

Pluralism Slippery Slopes and Democratic Public Discourse

Maria Paola Ferretti and Enzo Rossi

Abstract

Agonist theorists have argued against deliberative democrats that democratic institutions should not seek to establish a rational consensus, but rather allow political disagreements to be expressed in an adversarial form. But democratic agonism is not antagonism: some restriction of the plurality of admissible expressions is not incompatible with a legitimate public sphere. However, is it generally possible to grant this distinction between antagonism and agonism without accepting normative standards in public discourse that saliently resemble those advocated by (some) deliberative democrats? In this paper we provide an analysis of one important aspect of political communication, the use of slippery slope arguments, and show that the fact of pluralism weakens the agonists' case for contestation as a sufficient ingredient for appropriately democratic public discourse. We illustrate that contention by identifying two specific kinds of what we call pluralism slippery slopes, i.e. mechanisms whereby pluralism reinforces the efficacy of slippery slope arguments.

Keywords: agonism, deliberative theory, ethical pluralism, public discourse, slippery slopes

Introduction

One central issue in recent liberal democratic theory, particularly of a deliberative democratic bend, is to explain how citizens can constructively engage in public discourse, given their deep social, cultural and ethical differences. Political liberals and Rawls in particular, have argued that in public debate reasonable citizens should abstract from their particular conceptions of the good and reason starting from some basic political principles that all can share, with the aim of reaching consensual solutions. This emphasis on shared values and consensus has lately become

the focus of what is sometimes referred to as the agonistic critique of deliberative democracy.¹ In a nutshell, the agonists' worry is that the sort of normative standards for public debate favoured by liberals such as Rawls and Habermas stifle democratic pluralism with moral and practical adverse effects in terms of civic cohesion, stability, legitimacy, and social development. Various authors (Knopfs 2007, Markell 1997) have suggested that the points of opposition between agonistic and deliberative democrats may not be as sharp as the proponents of both approaches argue. This distinction, however, has been very powerful in shaping the academic debate on the relative importance of contestation and consensus in public discourse (Brady 2004: 333). In the version of such opposition offered by Chantal Mouffe, the focus on reason-giving processes and the search for reasonable consent leads theorists of deliberation to set aside identity differences, antagonism and power relations. These should instead be taken to be "constitutive at the conceptual level of the very nature of modern democracy" (Mouffe 2000, p. 18). The aim of the democratic institutions should be to allow these differences to be expressed in an adversarial form. While for Rawls pluralism is an inescapable fact to be contained through the ideas of reasonableness and public justification, for Mouffe pluralism is preeminently a value and characterizes an open society in which different identities, understood in non-essentialist terms, are constantly renegotiated in the ongoing political confrontation (Mouffe 2000, p. 17).

The debate on the role of pluralism in public debate is increasingly articulated and nuanced, however much of the literature is rather abstract. In this paper we set out to observe the effects of pluralism on some concrete instance of public communication. We have chosen to focus on one important aspect of public discourse, the function of slippery slope arguments which, as we will show, is particularly sensitive to the effects of pluralism in society. Our account of the dynamics of slippery slope arguments under conditions of pluralism yields an argument that weakens the agonists' case for unfettered democratic public discourse and points to the need for agonists to confront some of the problems that their understanding of political confrontation faces in its possible applications. Yet, unlike most defences of deliberative democracy, our argument proceeds from premises that agonists tend to share, namely the importance of taking actual interests, preferences and power dynamics seriously.

Before outlining our argument, it may be worth asking why one should worry about slippery slope arguments. Those arguments are a fixture of academic and especially public

debates on controversial policies: the worry often arises that allowing a desirable practice might ‘open the floodgates’ to undesirable consequences. Now, as we will show in some detail, the use and abuse of slippery slope arguments should be a serious concern in so far as research shows how those arguments have low cognitive efficacy and high rhetorical impact—of course they are not the only kind of argument that suffers from those problems, but they provide an interesting and normatively significant case study of the effects of pluralism on the quality of public debate (Talisie 2009).

In the version presented by some agonists, and that of Chantal Mouffe’s in particular, opportunities for expression of disagreement should be maximized and the idea that deliberation should aim at rational agreement or consensus should be abandoned.¹ Some critics, however, have remarked that Mouffe cannot explain how it is possible to distinguish between democratic and non-democratic discourse without explicitly endorsing some common principles or standards, such a commitment to liberty and freedom and indicate which political and legal institutions can favour such democratic qualities. (Deveaux 1999; Rummens 2009). Our analysis of slippery slope arguments corroborates this thesis.

