as deliberative are in fact normatively acceptable as communicative democratic tools when their intent is to engage a deliberative group in a dialogue that respects communicative democratic criteria.

In order to ensure that the deliberative polity will define just actions and acceptable public reasons in a way that includes the types of marginalized groups that form protest groups, dissent-as-difference alters this criterion. Because dissent-as-difference theory asks that deliberative groups engage in a dialogue with political protesters, deliberative groups need to redefine what constitutes an appeal to justice and to expand the scope of the types of actions and modes of communication that people

within the deliberative polity reasonably ought to accept. As dissent-as-difference theory applies this communicative democratic criterion it includes appeals to justice that occur outside the deliberative group and it accepts the deliberative value of protest actions that break the law as long as the actions in question do not violate normative democratic principles. Dissent-as-difference theory requires a re-evaluation of the use of public space to include the type of illegal but legitimate protest actions that marginalized groups may need to engage in if they are to successfully raise the consciousness of the deliberative polity.

iii) Deliberants must criticize other proposals and remain open to criticism

Communicative democrats need this criterion to ensure that deliberants will exchange public reasons in a way that leads to constructive deliberation. The arguments that deliberants offer must be subject to public examination so the deliberative group can determine if they based them upon acceptable public reasons. Because deliberants remain open to criticism, they know the deliberative group will hold them accountable for their claims and will be more likely to advance reasons that appeal to justice rather than to offer selfish reasons.[3]

Dissent-as-difference theory accepts this criterion, but interprets it in a way that extends the criterion to include the exchange of public reasons between deliberative groups and dissenters. Asking that protest groups meet this criterion and that deliberative groups change the way they meet it does two things. First, it strengthens the ability of the deliberative group to remain open to criticism. If deliberative groups effectively exclude marginalized groups and do not exchange public reasons with them once the marginalized group leaves deliberations then the deliberative group is not fully accountable. If deliberative groups remain open to criticism levelled at them by political protesters then they have the opportunity to redress any flaws in their own arguments, yet can still firmly state the reasons why some protest groups (those that do not adhere to normative democratic criteria) do not merit inclusion in the deliberative group. Second, asking that dissenters meet this criterion will have a positive impact on the relationship between political protest and deliberative groups. If we adopt dissent-as-difference then protesters will have a degree of institutional legitimacy because protesters must meet the same criteria that deliberative groups must meet. However, dissent-as-

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[3] Gutmann and Thompson, *Democracy and Disagreement*, 95-127.

difference theory requires that protest groups meet an amended version of communicative democratic criteria from outside the deliberative group, and so the deliberative polity manages to include dissenters without co-opting them.

The dissent-as-difference interpretation of this criterion brings with it a new understanding of what it means to engage democracy. Dissenters encounter additional demands in dissent-as-difference theory because the practical responsibility for initiating the criticisms contained within this criterion and for carrying out the exchange of public reason lies with dissenters. In cases where a deliberative group makes little effort to continue a dialogue with dissenters, protest groups must tailor their protest actions to respond to the reasons a deliberative group offers. Protesters must ask questions that focus on their audience and restate the arguments they hear deliberative groups make so they can ensure there are not any miscommunications. While it is not an ideal situation to have dissenters carry out this "extra" work, it is effective. If dissenters make clear and persistent efforts to engage in deliberations with a deliberative group then it will be increasingly difficult for the deliberative group to ignore or dismiss dissenters' public reasons and still maintain that they are a legitimate deliberative group.

iv) Deliberators must show concern for the interests of others and be open to their point of view

The purpose of this criterion is to expose deliberants to arguments in a way that facilitates the transformation of preferences. Deliberants must remain open to the point of view of other deliberants so the exchange of public reasons will be meaningful. Exposure to the public reasons that differently-situated people have teaches other deliberants the partiality of their own public reasons and enables the deliberative group to make policy decisions that take the interests of all people adequately into account.

Dissent-as-difference theory accepts this criterion but adds another requirement: deliberants and dissenters must show concern for each other's interests and be open to the other group's point of view. As in the previous dissent-as-difference criteria, the exchange of public reasons between deliberators and dissenters must occur with the same level of respect as communicative democratic theory instructs must occur between deliberants. Dissenters ought to offer normatively acceptable public reasons and their methods of protest must not violate normative democratic criteria. Deliberative groups ought to exchange public reasons with dissenters within the deliberative polity and must not refuse to deliberate with protesters if they merely disagree with their reasons.

Similarly, deliberants cannot legitimately reject dissenters on the basis of their dislike for the methods that protesters use to convey their public reasons as long as the reasons and methods are just.

v) Deliberants must bracket the influence of unequal power

The amendments that communicative democracy makes to deliberative democracy are meant to help deliberants bracket the influence of unequal power. Because communicative democratic theory makes provisions that allow differently-situated people to speak as differently-situated people instead of trying to force all deliberants to speak in very particular and exclusionary ways, the theory alters the power structure of the deliberative group in a way that makes it more likely that marginalized groups will be able to participate as equals in the policy making process. This change is important because the power that people possess within the deliberative group affects the evaluation of the public reasons they offer. As I discuss in chapter 3, one of the strongest critiques levelled at theories of communicative democracy is that deliberations will not work in practice because current power relations will impact the proceedings and the status and authority that the most powerful members of society possess will disadvantage marginalized groups. The distribution of power is particularly problematic when people in the deliberative group exchange and evaluate public reasons. Even though deliberants take steps to bracket the unequal distribution of power, a deliberative group may not be able to recognize the public reasons of marginalized groups as public reasons. Consequently, communicative democratic theory has the normative implication that a deliberative group can, in practice, argue that the exclusion of a marginalized group that leaves deliberations to form a protest group is just.

Dissent-as-difference theory accepts that this criterion is essential in order for communicative democrats to deliberate as equals. However, because communicative democrats cannot guarantee that bracketing will enable deliberants to identify all normatively acceptable public reasons, I argue that people in the deliberative polity must also take steps to bracket the unequal influence of power. As I discuss in chapter 3, dissent-as-difference theory motivates legitimate dissenters to take steps to ensure their protest groups do not suffer from the effects of group polarization. Protest groups are more likely to uphold the values in the fourth and fifth criterions if meeting the set of deliberative criteria is necessary in order to engage in dissent-as-difference. Engaging in

dissent-as-difference benefits protest groups because the approach adheres to normative democratic criteria. If dissenters show the rest of society that they adhere to normative democratic criteria, the deliberative group is more likely to respect the protest group and reconsider their rejection of dissenters' public reasons.

