

# DEMOCRATIC CONSENSUS AS AN ESSENTIAL BYPRODUCT

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## 1. Introduction

One common and cruel discovery of adolescence is that personal confidence is rarely attained except by those who manage not to care much about it, or at least not to give it much conscious thought.<sup>1</sup> For the very act of holding confidence as an aim before the mind only tends, perversely, to heighten awareness of our own shortcomings, an awareness which ironically is the source of personal insecurities in the first place. In this respect, confidence is an example of what Jon Elster calls an *essential byproduct*: a goal that can be intentionally achieved only as a consequence of aiming at some other objective.<sup>2</sup> As Elster notes, the same dynamic is at work in trying to be spontaneous or to fall asleep.<sup>3</sup>

In this paper, I try to show that democratic consensus – one of the more prominent ideals in recent political thought – shares this peculiar feature with personal confidence, sleep, or spontaneity. In particular, I will defend the view that democratic consensus is an essential byproduct of epistemically warranted beliefs about political action and organization, at least in those cases where the issues under dispute are epistemic in nature. I discuss this further below

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<sup>1</sup> I am grateful to André Bächtiger, Daniel Viehoff, Joseph Raz, Kerah Gordon-Solmon, Melissa Schwartzberg, Philip Kitcher, several anonymous referees, and the editors of this journal for significant comments on this material. Versions of this paper were presented at the University of Waterloo Philosophy Department, the School of Public Policy at Georgia Tech University, the 2011 Association for Political Theory Conference at the University of Notre Dame, and the 2012 conference on Liberal Pluralism and Its Critics at the CEVIPOF, Paris, and I would like to thank the audience members from each of these occasions as well. Parts of the paper draw on Chapter Two of my Ph.D. thesis, “The Scientific Public: Inquiry in Democratic Society” (Columbia University: 2009).

<sup>2</sup> Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge: Cambridge University Press: 1983), pp. 43-108

<sup>3</sup> *Ibid.*, p. 46

but, in my usage, a political issue is epistemic when there is some right (or at least best) answer concerning how it ought to be resolved that is independent of people's beliefs or desires about how it ought to be resolved. An important secondary claim, then, is that it is difficult to explain the presumptive value of political deliberation unless we understand a very large share of political issues as epistemic in nature.

The significance of consensus in political theory derives from the ascendance of deliberative models of democracy. In their early conceptions of that model, Habermas and Cohen held that, though one can never expect full agreement among the citizenry in actuality, a rational, unforced consensus nonetheless remains democratic deliberation's ideal endpoint, one that defines the conditions of legitimacy.<sup>4</sup> More recent discussions of deliberative democracy, however, tend to emphasize that consensus is not always an appropriate aim of deliberation, that it can be provisional, and that there are numerous levels of conflict at which valuable agreement can be achieved.<sup>5</sup>

The consensus paradigm nonetheless retains a central role in contemporary deliberative theory. Thus, for example, John Dryzek and Simon Niemeyer argue that, as an alternative to comprehensive consensus of a Habermasian sort, one defining aim of democratic deliberation should be "meta-consensus," by which they mean consensus about the "nature of the issue at hand," which includes agreement on "the domain of relevant reasons or considerations

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<sup>4</sup> Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1989), Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996)

<sup>5</sup> André Bächtiger, et al., "Disentangling Diversity in Deliberative Democracy: Competing Theories, their Blind Spots and Complementarities," *The Journal of Political Philosophy* 18 (2010): 32-63, John S. Dryzek and Simon Niemeyer, "Reconciling Pluralism and Consensus as Political Ideals," *American Journal of Political Science* 50 (2006): 634-49, Christian List, "Two Concepts of Agreement," *The Good Society* 11 (2002): 72-79, Jane Mansbridge, et al., "The Place of Self-Interest and the Role of Power in Deliberative Democracy," *The Journal of Political Philosophy* 18 (2010): 64-100, Simon Niemeyer and John S. Dryzek, "The Ends of Deliberation: Metaconsensus and Inter-Subjective Rationality as Ideal Outcomes," *Swiss Political Science Review* 13 (2007): 497-526