As we will show, where no common ethical and political standards are at works, public discourse under conditions of pluralism leads to a widespread recourse to slippery slope arguments. Now, setting aside the issue of the cognitive reliability of those arguments, which is quite likely no interest for agonists, what is most important even from the agonists’ point of view is that in a pluralistic context slippery slope arguments tend to induce a form of social stifling. As an effect of slippery slopes arguments, opinions tend to polarize, and citizens refrain from supporting certain intermediate resolutions (desirable from their point of view) in fear that other social groups would use those same resolutions as a stepping stone to bring about further, undesirable changes. That is to say, society fails to take a step that most citizens and groups would consider acceptable or even desirable. So, unlike what the agonists’ maintain, it is not always the case that the absence of shared standards in public debate is the best way to favour *agonism* (constructive confrontation, that is) rather than antagonism (ranging from political stalemates to all-out instability). A move from antagonism to agonism presupposes a normative view of the interactions among groups in society and may be impossible without employing some minimal standard of rationality akin to those found in deliberative democratic theory. As some

have argued, that is an element of Mouffe's theory that has not been emphasised enough (Knops 2007). As we will try to show, whether we conceive of the other as enemies or rather—as Mouffe thinks is desirable—we democratically appreciate their right to defend their position is also due to the dynamics that are created within public debate itself. Either the agonist accepts that any of those dynamics is equally good, or one defends agonist against antagonist processes. Indeed the thought that ‘[a] healthy democratic process calls for a vibrant clash of political positions and an open conflict of interests’ (Mouffe, 2005, p. 6) may be regarded with much less enthusiasm in light of an account—such as the one offered in this paper—of some of the dynamics intrinsic in such a normative conception of pluralism. In other words, our contention is that this radical version of political disagreement is ill-suited to the challenges of democratic pluralism. Instead our argument points to the need of social, legal and political institutions capable of mediation among citizens’ moral and cultural differences and of channeling the conflicts into a constructive discourse.

The paper proceeds as follows. In the first section, by way of introduction, we provide an abstract model of slippery slope arguments by distinguishing between conceptual and empirical slippery slope arguments. The next step is to see how that general model is affected by the fact of ethical diversity. So we carry out our analysis of slippery slopes under conditions of pluralism and we introduce the idea of *pluralism slippery slopes*. Then, in the second section, we present a taxonomy of the possible causes of slippage: legal precedents, attitude changes, and political power dynamics. We also illustrate with examples how, in light of our earlier analysis of pluralism slippery slopes, each type of slippage can be affected by the fact of diversity. The third section applies our account of pluralism slippery slopes to the normative issue of the management of pluralism in a democratic context.

Slippery Slope Arguments in Circumstances of Pluralism

This is a standard initial characterization of the abstract structure of slippery slope arguments:

A slippery slope argumentation scheme is a sequence of steps, a chain argument of the following form: First, it is conceded that there is no significant difference between two things A0 and A1. And since A0 is acceptable, A1 must be

acceptable too. But then, because there is the very same relationship between A1 and yet another thing A2 as there was between A0 and A1, it must be conceded that A2 is acceptable as well. Each time it is argued that the difference is not significant until, by a sequence A0, A1, ... , Ak, we arrive at some absurd or disastrous result Ak. The inevitable conclusion is that Ak must be acceptable too (Walton, 1989, p. 264).

That characterization, however, is too abstract and general for our purposes. It will thus be useful to introduce a standard distinction between two different versions of the slippery slope argument: the logical (or conceptual) version and the empirical version:

The logical form of the argument holds that we are logically committed to allow B once we have allowed A. The empirical form tells us that the effect of accepting A will be that, as a result of psychological and social processes, we sooner or later will accept B (van der Burg, 1991, p. 43).

To be more precise, there is a further distinction between two variants of the logical slippery slope. On the first variant there is no relevant conceptual difference between A and B, or the justification for A applies equally to B. On the second variant there is a difference, but ‘there is no such difference between A and m, m and n, ... y and z, z and B, and that therefore allowing A will in the end imply the acceptance of B’ (van der Burg, 1991, p. 44).

At any rate, with few notable exceptions² moral and political philosophers have tended to concern themselves mainly with the logical version of the argument, often downplaying or even dismissing the relevance of empirical slippery slope arguments in rigorous political and ethical discussion. Yet one should not presumptively overlook the plausibility of *some* empirical slippery slope arguments just because they are not subject to the same standard of proof as purely conceptual arguments: ‘Despite the tendency of the textbooks to treat slippery slope arguments as fallacious, it has become evident that this is probably not correct, and that some arguments of this type can be correct, given the right context of discussion’ (Walton, 1992, p. 37). In fact, as we shall see in some detail below, most slippery slope arguments deployed in public discourse are of

the empirical kind—and there is nothing fallacious about that argumentative form *per se*. At any rate, in the public sphere (as opposed to philosophical debate) often what matters about slippery slope arguments is their (perceived or real) *predictive* power, rather than their *conceptual* force (Lode, 1999). So the point is not that conceptual arguments are not relevant in those debates; it is just that we need analytical tools to make sense of the non-conceptual arguments, and of their effects on public discourse. So, while we should be wary of the way in which slippery slope arguments are often used as the ‘trump card of the traditionalist’ (Williams, 1986, p. 426), we should not automatically dismiss empirical slippery slope arguments either. We should rather try to assess their predictive force—a philosophically unfamiliar yet relevant task for the assessment of the normative relevance of those arguments. Additionally, as will become clearer below, we should recognize the implications of the impact of such arguments for the way we perceive and manage pluralism in a democratic context.