The practical implications of this criterion require that society re-evaluate the use of public space. One of the major problems with communicative democracy is the difficulty that less powerful groups face when they attempt to convince the majority of the ways that a particular policy – or the lack of a policy – oppresses members of particular groups. Because some marginalized groups encounter difficulties when they try to communicate their public reasons, dissent-as-difference acknowledges that dissent is one of the more viable ways for marginalized groups to challenge the oversight of the deliberative group. One way that dissenters can communicate their unjust exclusion is to politicize public space. In order to gain maximum visibility, dissenters politicize space in intentionally disruptive and often illegal ways. These disruptions, however, are acceptable from a normative democratic standpoint because they are direct appeals to the majority's sense of justice. Dissent-as-difference asks that we re-examine the laws that govern the use of public and private space rather than automatically denounce dissenters for their "invasion" of this space. The only requirement is that the method and content of the protest action meet normative democratic criteria, as I discuss in chapter 2. Dissenters may communicate in vocal and unconventional ways that deliberators do not like, but the fact that deliberators dislike and/or disagree with the messages and tactics of dissenters is not the issue.

vi) Deliberants must bring all potentially affected people together to make decisions

For communicative democracy to be legitimate, all people must participate as equals. The normative criteria that underlie communicative democracy all deal with the exchange of public reasons in a way that is meant to facilitate a just process and outcome. Communicative democracy requires that all people come together in the deliberative group in order to make decisions; communicative democratic theorists argue this dialogue must necessarily occur within the deliberative group so that deliberants can ensure that all people adhere to the normative criteria.

Dissent-as-difference also recognizes the centrality of this criterion to a legitimate deliberative process. However, the way that communicative democratic

theory defines this criterion has negative implications for political protesters. Dissent-as-difference changes this criterion so that the "potentially affected" people include all people with normatively acceptable public reasons in the deliberative polity, and not just all people in the deliberative group. Dissent-as-difference theory does not alter the fact that policy decisions occur within the deliberative group. It does, however, extend the space in which all potentially affected people can affect public policy. Because dissent-as-difference theory encourages a dialogue between deliberants and dissenters, the approach offers excluded groups a way to re-enter the deliberative group on equitable terms and this has a significant impact on the ability of a deliberative polity to involve all potentially affected people, whether they are deliberants or dissenters, in deliberative processes.

Dissent-as-difference in practice

The normative criteria in communicative democratic and dissent-as-difference theory relate back to the exchange of public reason. The intent of each criterion is to ensure the normative approach can sustain an exchange of public reasons that include all potentially affected people and produces just policies. In order for deliberations to occur in a way that treats all people justly, the exchange of public reasons must be effectively accessible to everyone and treat members of marginalized groups as equals. As I set out communicative democracy's normative criteria in chapter 3, I argue that the way this approach defines its criterion is under-inclusive and cannot guarantee a fully inclusive exchange of public reasons within the deliberative group. Communicative democratic theory fails to meet normative democratic criteria because its failure to address legitimate political protest leads to the effective exclusion of some people with normatively acceptable public reasons. In the same chapter I also argue that legitimate dissenters offer normatively acceptable public reasons.

The exchange of public reasons in dissent-as-difference theory differs from the one in the communicative democratic approach. Dissent-as-difference theory includes legitimate political protesters in the exchange of public reasons that occurs in the larger deliberative polity in order to incorporate its democratic potential into the theory. Consequently, the approach lends legitimacy to the exchange of public reasons between dissenters and political protesters and this changes the nature of public reason itself. In the dissent-as-difference approach, a wider range of communicative actions count as

reasonable deliberative tools. As a result, more marginalized people have better opportunities to convince the deliberative group that they have normatively acceptable public reasons. In the deliberative polity in the dissent-as-difference approach, members of marginalized groups are not unreasonable if they dissent from the deliberative group. Dissent-as-difference theory pressures deliberative groups to re-evaluate the way they exchange public reasons with dissenters; this pushes the deliberative group to question the normative effect of communicative democratic theory that effectively categorizes people who do not participate in the deliberative group as unreasonable.

Dissent-as-difference theory is an important part of communicative democratic processes. Current social and political discourse privileges certain kinds of reason and people within the deliberative group may present their arguments as acceptable public reasons when in fact they fail to meet the normative criteria. Similarly, dissenting groups may have normatively acceptable public reasons that go unacknowledged by a deliberative group. Even with the dissent-as-difference approach there is a danger that public reason will become a tool that enables the already-privileged to maintain their status. The misuse of public reason may even make it more difficult for marginalized groups to communicate their specific concerns effectively. The deliberative discourse of public reason could function in a way that automatically labels certain arguments as unreasonable, thus making it even more difficult for marginalized groups to effect change. Where problems arise and when marginalized groups claim unjust treatment, communicative democrats must appeal to what is just and fair. However, notions of what is just and fair are, to a considerable extent, already in place and the different ways that people may interpret public reasons (acceptable or not) makes it difficult for marginalize groups to transcend existing inequalities. If marginalized groups only needed to explain their public reasons in order to seek social and political redress for their injustices, then marginalized groups would cease to exist. This is not the case. Public reason causes problems when people use and interpret it incorrectly, but it is essential to communicative democracy. Without it there is no way to ensure the claims people make on others are legitimate.

Communicative democracy takes certain steps to help prevent the abuse of public reason, and dissent-as-difference theory takes the principles behind these steps and allows the protective measures to be even more effective. A common critique

levelled at theories of communicative democracy is that while the deliberative process depends upon the ability of less-powerful groups to convince a democratic majority that it should engage in deliberative processes,[4] communicative democracy must exclude anyone who refuses to deliberate according to the rules of inclusion.[5] These rules include "those who are unwilling to give up their settled moral commitments"[6] (the conservative religious groups that leave the deliberative group because deliberants refuse to accept their objections to a particular approach to sex education because it promotes sin) and those who hold power and do not wish to see it pass to a deliberative body they may dislike or distrust.

Communicative democratic theory encounters problems as a normative approach because the boundary that communicative democrats set for the exchange of public reasons is under-inclusive. Because dissent-as-difference theory defines public reason in a more inclusive way and because it expands the space in which legitimate deliberative dialogue can occur, the theory meets normative democratic criteria. Communicative democratic theory encounters problems when deliberative processes do not work ideally. In order for the dissent-as-difference approach to avoid this same problem, dissenting groups and deliberants must be able to use dissent-as-difference's normative criteria as a basis for deliberations that lead to constructive policies.