That was a thumbnail sketch of the abstract structure of slippery slope arguments. Before entering into any detail as regards what exactly may cause slippages of one sort or another, however, it will be useful to introduce our analysis of what happens to slippery slope arguments under conditions of ethical diversity—as we shall see, that will have important consequences for our understanding of the role and management of pluralism in liberal democratic contexts. As anticipated, one of our contentions is that the fact of pluralism plays an important role in determining the potential severity of slippages, or at least their perceived potential severity.

In a society where different groups of citizens take different stands with regard to a certain policy, the preoccupation with empirical slippery slopes takes the following form. A certain group X of citizens supports (or at any rate finds acceptable) a certain decision A, but decides to oppose it in fear that passing that decision will put another rival group Y in a better position to defend (and pass) another decision B that X oppose. Call this a *pluralism slippery slope*. The relevant question, then, is this: what, if any, is the rationale³ for X to support (or not support) A, given that it may facilitate Y in their claim for B? What makes such a question relevant is the fact that competing groups in society support different policies that are located on different points along the slope, as it were (Volkh, 2003, p. 13). At least in some cases the lack of control of X over the actions of Y (e.g. how they will draw on a decision A to foster decision B and perhaps C) is bound to increase the perception of the risk of a slippage.⁴ So, in a society

where citizens are deeply divided in their ethical and ideological positions (as opposed to a more homogenous community) it is more likely that slippery slope arguments will be deployed and perhaps win the day. Possible strategic uses of slippages include using them rhetorically to support one's point, or rather avoiding drawing attention to the possible connections among various elements of an argument so as to prevent possible slippages to undesirable conclusions/decisions. Although our examples concentrate on cases in which such arguments are deployed in public, it is clear that they play an important role even in cases in which, as a matter of strategy, citizens avoid expressing certain views in fear that they may be exploited by others.

However the perception of the risk of slippage is not only due to diffidence towards people with different ethical outlooks and political preferences. Pluralism also affects the ways in which individuals and groups come to pass judgment on the likelihood and plausibility of the progression from one step on a slippery slope to the following ones. Formulating judgments on the likelihood of certain undesirable consequences (which may derive from taking a desirable course of action) requires a complex evaluation, burdened by the difficulty of assessing empirical evidence, disagreement about the relative weight of relevant considerations, the vagueness and indeterminacy of our conceptual tools, and so on. That account explains persistent and deep disagreement even among citizens who share a number of deep ethical commitments. The differences in their whole life experiences (which tend to be greater in societies where citizens enjoy liberal-democratic freedoms) produce differences in their epistemic stances, and so influence the way they reason about possible implications between one case and the other.⁵

Varieties of Slippages

Our account of pluralism slippery slopes above begins to bring into a sharper focus a way in which the fact of pluralism can exacerbate some ethical and political controversies. In the third section we will explore exactly why that tends to be socially detrimental. As a groundwork for answering that question it will first be useful to get a more concrete sense of how pluralism slippery slopes can affect public debate. Thus in this section we introduce a taxonomy of the causes slippery slopes (adapted from Volokh, 2003). The distinction between the three types of slippages is made for analytical purposes, in so far as most 'real world' slippery slopes are in fact

an hybrid of legal, political and socio-psychological elements. Without addressing the merits of the particular arguments at stake, we will introduce some examples to illustrate how, under conditions of diversity, each potential slippage is susceptible to argumentative exploitation—as envisaged in our account of pluralism slippery slopes.

Legal Slippery Slopes

In most legal systems precedents play a central role in grounding further judicial decisions.⁶ Weighty reasons are needed in order to depart from a precedent—and typically such departures become exceptions that constitute new rules for the treatment of similar cases. To a certain extent, what counts as a similar case will then be subject to the interpretation of different judges, as legal rules are generally vague at the margins. Thus a legal rule may evolve from A to B and to C by means of the introduction of new rules that are progressively more distant from the initial rule. So, even if slippery slope arguments do not always impair legal reasoning, sometimes the logically weak distinction between a case and a precedent enables slippages. Given the possibility that other judges give an interpretation of the new rule that goes beyond the intended limit, some may decide against interpretation B of A, in fear that via a legal slippery slope it may bring about C, which they strongly oppose.

Lawrence v Texas (539 U.S.558, 2003) is a good illustration on how legal decisions have been regarded (and opposed by some) as a first step on a slope which, under conditions of pluralism, can become very slippery. This is a landmark United State Supreme Court case, in which the justices declared unconstitutional the sodomy law in Texas, thus reversing a previous ruling which did not find a constitutional protection for privacy in the case of homosexual sex (*Bowers v. Hardwick* 478 U.S. 86, 1986). Justice Kennedy, who wrote the majority opinion, grounded the right to have consensual homosexual sex among adults on the intimate and personal character of the conduct, thereby invalidating similar laws that criminalised sodomy throughout the United States. Additionally, it offered a legal basis for the protection of a whole host of sexual activities between consenting adults. The gay community welcomed this ruling as a positive legal development, which may result in further legal advance in the protection of gay rights. By converse, justice Antonin Scalia based his dissent on the negative slippage induced by this judgment, which denies that morality should be defended by law. Scalia argues that this ruling

will bring into question not only *Bowers*, but also some subsequent judgments from lower courts and the envisaged effects are:

State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices. Every single one of these laws is called into question by today's decision.⁷

In other words, for Scalia the *Bowers* ruling is the only floodgate against a set of undesirable consequences. The reasons for opposing the ruling are not so strongly directed at defending the law against 'sodomy', but at holding the floodgate. The worry is that any further stopping point would be arbitrary, and given that some other groups (in this case gay rights advocates) consider some steps further on the slippage as positive, one should reasonably think that they will exploit them to their advantage: 'With this decision' Scalia concluded, the Court 'has largely signed on to the so-called homosexual agenda'. This formulation suggests that the existence of a rival group which regards the slippage as positive makes it more threatening, and the fact that different courts and judges may give interpretations more favourable to those rival groups exacerbates the worry. However, even assuming a relative impartiality of judges between the gay cause and the conservative claim, one may expect that different judges disagree, due to a different interpretation of the constitutionally protected value of privacy. Whilst for the dissent the decision implies that 'everything goes', the majority opinion stresses the limits of the scope of the ruling, for example asserting that it excludes public recognition of gay unions (and therefore also of bigamy, which is one of the possible feared steps further down the slope envisaged by Scalia). Now, if we consider judges as reasonable actors we can understand their disagreement about the possibility of slippery slopes. However their arguing in terms of slippages, in order to be something more than rethoric or an *ad hominem* attack, must respect some rules such as using clear definitions that are accessible to all, and showing evidence for the likelihood of the slippage, for example by showing that there are no other legal resources to prevent it (Walton, 1992, pp. 175-176).

Instead, Scalia moves the attention from the reason-giving process to the actors and their different identities. By identifying gay rights advocates as antagonists Scalia implies that they will probably exploit slippages to their own advantage. If we treat this issue as an antagonistic confrontation among different groups, then it seems that the use of the argument from possible legal slippages will be more widespread and, perhaps, successful. This would be desirable for those who want to oppose gay unions, but not those who would accept gay unions but not, say, bigamy, or other consequences envisaged by Scalia. As a result of this worry, an acceptable or even desirable change risks being stopped in its tracks. What is important to stress here for the purposes of our argument is that the use of slippery slope arguments is an instance of how the sort of unregulated, confrontational public discourse favoured by agonists has deleterious effects for the quality of societal interactions and for society's ability to progress in whatever direction it regards as acceptable or desirable.⁸

Attitude Change Slippery Slopes

This second kind of slippery slope concerns not specifically the outcomes of a certain decision-making process but the attitudes of people toward a certain proposal. This can be confined to the evaluation of a certain proposal, which is in general connected with the support or withdrawal of support for the proposal, but could also extend to the motivational disposition towards a rule, at least if we accept that the motivation to comply with the law depends on attitudinal dispositions toward the rule (Elster, 1989).

Arguably, moving from the absolute banning of a practice to a regulated use of that practice under certain specific circumstances specified by a law may weaken motivation by generating an attitudinal change toward the rule. Affected by the is/ought heuristic, people may think that if a law exists, the justification of the law is sound, and will thus use such perceived justification (however ill- or well-grounded it may be) in order to form their opinion on other cases (Foot, 1977). In this way a gradual, incremental change in the attitude of the people and in society occurs, which would never have occurred as a single big and sudden change, for as such it would not have been considered acceptable (Glover, 1984; Williams, 1985).