In order for dissent-as-difference theory to succeed where communicative democratic theory fails, it must overcome two challenges. First, deliberants and dissenters must frame their public reasons in term that others ought to accept[7]; in addition, deliberants and dissenters must be able to recognize normatively acceptable public reasons as public reasons. When both parties recognize that the other group argues from the basis of normatively acceptable public reasons, they can begin deliberations within a deliberative group. At this point, a group may disagree fundamentally with the other group's public reasons, but the exchange can nonetheless take place within the deliberative group in the way that I discuss in chapter 3. Second, when dissenters move into the deliberative group, both they and the original deliberants

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[4] Spinner-Halev, "Review of *Inclusion and Democracy*," 892.
[5] De Wiel "Book Review: *Inclusion and Democracy*"
[6] Williams, "The Uneasy Alliance of Group Representation and Deliberative Democracy," 143.
[7] Young, "Activist Challenges to Deliberative Democracy," 672.

must be willing to transform their preferences on the basis of these public reasons and must create just public policies.

In order to meet normative democratic criteria and to satisfy the demands of inclusive political communication, a dissent-as-difference dialogue must involve all people affected by the law or policy that a particular deliberation aims to create. This can be very difficult when two or more of these groups have fundamentally different opinions on the values that should guide the discussion. Often, when this divergence of opinion occurs, one of the groups is marginalized and has a difficult time affecting deliberations. In chapter 3 I show that although ACT UP broke the rules, it did so in a way that nonetheless furthered normative democratic values. As I look at dissent-as-difference theory in practice, I look at the ways that dissent-as-difference theory uses the contributions of protest actions in order to improve upon communicative democratic theory. I illustrate how dissent-as-difference works by looking at the normative contributions that ACT UP and Youth Education Life Line (YELL), an affinity group within ACT UP with a special focus on AIDS education that formed in 1989 to work on AIDS-related issues that face youth,[8] make to communicative democratic processes.

ACT UP and YELL frequently clash with the New York City public school system on the subject of sex education. There is no consistent sex education policy in the US. Sex education is not a requirement in many states and policies differ between school districts. Even though New York City was the first school system in the country to make condoms available to students, sex education is still not a requirement that state, although a discussion of HIV/AIDS is mandatory.[9] I look at this particular issue because the silences that many states and districts have in their sex education policies (or lack thereof) offer a good example of the type of problems that marginalized groups can encounter in communicative democratic practices.

ACT UP and YELL offer normatively acceptable public reasons but face opposition from several fronts: people within the Catholic Church oppose ACT UP's recommendations on matters of sex education and the distribution of birth control; some people object to the discussions of safe sex that specifically target homosexuals; others object to the "waste" of taxpayer's money that goes into sex education initiatives;

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[8] www.actupny.org/YELL/YELL.html

[9] Celeste Ford "Sex Education: Who is Teaching Our Children What? *7Online* (May 21, 2002) http://abclocal.go.com/wabc/news/WABC_ourschools_052102sexed.html

and many of the people in positions of power are reluctant to alienate sub-groups within deliberations and as a result are reluctant to advocate policies these groups may perceive as "radical."

I look at the arguments these groups are likely to offer in terms of public reason and separate acceptable public reasons from selfish reasons. As I do this I mirror the process that deliberators and dissenters undertake in the dissent-as-difference approach. After deliberants and dissenters collectively separate public reasons from selfish ones, they must weigh the merits of the different public reasons against each other and against normative democratic criteria so that they can create a consistent policy that all reasonable people can accept.

The first step in a dissent-as-difference approach to is for dissenters to create a space in the deliberative polity in which they can communicate their public reasons to the rest of society and to the deliberative group. Because the deliberative group rejects the public reasons of some marginalized groups, thus leading them to form protest groups. After excluding marginalized groups on these grounds, the deliberative group continues to conduct deliberations and form public policy in the absence of, and without the support of, dissenters. Consequently, the burden of establishing a dialogue that addresses the public reasons of dissenters necessarily falls on political protesters and dissenters must convince the deliberative group that their public reasons are reasonable. In the example I use, the dissent-as-difference dialogue necessarily begins with YELL and ACT UP.

Members of ACT UP face two challenges as they attempt to effectively participate in the formation of the sex education policy. The first challenge is to make their reasons accessible so that people within the school board's deliberative group will be able to see the impacts that certain policy proposals have upon differently-situated people and so the deliberative group will recognize that ACT UP has acceptable public reasons. If ACT UP can establish this *vis a vis* deliberants, then members of ACT UP will be able to join the deliberative group. The second challenge, after the deliberative group accepts the public reasons of dissenters is for ACT UP to convince the rest of the deliberative group that their public reasons are sufficiently important to warrant a new public policy. This new public policy must take into account all public reasons, weigh the merits of conflicting ones, and use the outcome to form the basis of a sex education

policy that all reasonable people (people in the deliberative group which will, after they meet the first challenge, include members of ACT UP) can affirm, even if they disagree with (but do not fundamentally object to) some of its provisions.

In order to meet the first challenge and make their public reasons accessible, ACT UP must draw attention to public reasons that have already been dismissed by the deliberative group. Because dissenters must exchange public reasons from outside the deliberative group, dissenters are at a disadvantage when they try to communicate with deliberators. As I show in chapter 3, dissenters can exchange public reasons. In order to be maximally effective, dissenters must be very clear about what their message is, about who constitutes their audience, and they must know what they can effectively say in a public space.[10] Because dissenters are at a relative disadvantage they must do everything they can to make available public space work for them. Dissenters need to sustain (or create) a deliberative polity that in which they can engage deliberants in an exchange of public reasons.

In order to apply dissent-as-difference theory, members of ACT UP must draw attention to their public reasons and do so in a way that is consistent with normative democratic criteria. Members of ACT UP can use a wide range of tactics as they launch protest actions within a dissent-as-difference framework. Members of ACT UP can attend public meetings and voice their dissent, protest outside closed meetings, hold die-ins, conduct poster campaigns and zaps, picket high schools whose representatives are opposed to a far-reaching sex education policy, distributing information and condoms in the process, and can protest at the offices and buildings of subgroups within the deliberative group. Although dissenters, after leaving the deliberative group, continue to advance public reasons in their protest actions, they are no longer just differently-situated groups: they are marginalized groups who assume the position of dissenters. This gives dissenters a certain freedom to use language and tactics that differently-situated groups within the deliberative group cannot use. The tactics that dissenters use in a dissent-as-difference approach change the power relation between differently-situated groups and the deliberative majority.