Consider the issue of embryology, whose discussion frequently features attitudinal slippery slope arguments. In countries like Germany, where the horror of the Holocaust has deep cultural

relevance (Wessels, 1994), those arguments have been used with remarkable success to stop or delay legislation and regulation of genetics' applications. For example, until the more liberal regulation of 2010, pre-implantation genetic diagnosis (PGD) was banned. Despite the fact that most Germans believed that the use of PGD was justified for selecting against some life-threatening monogenetic diseases,⁹ opposers (such as disability advocacy groups) argued that this would be the first step on a dangerous slippery slope. They argued that, as is the case in countries like the USA (where PGD is permitted), people will ask for selection against increasingly less serious diseases and genetic fitness will become the new standard for being born; thus, in a progressive series of small psycho-social changes, people would end up having less respect for disabled people (Franzisket, 2010). In the same vein, in a public speech in May 2001, Federal President Johannes Rau stated that there is no scope for compromise on the value of human dignity (which in German law is ascribed also to the embryo), as that would undermine the general force of the principle: 'Those who begin to instrumentalize human life, to differentiate between worthy of life and unworthy of life, are on a runaway train' (Cohen, 2001). The fear is that, as Habermas (2003) put it, we face an 'erosion of moral inhibitions' against the violation of certain principles. The thought behind these statements is that, '[once we have] compromised a bit on the principle, there's nothing to be lost by compromising further' (Volkh, 2003, pp. 33-34).

Attitudinal slippages may be simply out-of-hand processes which occur in society, which may be prevented by avoiding stepping on the slope in the first place; or they can be processes explicitly exploited by some groups in order to push changes that are desirable from their point of view, but are not supported by other groups in society. In both cases, we can discern the relevance of pluralism: it may be that a group X has some moral and/or political beliefs in A such that they would allow for certain practices B but oppose firm resistance to other practices C and D. Although confident in the moral strength of the members of their own group, some may doubt another group Y, who do not share (say) the same religious motivation for strongly upholding A even when B is allowed; thus group Y could allow (or even actively work to reach) steps C and D. What is more, group Y may promote values that are in tension with those expressed by A and be prepared to accept trade-offs that are unacceptable from the point of view of group X. For instance in the case of embryology, the rapidly growing biotech industry and its lobbies are often

indicated as having substantial economic returns from an increased demand for PGD, and therefore as having an interest in exploiting the slippage at least down to some steps that others find unacceptable. So, as envisaged by our account of pluralism slippery slopes, the antagonistic posturing of a plurality of divergent interests and perspectives gives force to arguments invoking the possibility of slippages, thus making the recourse to such arguments and their success more likely, regardless of the intrinsic quality of such arguments. To see this from a slightly different angle, we may say that the sort of pluralism slippery slopes that tend to be invoked in public discourse in circumstances of agonistic pluralism make it more difficult to accept reasonable defenses of opposing positions in fear of the unwanted consequences that these could have.

Political Power Slippery Slopes

This third instance of slippery slope concerns the relative force of the various groups in society. The relative power of social groups may change as a consequence of various empirical factors, which may have an impact on (say) the size of groups, or their political influence.¹⁰ Volokh identifies five kinds of political power slippery slopes: decisions to change the voting rules; decisions to change the immigration rate; change the levels of participation in political campaigns; change in the number of people who feel personally affected by a particular policy; events that make supporters of a certain option more credible to the public or more capable to organise public campaigns and political action; political momentum slippages (Volokh, 2003, pp. 47-48).

In the 2008 US presidential campaign, Barack Obama's proposal for health reform included various measures aimed at expanding access to health coverage, with the aim of obtaining or approximating universal coverage. These included incentives (through public funding) to individuals and employers, compulsory coverage for children, and the creation of a National Health Insurance Exchange through which individuals could purchase public plans or qualified private insurance plans. After months of political battles, the reality of the reform in 2010 has been much more modest. It leaves the insurance system basically unchanged, insofar as it does not envisage a 'public option', but introduces subsidies for the purchase of coverage and regulates the insurance market by introducing some rules such as the prohibition to deny

coverage on the basis of previous conditions, and the obligation to cover young adults until the age of 26 under their parents' insurance.

Even those rather modest interventions are regarded with strong suspicion by President Obama's opponents, who see these small changes as a slippery slope toward a system of state-funded healthcare. Michael G. Franc, vice president of government relations for the Heritage Foundation, for one, denounced a chain of changes that—in his view—will follow the reform:

Those seemingly modest changes urged by the White House, you see, would fundamentally alter the terms and conditions under which Americans purchase their health insurance. Worse, those changes cannot stand alone. They would necessitate a series of additional changes, each building upon the others so as ultimately to produce reform every bit as 'robust' — and every bit as lethal — as the \$2-trillion government takeover now being so loudly denounced in town halls throughout the nation (Lansing, 2010).

This formulation may suggest a change in the attitudes of health insurance purchasers. However what is interesting to observe here is the perception of how a modest political victory can become, via political slippages, a great success because of how it changes, progressively, the way they are *affected* by the reform. An unpopular reform may 'sneak in from the back door' because it obtains support from people that, before the first step on the slippage, did not 'need' a public health system, but do need it at the end of the slope (and therefore will be favourable to it) because of the earlier small changes introduced by the liberal reformists.

In Franc's description the steps of the health care reform slippery slope roughly are: a) guaranteed coverage (independent from previous conditions); b) less healthy people who purchase insurance plans; c) rise of cost of premium; d) health insurers will ask that purchasing a plan is made mandatory; e) liberals would find the proposal sound; f) many will find the cost of the mandatory premium unaffordable; g) as a response, liberals will therefore introduce public subsidies; h) these public subsidies will expand to meet the demands of various patient groups and lobbies and the costs will be born by consumers and tax payers; i) government enforcement bodies will be needed to enforce the individual and employer mandates. He concludes:

So there we have it: the slippery slope of health reform. Drop the controversial notion of a public plan. Ask for the voters' forgiveness. Scale back the ambition, and tone down the rhetoric. Return with a 'constrained' package limited to a few 'consumer-friendly' regulations on insurers. And, before you know it, Mr. Liberal Reformer, you're back where you always wanted to be, the proud proponent of a massive legislative and regulatory overhaul that registers 9.5 on the political Richter Scale (Lansing, 2010).

That argument—whatever its merits—points at how small successes can be exploited from the winning party to gain political support for their proposals only because a first reform has created the need for such changes in the country. In particular steps e), f) and g) point at the exploitation of the slippage on the part of the liberals—a clear case of pluralism slippery slope. In fact Franc's idea is not simply that liberals fail to appreciate (or appreciate differently) the possible consequences of their reform. Rather, he presents the current reform as a back-handed strategy to gain further support. So it seems that his argument leans on an *agonistic* understanding of pluralism, where raw power relations are seen as a necessary part of the democratic process (Mouffe, 2005, p.7). In the next section we will consider why that may be problematic, and how promoting agonism may require us to consider some regulation of the public debate in order to prevent widespread use of slippery slopes.

The Quality of Political Debate

Now we have seen exactly how pluralism tends to reinforce slippery slope arguments: (more or less accurate) predictions of how other people will react to the situations brought about by the various steps on the slope increase the perception of the risk of slippage, and thus inhibit steps that would otherwise be desirable for all parties.¹¹ This path dependency on other parties' behaviour—engendered by the fact of pluralism—often makes slippery slope arguments cognitively challenging. However, as a matter of fact, often people resort to and are influenced by these arguments, whatever their cognitive merits. But the issue here is not cognitive reliability *per se*, but rather the fact that slippery slope arguments are politically powerful despite their typically low cognitive reliability. In short, considerations on the mechanics of 'bounded rationality' should lead us to recognize that, while some slippery slope arguments may well be

cognitively reliable, we should be wary of their overall effects on the quality of public debate. David Enoch clarifies that his point applies especially to political debates: ‘my argument gives a very strong reason not to let slippery slope arguments have influence in the *political* arena-- indeed, a much *stronger* reason than the one it gives not to use slippery slope arguments in a philosophical discussion’ (Enoch 2001, p. 643). In this sense, regardless of whether our leanings are progressive or conservative, there is at least a *pro tanto* reason to try to reduce the impact of slippery slope arguments.

Moreover, there is another, deeper and equally non-partisan reason to oppose slippery slope arguments, namely the social stifling brought about by the success of slippery slope arguments in public debate.¹² The social, legal and/or political change that is seen as the first step on the slippery slope is typically considered acceptable or even desirable even by those who oppose the change (or at least by a large majority—hence the need for a slippery slope argument);¹³ yet if the argument is successful that step is forsaken because of the undesirability of what lies at the bottom of the slope. In other words, slippery slope arguments make it more likely that a society will miss opportunities for desirable changes.

Those considerations show why we have reason to try to develop a culture of public debate that reduces the prevalence and force of slippery slope arguments. Working out how that may be achieved is beyond the remit of this paper. However it seems fair to say that the sort of unbounded public discourse favoured by agonists is unlikely to mitigate the recourse to and the adverse effects of slippery slope arguments. And perhaps that point may be applied by extension to other kinds of argumentative strategies. On the other hand, if we cultivated reasonable rather than radical pluralism, it would be more likely that the various social groups would be willing move to the first step, given that their expectations regarding the behaviour of other groups would be informed by a constructive rather than an adversarial attitude.

Let us get clearer about that point. So far we have described the context of pluralism mainly descriptively, as diversity. We identified a host of circumstances that make slippages more threatening, and thereby more salient and pressing than they would be in circumstances of moral homogeneity. Mouffe insist that is not homogeneity that we are seeking, but rather agonistic rather than antagonistic confrontation, and agree that some limits need to be put to the kind of confrontation which is going to be seen as legitimate in the public sphere (Mouffe 2010, p. 93).

The question is where and how these limits should be drawn. Our claim is that an analysis of the consequences of pluralism for the conduct and outcomes of public deliberation such as the one carried out here should shed some light on that question. As anticipated, our answer will be that pluralism slippery slopes point towards a reason in favour of a more circumspect approach to the management of pluralism than the one favoured by the agonistic theories of democracy that are currently developing a growing following. However, while our *conclusions* are largely hostile to agonism, the *type of argument* we offer is consonant with those approaches.