A different type of public reason comes out of the normative criteria of the dissent-as-difference approach. A lot of the work that protest groups such as YELL and

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[10] Grover, "Public Art on AIDS: On the Road with Art Against AIDS," 69.

ACT UP must do if they engage in dissent-as-difference involves consciousness-raising, the (unpaid) use of public space and illegal protest actions. In order to communicate their public reasons effectively members of ACT UP and YELL must be able to conduct their protest in ways that capture the attention of their audience. It is not enough for the deliberative group to allocate particular spaces in which dissenters can protest, nor should deliberative groups unnecessarily restrict legitimate protest actions. If the deliberative group has this kind of power, then the protest groups in a dissent-as-difference approach will effectively be under the same rules as they would be if they were to remain in the deliberative group. Dissent-as-difference cannot work to enrich communicative democratic theory if the deliberative group only engages with the public reasons of dissenters on the condition that dissenters protest in sanctioned marches or other equally tame and controlled ways. If dissenters only protest in the "safe" and legal ways the deliberative group encourages, dissenters run the risk of a form of cooptation that perpetuates their marginalization.

By the time dissenters organize and are ready to protest, they have already gone through an internal process of consciousness-raising. However, dissenters still need to raise the consciousness of people outside their group in order to convince them of the problem at hand. In order to raise the consciousness of people in the deliberative group, dissenters must be able to use available public space to convey their messages. The use of public space is very effective, as I argue in chapter 3 when I look at AmFAR's *On the Road* project. *On the Road* was successful in raising the profile of AIDS and AIDS-related issues, but it took place, in large part, because of corporate sponsorship. AmFAR did not permit corporations to veto any of the artwork and all profits went to the organization, thus minimizing many of the problems regarding cooptation that arise when activists depend upon external funding. As a result of the corporate money, AmFAR ran instalments on rented billboard spaces and busses, thus making the display of public art entirely legal.

ACT UP's artwork, while it operates in similar spaces, does so (often) without permission and without renting space because the group has limited resources. Activist art that appears (unpaid and without permission) on privately owned buildings or that replaces (paid) advertisements are likely to meet greater resistance than smaller art zaps that appear on lamp posts and traffic lights and which authorities generally regard as a

public nuisance. The use of these higher-profile public spaces is often very beneficial to activist causes, but they are high-risk actions[11] because of the legal consequences that accompany the illicit use of public space.

In a deliberative polity that uses a dissent-as-difference approach, deliberative groups will still restrict policy making to participants in the deliberative group. The deliberative group will maintain certain boundaries that express "acceptable" ways to deliberate and the types of dialogue that are "appropriate" within these deliberations. This poses problems for dissenters because face problems trying to convince deliberants that their public reasons are acceptable if they can only speak in ways the deliberative group approves of. Just as communicative democrats endorse alternative modes of communication (greeting, rhetoric and narrative), in dissent-as-difference theory, dissenters use alternative modes of communication that include, but are not limited to, greeting, rhetoric and narrative.

When ACT UP and YELL try to make their public reasons accessible, a wide range of actions, many of them illegal, are justifiable from a normative democratic standpoint. Dissent-as-difference theory accepts protest actions in which people graffiti, trespass on school property in order to distribute condoms and safe sex literature, replace paid advertisements with informational posters and other actions of a similar nature. Dissenters who perform these acts are still subject to legal action,[12] but the fact that a polity may prosecute dissenters does not negate the legitimacy of their public reasons or negate the fact that their actions are appropriate from a dissent-as-difference and a normative democratic standpoint.[13]

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[11] www.actupny.org/documents/DA.html

[12] The justice of legal punishments is a separate issue, and one that is beyond the scope of this paper.

[13] If deliberants convey acceptable public reasons through unjust actions, dissent-as-difference theory must respond differently. While a normatively acceptable public reason is still a normatively acceptable public reason despite the steps dissenters take to communicate it, the activist tactics that dissenters use do have significant consequences in a dissent-as-difference approach. If dissenters were able to use dissent-as-difference theory in order to lend legitimacy to their public reasons without the theory placing restrictions on the tactics they use, then dissent-as-difference theory could not be consistent with normative democratic values. Dissent-as-difference theory must place restrictions on dissenters and exclude them from participating in the deliberative polity as legitimate political protesters (though not necessarily as illegitimate protesters) because the failure to distinguish between protesters on the basis of their actions – ie to fail to discriminate between protesters who graffiti public buildings and protesters who kill figureheads of particular organizations – undermines justice claims. A full discussion of this issue, however, is beyond the scope of this paper.

When deliberants ask marginalized groups to modify their claims or to pursue them in less "radical" ways, marginalized groups often leave the group to argue the merit of their public reasons. Dissenters appeal to the same people as communicative democrats, but they appeal to a different understanding of that public – to a different range of possibilities and actions and to a potentially different public mindset. Because protesters engage in a dialogue without the constraints that accompany deliberative groups, dissenters draw attention to the issues that concern them in ways that participants in a deliberative group cannot. It is up to dissenters to determine *how* they meet normative democratic principles, and they may do so in unconventional ways. It is important only that they meet them through just actions.

Drawing attention to their public reasons, while necessary, is not sufficient for a protest group to convince people within the deliberative group that they ground their arguments in normatively acceptable public reasons. While there is no formula that, if protest groups follow it, will convince deliberants of the public nature of their reasons, dissenters are much more likely to communicate this if they frame their arguments as appeals to justice. Dissenters must emphasize the normative democratic values that support their arguments and present their claims in clear and concise ways. It is imperative that dissenters emphasize their public reasons as public reasons. The best way to do this is to use empirical data that is logically consistent and which deliberants can measure against "reliable methods of inquiry."[14]

In one confrontation with the school board, YELL conducted a survey of New York City schools to see if area schools were complying with the mandates of the existing AIDS curriculum. The data that YELL collected in the 1997 survey found that only 10% of the students has received the required six classes and that 39% did not recall being offered any AIDS education. YELL then presented this information juxtaposed with the Board of Education's report that there was only one school out of compliance with AIDS education mandates and were thus able to assert that their concerns about the quality of AIDS education in New York City were justified.[15] Protest groups can use these tactics to communicate facts about the inadequacy of a particular polity or to protest the absence of a policy on a particular issue. ACT UP and YELL have lots of

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[14] Gutmann and Thompson, *Democracy and Disagreement*, 56.
[15] www.actupny.org/YELL/survey.html

empirical data to draw upon to show that their proposed policy objectives serve a "pubic good" and to argue that the problems that deliberative opponents have with ACT UP's public reasons do not hold up to deliberative scrutiny.