According to Chantal Mouffe:

Many liberal theorists refuse to acknowledge the antagonistic dimension of politics and the role of affects in the construction of political identities because they believe that it would endanger the realization of consensus, which they see as the aim of democracy. What they do not realize is that, far from jeopardizing democracy, agonistic confrontation is the very condition of its existence. [...] a pluralist liberal democratic society does not deny the existence of conflicts but provides the institutions allowing them to be expressed in an adversarial form (2005, p. 30).

In a similar vein, John A. Hall argues that ‘exclusion creates resistance, whereas inclusion diffuses conflicts through society, thereby lowering the temperature of politics’ (2008, p. 75). In addition to agonists as different as Mouffe, William Connolly (2002) and Bonnie Honig (1993), a number of other theorists argue along similar lines: for instance, Bernard Williams (2005), Raymond Geuss (2008), John Gray (2000) and Glen Newey (2001) attack the moralism and the legalism of John Rawls’ and Ronald Dworkin’s ‘high liberalism’ on the grounds that it stifles pluralism in undesirable ways. Despite the important differences among these authors, which we cannot discuss in any detail here, the general line of argument towards which they converge is that that democratic structures should maximize the opportunity for people and groups to defend their position (whatever that might be), without discarding their emotional, non-rational and antagonistic component for the sake of achieving an elusive reasonable consensus. Pluralism in

public discourse is not a threat to liberal-democratic values that needs to be contained, but rather a necessary condition for the full realization of those values.¹⁴

Now, while there may well be a lot to say for that view, our analysis of pluralism slippery slopes highlights one specific area in which it presents some serious problems, for slippery slopes deform the expression of people's positions in democratic debates by generating 'yes' and 'no' fronts without space for intermediate positions, and indeed causing stifling, often on conservative (here used simply in terms of conservation of the *status quo* rather than indicating specific political views) positions. The problem is as much one of reducing the force of slippery slope arguments as it is one of reducing the likelihood of the recourse to slippery slope arguments. Unhinged pluralism exacerbates certain debates by increasing the force of slippery slope arguments, either because socially fragmented groups will operate in antagonistic isolation, or because of a lack of shared rules to distinguish legitimate and illegitimate uses of slippery slope arguments. In this perspective the 'vibrant clash of political opinions' (Mouffe, 2005, p. 6) cannot be a guarantee of a debate that is democratic unless there is at least a shared attempt at convergence.

So it seems plausible to suggest that the hope that antagonism transforms spontaneously in agonism collapses once one analyses closer specific features of unconstrained public debates; slippery slope arguments are one apt illustration of that dynamic. As Rainer Forst puts it, keeping public democratic discourse within the bounds of reasonable pluralism promotes 'a "civic bond" between liberal citizens who consider their social and political framework as a common project for which they are collectively responsible' (2001, p. 350).¹⁵ Our claim is not that there is something intrinsically valuable in that 'social bond' (we remain neutral in that respect). Rather, in so far as it reduces the force of pluralism slippery slopes, such a bond tends to produce effects that can be considered beneficial from the point of view of most social groups, not just in terms of outcomes but also in terms of the sorts of positions that can be openly defended in the public space. The thought here is that the agonistic understanding of public debate as an arena for confrontation between conflicting *identities* (although understood in non-essentialist terms) tends to create social stasis, as differences are highlighted, and mutual trust between social groups is consequently eroded. Thus promoting democratic agonism seems to require *practical measures* to

address this problem in actual politics as well as accepting some minimal rational standards that can regulate agonistic interactions.

Clearly the argument we have presented does not offer suggestions on which specific forms of standards should be put in place. However in the literature there are suggestions, for example, about the practicability of mediation-based models of democracy able to prevent dialogue from deteriorating into mutual attacks and guiding the discussions towards possible solutions (Deveaux 1997: 18).

Our argument is broadly compatible with many of the premises of agonistic approaches to democracy, unlike most arguments for deliberative democracy. Indeed our argument does not proceed from moral notions of fairness, recognition, or neutrality, which are often denounced by agonists as unargued-for ways of moralistically skewing the democratic game in a liberal direction, as it were. Rather, our argument proceeds from some observations about the nature of democratic politics: the argument is driven by a concern for avoiding social stifling that is rooted in an observation of the actual interests of social groups, rather than merely in pre-political moral commitments, so it may be considered a realist contribution that is somewhat orthogonal to the debate between agonists and deliberative democrats.¹⁶ Moreover it is worth pointing out that our position ultimately results from an empirical balancing exercise between the fostering of pluralist exchange and the need to prevent some undesirable effects of unhinged pluralism; so the issue we have raised here is not one that can be solved from the armchair, applying a moral ideal to the design of political institutions.¹⁷ Careful consideration must be paid to the exact make-up of the society at hand, and the argument offered here serves only as a rough guide to some of the factors that are relevant to addressing the challenges of pluralism. Thus it may turn out that, depending on a society's make-up, different measures for channeling political communication towards democratic solutions may be justified. And it is this pragmatic (for lack of a better term) justification of the restrictions favoured by deliberative democrats which should appeal to agonists and realists. For instance, even Mouffe writes that '[agonistic democracy] does not mean accepting a total pluralism, and some limits need to be put to the kind of confrontation which is going to be seen as legitimate in the public sphere'. The point, however, is about the status of those limits: 'But the political nature of the limits should be acknowledged instead of being presented as requirements of morality or rationality' (Mouffe 2000, p. 93; 2005, p. 121).