Dissenters can only join a deliberative group when the deliberative group accepts that dissenters argue from the basis of normatively acceptable public reasons. It is possible that a group of dissenters may join a deliberative group in which most, but not all, members accept that the dissenting group offers public reasons. However, this can only be the case if the people or group who fail to acknowledge the dissenter's reasons as public reasons do not prevent the deliberative group as a whole from carrying out a dialogue in which the deliberative group treats the reasons of the formerly dissenting group in the same way as they treat the public reasons of other deliberants. It may be unlikely that a dissenting group will join a deliberative group under circumstances in which not all deliberants accept their reasons as public reasons (a situation very different from some deliberants disagreeing fundamentally with those public reasons) because the former dissenting group and the deliberants who reject their public reasons would be unable to deliberate.

A deliberative group can invite dissenters to join deliberations if dissenters convince a deliberative majority that they have acceptable public reasons. When this happens, there are two possible consequences. One possible result is that the remainder of deliberants who reject these public reasons are marginalized within the deliberative group as the rest of the deliberants argue on the basis of their, and the former dissenter's, public reasons. The second possible consequence is that the objecting members of the deliberative group leave deliberations and launch their own political protest. This new exit from and subsequent protest against the deliberative group only poses a problem if the new protest group has public reasons that are acceptable according to normative democratic criteria. Even then, dissent-as-difference theory can address this problem. I will revisit this problem later on in the chapter and set out the ways that a dissent-as-difference approach can deal with this type of subsequent protest.

In previous chapters, I set out the types of claims that count as public reasons and those that do not. In order to better illustrate the scenarios mentioned above, I look at the beginning of a dissent-as-difference dialogue on sex education policy and look at

the types of reasons ACT UP, YELL and various subgroups within the deliberative group may advance.

What types of claims count as public reasons?

Although people widely accept the argument for AIDS education in public schools as a good public reason, they still disagree on the content of such policies. This is where ACT UP and YELL factor in. I look at the dissent-as-difference approach in practice because the failure for a deliberative group to identify all normatively acceptable public reasons exacerbates the conflicts that in any contentious issue. Members of ACT UP and YELL protest outside the deliberative group because deliberants argue that the group's proposal for a comprehensive sex education program goes too far. The school board argues that because it offers more than what federal policy requires, it balances the interests between its conservative and liberal constituents. In a situation where ACT UP and YELL are welcome at meetings to discuss the sex education policy, but where the board makes it clear that the discussion will take place within a specific parameter and in which the policy is not up for a fundamental re-evaluation, just some small amendments, members of ACT UP and YELL position themselves outside the deliberative group and protest that the terms set out by the school board are exclusionary, fail to address public reasons, and are not in society's best interests.

From outside the deliberative group, members of ACT UP and YELL make a case for a comprehensive sex education policy on the basis of the following three public reasons. First, schools should not withhold information in sex education classes and/or make it difficult for students to access birth control and counselling because this is not the most effective way to reduce the spread of HIV/AIDS. Second, sex education must address homosexual and premarital sex: failure to do so will not prevent the practices, but is much more likely to result in unsafe sex because those who engage in them may not have the necessary education or access to safe sex materials. Third, reduced funding is not a good reason to limit services, nor is it financially sound because the long-term costs of heath care far overwhelm the cost of preventative programs.

A deliberative group typically consists of a variety of different sub groups. In the sex education policy example, some of the sub groups vehemently oppose ACT UP and YELL's arguments and do not accept them as public reasons. Other sub groups within the deliberative group may acknowledge that ACT UP and YELL have acceptable public

reasons, yet disagree with them and, for this reason, refuse to change the ground rules of the deliberation so that members of ACT UP and YELL can participate effectively. Both are problematic.

The public reasons that ACT UP and YELL use to make an argument for comprehensive sex education and the availability of birth control stand in opposition to the values of the Catholic Church. Some Catholics argue that it is important to their religious identity to teach abstinence or monogamy as the best safe sex solutions and that a comprehensive sex education plan of the type ACT UP advocates contradicts these teachings. Conservative religious groups that oppose homosexuality also reject ACT UP's public reasons. In their view, teaching safe sex that includes gay sex is tantamount to promoting it. Because they believe that homosexuality is a sin, any official policy that advocates practices that endorse it contradicts their religious beliefs. Neither religious groups nor ACT UP will support policies that fail to respect their group identities. The premises members of these groups hold stand in fundamental opposition, which means that the two groups will not be able to agree on a mutually satisfactory evaluation of the sin/acceptability of these practices; however, this is not a problem that negates a deliberative solution. The purpose of dissent-as-difference theory is not to evaluate the "correctness" of these premises, but to offer criteria so that people can determine if the reasons members of each group offer are acceptable pubic reasons and if and how the reasons conflict.

Dissent-as-difference and the problem marginalized groups pose to democratic bodies

One of the reasons that interest group pluralism fails to account for marginalized groups is because the approach does not, for practical purposes, distinguish between interest and identity groups. As I show in chapters 1 and 2, if an approach does not allow members of marginalized groups to participate as differently-situated people and discuss the impact that deliberative policies will have upon them as people with specific identities then the approach cannot treat members of marginalized groups as equals and it fails deliberative criteria.

In his essay "Are Identity Claims Bad for Deliberative Democracy?" Jonathan Quong argues that identity claims do count as public reasons. He argues that it is important to frame an argument as an appeal to identity if that is why a person holds a claim with such force. To frame an identity claim in other language is inconsistent with

public reason because it can obscure the nature of the issue, thus preventing proper deliberation.[16] The content of an identity claim, however, is subject to further scrutiny. While the claim "because it is important to my identity" is something that most people can understand lends sufficient weight to a practice so that others should consider it fairly,[17] it does not mean that the pubic reason is acceptable or that the identity in question meets normative democratic principles and thus merits deliberative attention.[18]

If we look at the reasons some religious groups are likely to offer within in the sex education policy debate, it is clear that the normatively acceptable public reason is not that homosexuality or premarital sex is a sin, but that these beliefs (however inconsistent with the normative values that underlie communicative democracy) are important to the deliberant's identity as members of a religious group. It is the appeal to respect freedom of religion that constitutes an acceptable public reason. However, it is only the appeal to freedom of religion that registers as an acceptable public reason: it does not follow that the specific beliefs that members of a particular religious group hold automatically receive the protection that freedom of religion does.

Freedom of religion qualifies as an acceptable public reason because it is a fundamental interest,[19] an interest that all people have an interest in protecting, and finds support in normative democratic values because respecting freedom and religion is one way to ensure that all people are treated as equals. To this end, the religious groups within the deliberative group are justified in their claim that their religious identity constitutes an acceptable public reason and, as such, warrants evaluation in the deliberative group. Religious groups overstep their bounds, however, when, in the context of formulating a sex education policy, they ask that the deliberative group do not just tolerate their specific religious belief, but impose them upon all people who go through the public school system.[20] The particular problems these religious groups have with ACT UP's public reasons have little to do with identity claims,[21] but follow from the

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[16] Jonathan Quong, "Are Identity Claims Bad for Deliberative Democracy?" in *Contemporary Political Theory*. 1/3 (2002), 311.
[17] Quong, "Are Identity Claims Bad for Deliberative Democracy?" 312.
[18] Quong, "Are Identity Claims Bad for Deliberative Democracy?"319.
[19] Quong, "Are Identity Claims Bad for Deliberative Democracy?"320.
[20] Quong, "Are Identity Claims Bad for Deliberative Democracy?" 316.
[21] This conflict involves identity claims when a group is allowed to impose their beliefs on their children. However, the identity claim of an of-age person is not compromised if a policy prevents a religious group from imposing their religious beliefs on others in civil society.

fact that the religious group demands that the polity impose its practices upon everyone. Arguments about imposing policies on others must, in order to make sense, have to appeal to other kinds of reasons, such as arguments that heterosexuality and sex within marriage are "the only morally permissible practice[s]" and that all people should adhere to these rules because "it is commanded by God."[22] These reasons are not acceptable public reasons and cannot hold force in deliberations. We can solve the conflict between the arguments that ACT UP and YELL offer and those that religious groups put forth when deliberative theory makes it clear that the reasons religious groups put forth as they oppose ACT UP and YELL are different from the acceptable public reason to have the deliberative polity respect their religious identity.

The religious objections to ACT UP and YELL's arguments fail the test of public reason. In a conflict between assertions of public reason, whenever a deliberative group establishes that dissenters have acceptable public reasons and when enough deliberants concede this point so that the dissenters can argue from the basis of their public reasons within a deliberative group, the dissent-as-difference approach meets the first challenge. After this occurs, the deliberative group will then go on to debate the remaining conflict on the merit of the public reason. The second challenge begins here as the deliberative group evaluates the merits of the conflicting (but acceptable) public reasons.

One or more of the sub-groups within a deliberative group may leave deliberations if their public reasons are, as a result of the analysis that follows from the claims put forth by dissenters, no longer acceptable. Or, while the status of the objecting sub-group's pubic reasons may go unchallenged, the subsequent evaluation of conflicting public reasons may prove unfavourable and they may withdraw from the deliberative group because they feel the deliberative group effectively excludes them, thus sparking a further instance where a protest group uses the dissent-as-difference approach, but with different people assuming the role of the dissenting group. If the deliberative polity replaces one legitimate protest group with another, then the dissent-as-difference approach does not address adequately the effective exclusions of the deliberative group. However, the replacement of one group with another does not automatically disprove the democratic value of the dissent-as-difference approach. The substitution of a sub-

[22] Quong, "Are Identity Claims Bad for Deliberative Democracy?" 315.

group with a dissenting group only poses a serious problem to dissent-as-difference theory if this substitution continues repeatedly and without working to resolve the issue that provokes the dissonance. In a case where the groups that move in and out of the deliberative group have acceptable public reasons, I doubt the groups would make no, or minimal, progress toward deliberating on the basis of acceptable public reasons within the deliberative group. When groups move in and out of the deliberative group like this, it will likely be because the groups disagree fundamentally with the public reasons put forth by the other group -- a phenomenon that can occur exclusively within a deliberative group but which may push a group to leave and employ dissent-as-difference tactics in the hopes that they can influence policy decisions. Sub-groups may not be able to influence policy decisions in the ways they want, but the purpose of communicative democratic and dissent-as-difference theory is not to satisfy the interests of the public, but to uphold normative democratic values.

In very few cases where two acceptable public reasons are not compossible -- for example, abortion -- then an agreement on the core issue is impossible. However, both groups can find some common ground [improving health care for pregnant women, providing sex education and (for some groups) birth control, etcetera] and, in identifying constructive things, reach some policy agreements.[23] As long as the dissent-as-difference approach incorporates all normatively acceptable public reasons into a deliberative discussion of public policies and as long as the deliberative group treats the evaluation of these public reasons in a fair and inclusive way, then it does not matter, from a normative standpoint, if all groups are happy with the outcome, or even if all groups are in the deliberative group. It only matters the deliberative group effectively includes all people with normatively acceptable public reasons. Whether or not people choose to reject their effective inclusion is irrelevant.

If a sub-group does not argue from the basis of acceptable public reasons and leaves the deliberative group in order to protest, then their exclusion is justifiable. Deliberative democratic processes cannot "address people who reject the aim of finding fair terms for social cooperation," nor can they "reach those who refuse to press their

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[23] John Forester, "Rationality and Surprise: The Drama of Mediation in Rebuilding Civil Society" Green College Lecture, University of British Columbia, March 4, 2003. On file with author, 21.

public claims in terms accessible to their fellow citizens."[24] Groups that do not argue from the basis of acceptable public reasons fail to appeal to justice. In failing to frame their reasons in terms that others ought to accept, they fail the normative criteria of communicative democratic and dissent-as-difference theory.

There are benefits for the powerful if they agree to more inclusive processes. Two principle motivations are the desire to be just and the need to manage conflict.[25] Just as these motivations push those with more power to agree to the deliberative democratic process, extending the deliberative polity and using a dissent-as-difference approach will result in more checks on the deliberative use of public reason and offer another space to challenge any abuses if they arise. Young argues: "reasonable people understand that dissent produces insight, and that decisions and arguments should in principle be open to new challenge."[26] If society fails to recognize all normatively acceptable public reasons and prevents marginalized groups and individuals from engaging the polity in an effective discussion over certain issues or policies, then treating dissent as a form of difference offers an ideal way for communicative democratic theory to incorporate legitimate dissent because it can retain the effectiveness of civil disobedience, if a protest group needs to engage in it, while still using deliberative processes and adhering to normative democratic criteria. While dissent-as-difference theory guarantee that people only use and interpret pubic reasons to advance social justice, it does legitimize a space for marginalized groups to contest the justice of public reasons and therefore extends the type of protections that public reason is meant to offer in a way that strengthens the democratic base of communicative democratic theory.