Examining exactly what kind of procedural norms for democratic discourse are most conducive to a healthy form of pluralism for a given society will have to be a subject for further studies.

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NOTES

¹ For a useful distinction between variants of agonism see Glover (2012), who correctly notes how Mouffe's agonism is more radical than that espoused by William Connolly or Bonnie Honig. Our argument applies more forcefully to Mouffe's position, given its radicalism. On this issue also see Fossen (2008) and Gürsözlü (2009).

² Foot, 1977; Williams, 1986; Steiner, 1995; and Habermas, 2003 pointed out the relevance of empirical slippery slopes in public ethical discourse.

³ 'Rationale' should not be understood merely in terms of maximizing considerations (such as promotion of wellbeing and other values, or prudential protection of specific interests); it could also be constituted by deontological considerations (a group might, for example, maintain that it has an obligation to treat other groups in a certain way, irrespective of maximising considerations).

⁴⁴ That is a simplified account. Political intentionality on the part of group B is not necessary. It may also be the case that group A just does not know what group B will do in the future. This would inform their judgment on what political decision should be supported or resisted.

⁵⁵ Note how for agonists, drawing on citizens' 'total experiences' (rather than focusing on shared values and terms of debate) is necessary to channel passions towards a democratic design (Mouffe, 2005, p. 3).

⁶⁶ Exploring the implications for this debate of the different relative weight of judicial precedent in civil law systems as opposed to common law systems would take us beyond the scope of this paper; our example-based discussion ranges over the differences between the two systems. For an insightful discussion of why and how slippery slopes 'flourish' in law (even) more than in other fields see Schauer, 1985.

⁷⁷ Among the rulings quoted by Scalia: *Williams v. Pryor*, which upheld Alabama's prohibition on the sale of sex toys; *Milner V. Apfel*, which asserted that 'legislatures are permitted to legislate with regard to morality...rather than confined to preventing demonstrable harms'; *Holmes v. California Army National Guard*, which upheld the federal statute and regulations banning from military service those who engage in homosexual conduct.

⁸⁸ Agonists often point out that legalising political issues is one of the ways in which liberal democracy may stifle political discourse. However we believe that this perspective can be incorporated in our discussion so long as one takes a broadly realist view of law (with particular reference to American legal realism): despite the rhetoric surrounding them, judicial decisions inevitably reflects the moral and political views of the judges and jurors, so the judiciary should be considered participant in the political arena, rather than a sort of impartial referee. For an overview of this position see Leiter (2002).

⁹⁹ Surveys show that a majority of the German population believe that the use of genetic diagnosis is acceptable for some very serious monogenetic diseases, but oppose other applications such as sex selection (Meinster et al., 2004).

¹⁰¹⁰ This mundane observation may be articulated through Steven Lukes' (2005) standard account of the nature of power.

¹¹¹¹ Our claim is not that all SS are at the advantage of conservative participants on the public debate. There are indeed cases in which progressive legislation is promoted via SS.

¹²¹² This issue is similar to the one Volokh (2003, 51) terms 'slippery slope inefficiency'. A similar argument has also been advanced by Hugh LaFollette (2005).

¹³¹³ Of course the thought here is that sometimes those advancing the argument may oppose even the first step. But they advance the argument precisely because they know that most members of their society do not oppose it, but oppose further steps down the envisaged slope.

¹⁴¹⁴ ‘A related claim often advanced by those theorists is that the restrictions to the conduct of public discourse championed by ‘moralistic’ liberals cannot be justified on procedural or neutral grounds, and thus the normative commitment that inform those restrictions should enter the fray of the public forum, rather than be exempted from public scrutiny through their status as ‘rules of the game’ (Nagel 1987, p. 216). However, while Nagel’s formulation expresses that worry very lucidly, he is a supporter of a version of deliberative democracy and, thus, of reasonable rather than agonistic pluralism.

¹⁵¹⁵ Here Forst refers to the position of Ronald Dworkin and Charles Larmore, themselves proponents of reasonable pluralism.

¹⁶¹⁶ For an overview on political realism see Galston (2010).

¹⁷¹⁷ Raymond Geuss (2008) cautions precisely against this sort of moralism in normative political theory. For a discussion of that position see [author’s article].