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I introduce dissent as difference in chapter 3 as a theory that can work with the normative ideals of communicative democracy and help deliberative groups better address the problems that marginalized groups pose for theories of communicative democracy. Dissent-as-difference theory is able to include members of marginalized groups that form protest groups. In chapter 2, I show that protest groups strengthen deliberative groups from the outside and argue that a normative approach should find a way to incorporate political protest if it wishes to benefit from the democratic potential

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[24] Gutmann and Thompson, *Democracy and Disagreement*, 55.
[25] Williams, "The Uneasy Alliance of Group Representation and Deliberative Democracy," 143.
[26] Young, *Inclusion and Democracy*, 24.

of protest groups. Dissent-as-difference theory effectively includes members of all marginalized groups, which, as I show in chapter one, is something that all three approaches do not do on their own.

My criticisms of communicative democracy arise because the theory cannot ensure that all deliberative groups are able to recognize all normatively acceptable public reasons. In chapter 3 I look at the communicative democratic criteria in respect to the ability of a deliberative group to effectively include all members of marginalized groups. I argue that communicative democracy cannot meet its own criteria because it cannot guarantee that all marginalized groups will be able to participate effectively within the deliberative group. The type of marginalized groups that form protest groups challenge communicative democracy insofar as this approach claims to meet the criteria of inclusive political communication.

My criticisms of communicative democratic theory centre on the discrepancy between the theory - in which all members of marginalized groups make use of the amendments that communicative democratic theory makes to deliberative democratic theory to exchange public reasons as equals within the deliberative group - and practice - which cannot ensure that deliberants recognize all normatively acceptable public reasons. It is important that dissent-as-difference theory, which I offer as a solution to the failure of communicative democratic theory to address all members of marginalized groups, does not fall into the same trap. Dissent-as-difference theory addresses protest groups within the deliberative polity. This does two things. First, this approach engages with the public reasons of marginalized groups that are outside the deliberative group and thus meets communicative democratic criteria. Second, dissent-as-difference theory engages with protesters as protesters, and thereby avoids the problems that arise when a deliberative group recognizes marginalized groups only when they fit a particular conception of what constitutes an acceptable public reason.

Dissent-as-difference theory respects the democratic merit of political protest and it respects the normative criteria of communicative democratic theory. The implementation of dissent-as-difference theory changes the criteria of communicative democracy in the cases where communicative democratic criteria cannot treat all members of marginalized groups as equals. These amendments alter the type of public reason in the dissent-as-difference approach; they affect the scope of communicative

democracy and conceptualize the deliberative polity as an overarching space for deliberation. The changes dissent-as-difference theory makes to communicative democratic theory changes respect the egalitarian spirit of communicative democratic theory and offer marginalized groups an arena in which they can protest against the types of practices that a policy making body may not recognize as oppressive.

Conclusion

I look at theories of deliberative democracy because they emphasize procedural justice in policy formation with the specific and laudable intent of including all people as equals. As I show, however, deliberative democracy and communicative democracy cannot fully address the concerns of marginalized groups because they cannot guarantee that a deliberative group will be able to recognize all normatively acceptable public reasons. Because theories of deliberative democracy cannot guarantee that all members of marginalized groups will be able to participate effectively within deliberations, it is important to address political protest. Deliberative groups effectively exclude some marginalized groups; these marginalized groups may form protest groups and try to impress upon the deliberative group the normative merit of their public reasons. Political protest poses a problem for theories of deliberative democracy, however, because neither deliberative nor communicative democracy account for dissent. Both approaches assume that all members of marginalized groups should and will be able to deliberate within the group. Deliberative democratic theories assert that deliberating from within the group is the best way to ensure inclusive and legitimate deliberative processes, but, as I show, this is not always possible.

I propose dissent-as-difference theory as a new approach that is able to address the type of political protest that marginalized groups engage in when a deliberative group effectively excludes them. I look at the dissent-as-difference approach as a way for marginalized groups to engage the deliberative process from outside a deliberative group after their attempts to communicate normatively acceptable public reasons from within the deliberative group fail. As a normative approach, dissent-as-difference theory changes the deliberative conception of what it means to engage rather than confront democracy and it does so by widening the deliberative scope to include civic society in an overarching deliberative polity.

In chapter 1, I look at interest group pluralism, deliberative democracy and communicative democracy as three ways of understanding how we form policy according to democratic ideals. These three approaches deal with the problem that marginalized groups pose in different ways. Deliberative groups may effectively exclude members of marginalized groups because the deliberative group may fail to recognize

their public reasons as public reasons. Each approach has a different understanding of what constitutes an acceptable public reason and what constitutes an effective exchange of public reasons.

In interest group pluralism, people do not have to offer public reasons and as such cannot meet the normative criteria of inclusive political communication. Deliberative democratic theory does stress the importance of an exchange of public reasons, but the deliberative democratic conception of what constitutes an acceptable public reason effectively excludes the partial concerns of differently-situated people. The deliberative standard of impartiality treats difference as a problem that must be solved and as such cannot treat members of marginalized groups as equals. Communicative democratic theory contests the justice of the standard of impartiality and asks deliberants to treat difference as a resource. In addition, communicative democrats ask deliberants to expand the conception of democratic communication to include the partial ways that members of marginalized groups communicate their public reasons.

As I look at the three approaches, I find that communicative democracy is the approach best suited to the fair and just treatment of marginalized groups. However, a truly inclusive approach to policy formation must address all types of effective exclusion that marginalized groups face and I show that communicative democracy cannot do this. Communicative democrats assume that because communicative democratic groups treat difference as a resource, deliberants will be able to recognize the reasons of marginalized groups as acceptable public reasons. Although communicative democratic theory refines deliberative values so that this should be the case, the theory does not address the possibility that deliberants may be unwilling or unable to recognize he merit of some normatively acceptable public reasons. Consequently, deliberants may determine that certain pubic reasons are sufficiently unimportant to warrant deliberative attention and may unjustly exclude members of marginalized groups.

In chapter 2, I look at the problem that the effective exclusion of marginalized groups poses for communicative democratic theory and argue that this problem exists because theories of deliberative democracy do not address political protest. Political approaches that do not offer ways to deal with legitimate political protest fail the test of democratic legitimacy because they ignore the link between marginalized groups and protest groups. Because none of the approaches can guarantee the effective inclusion of

marginalized groups, each must have a mechanism to deal with political protest if they are serious about including all marginalized groups that have normatively acceptable public reasons.

As the protest actions of ACT UP show, political protest can redress effective exclusions that a political approach may inflict on members of a marginalized group. Members of ACT UP saw a void in America's response to AIDS. By launching a series of dissent and civil disobedience actions, ACT UP succeeded in remedying many of the policy gaps and improved the treatment of marginalized groups in the US. The successes of ACT UP show that marginalized groups can offer public reasons from outside a political approach. While the fact that protest groups are capable of doing this strengthens the position of marginalized groups insofar as they form political protest groups, it does not redress the failure of interest group pluralism or deliberative democratic theory to deal with marginalized groups because it does not change the way these two approaches define what counts as an acceptable public reason or what modes of communication an approach deems acceptable.

In chapter 3 I look at the relationship between communicative democratic theory and political protest because this approach is more successful than interest group pluralism and deliberative democratic theory in effectively including members of marginalized groups. Communicative democratic theory should be able to address all normatively acceptable public reasons that members of marginalized groups put forth in the deliberative group, thereby eliminating the existence of legitimate dissent. Because communicative democratic theory should eliminate the existence of the type of legitimate political protest that marginalized groups engage in, the theory does not address political protest. However, I show that communicative democratic practices cannot guarantee that a deliberative group will be able to recognize all public reasons as normatively acceptable public reasons. Because marginalized groups form a type of protest group when the deliberative group effectively excludes them, communicative democratic theory does not succeed in negating the existence of legitimate dissent. Consequently, I argue that communicative democratic theory must address political protest if it is to treat all members of marginalized groups as equals.

After I establish the problem that dissent poses for communicative democracy, I propose a new approach. Dissent-as-difference theory is a response to communicative

democratic theory's conceptualization of deliberative space. Communicative democrats limit this space with their narrow conception of what it means to deliberate, and the "proper" ways to do so. Communicative democratic theory reveals flaws with the scope of deliberative democratic theory and offers suggestions to make the deliberative process more inclusive; it finds new ways to listen to participants in deliberative groups and is able to respect difference. I agree with the communicative democratic critique of deliberative democratic theory, but I do not think it goes far enough. Although deliberative democratic criteria explicitly and purposefully exclude dissenters on the grounds that inclusive and effective communication cannot occur when people position themselves outside a deliberative group, this criterion is misguided. I take the communicative democratic criticism – criticism that emphasizes the democratic importance of enabling marginalized groups to initiate dialogue -- further, and argue that we must enlarge our understanding of deliberative space in order to accommodate dissent.

For these reasons, I propose that communicative democrats treat dissent as a form of difference. Dissent-as-difference theory works with communicative democratic theory to provide a better way to realize the spirit of communicative democracy. If we want to raise the standard of democratic legitimacy and enable all differently-situated people to speak as differently-situated people, then we must treat dissent that accords to normative deliberative criteria the same way we (should) treat difference. Dissent-as-difference theory expands the conception of the deliberative public because it includes the deliberative group and the wider deliberative polity.

I discuss dissent-as-difference theory further in chapter 4 and argue that a dissent-as-difference approach avoids the problems that communicative democratic theory faces when deliberative groups put it into practice. My criticisms of communicative democratic theory arise because the theory cannot ensure that all deliberative groups are able to recognize all normatively acceptable public reasons. Dissent-as-difference theory addresses protest groups within the deliberative polity. This does two things. First, this approach engages with the public reasons of marginalized groups that are outside the deliberative group and thus meets communicative democratic criteria. Second, a dissent-as-difference approach engages with protesters as protesters, and thereby avoids the problems of cooptation that arise when a deliberative group

recognizes marginalized groups only when they fit a particular conception of what constitutes an acceptable public reason.

Dissent-as-difference theory respects the democratic merit of political protest and it respects the normative criteria of communicative democratic theory. The implementation of dissent-as-difference theory changes the criteria of communicative democratic theory in the cases where communicative democratic criteria cannot treat all members of marginalized groups as equals. The amendments dissent-as-difference theory makes change the nature of acceptable public reasons and affects the scope of communicative democratic theory because the dissent-as-difference approach conceptualizes the deliberative polity as an overarching space for deliberation. The changes dissent-as-difference theory makes respect the egalitarian spirit of communicative democratic theory and offer marginalized groups an arena in which they can protest against the types of injustices a policy making body may not recognize as oppressive.

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Dissent-as-difference theory is an approach to deliberative politics that addresses both deliberative groups and the deliberative polity. Because the theory does this it is able to address the type of political protest group that members of marginalized groups form when a deliberative group effectively excludes them. Dissent-as-difference theory accepts that this effective exclusion is an unfortunate but nonetheless real part of communicative democratic practices. A dissent-as-difference approach allows protest groups that meet the normative criteria of communicative democratic theory to continue to try and initiate dialogue within a deliberative group. In the other deliberative theories, excluded marginalized groups may protest, but because the theories do not discuss political protest and because deliberative and communicative democratic theories place strong boundaries on what they deem to be acceptable public reasons and legitimate political behaviour, it is difficult for marginalized groups to assert their justice claims from outside the deliberative group. In contrast, dissent-as-difference theory makes provisions so that even when a marginalized group cannot argue from within a deliberative group, the group can use communicative democratic criteria to restate the legitimacy of their public reasons and, importantly, do so with the support of a normative theory that cautions the deliberative group that it is not the exclusive realm of

normatively acceptable public reasons. Because dissent-as-difference theory cautions communicative democratic theory that marginalized groups outside the deliberative group may have normatively acceptable public reasons, the deliberative group is more likely to recognise them as such and is better equipped to guard the deliberative group from the dangers of being under-inclusive.

Because dissent as difference theory works with political protest groups, it offers a realistic way to account for the dissent that arises when communicative democratic ideals fail to translate into ideal communicative democratic practices. Dissent-as-difference theory changes the deliberative understanding of what it means to engage democracy. A dissent-as-difference approach reconciles the perceived tension between political protest and communicative democratic theory and does so in a way that not only respects the normative criteria that underlies theories of deliberative democracy but expands it in order to better address the concerns of marginalized groups.

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