(involving both beliefs and values) to be taken into account.”<sup>6</sup> And in a recent paper criticizing the ideal of “reasons that all could accept,” Bohman and Richardson nonetheless hold that deliberation should be guided by a framework of civility that “recognizes and exploits the complexity of every tradition and of every actual person’s views in the hopes of finding tenets the other person believes that will provide them with a basis for agreement.”<sup>7</sup> To choose one more example, Jane Mansbridge and a host of prominent collaborators seek a proper democratic role for non-deliberative mechanisms, such as fair bargaining and aggregative voting, and emphasize that “the goal at the outset of deliberation ought not necessarily to be a substantive consensus.”<sup>8</sup> They propose expanding the conception of democratic deliberation to include, not only the “classic,” Habermasian model of deliberation, but also a range of alternatives: “convergence,” “incompletely theorized agreements,” “integrative negotiation,” and “fully cooperative distributive negotiation.” But though these alternatives are less demanding than Habermas’s original view, the authors nonetheless are compelled to note that “each of these processes ends in a kind of consensus, that is, a genuine agreement among participants that the outcomes are right or fair.”<sup>9</sup>

These are obviously mere snapshots of nuanced views but they all display, I think, the special status that consensus enjoys within deliberative theory. If consensus is not explicitly conceived as deliberation’s exclusive objective, the articulation of alternatives remains muted at

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<sup>6</sup> Niemeyer and Dryzek, "The Ends of Deliberation: Metaconsensus and Inter-Subjective Rationality as Ideal Outcomes," p. 500. See also List, "Two Concepts of Agreement."

<sup>7</sup> James Bohman and Henry S. Richardson, "Liberalism, Deliberative Democracy, and 'Reasons that All Can Accept'," *The Journal of Political Philosophy* 17 (2009): 253-74, p. 271

<sup>8</sup> Jane Mansbridge, et al., "The Place of Self-Interest and the Role of Power in Deliberative Democracy," *Ibid.* 18 (2010): 64-100, p. 68

<sup>9</sup> *Ibid.*, p. 70

best. Likewise, though one finds few explicit denials of a proper role for epistemic goals, the proper role that these should play as weighed against consensus remains mostly unaddressed.<sup>10</sup>

I will use the phrase *consensus theory* to refer to the view that *some* form of consensus – whether the strong form originally espoused by Habermas and Cohen, or the weaker forms most recently described – should serve as the definitive goal of political deliberation. This paper targets that view and presses for an epistemic alternative across a significant range of political deliberation.

## 2. Epistemic Standards and the Ideal of Rational Consensus

Let us begin by considering a peculiar ambiguity in the central notion of a “rational agreement.” All consensus theorists seem to endorse the view that a morally desirable democratic consensus must be the result of a due sensitivity to reasons under conditions of freedom and equality. But in thinking about the idea of rational consensus there are two possibilities, each of which has rather different implications: An agreement might be rational, first, in the sense that the parties to that agreement all have good reasons to form an agreement, or it might be rational, second, because there are good reasons to endorse the view agreed to, reasons that are independently valid for all the parties to the agreement. In the first sense of rational consensus, the parties have reason to form an agreement because agreeing itself realizes certain kinds of values irrespective of any differential merits among possible objects of agreement. I will call any such value deriving from consensus a *convergence value*.

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<sup>10</sup> The crucial exceptions to this claim are Cheryl Misak, *Truth, Politics, Morality: Pragmatism and Deliberation* (New York: Routledge, 2000), Robert B. Talisse, *Democracy and Moral Conflict* (New York: Cambridge University Press, 2009). There are some parallels between my argument and that of Misak in particular, who explicitly argues against consensus-oriented models of deliberation as part of a broader case for epistemic deliberation. However, Misak rejects consensus theories principally on the grounds that they presuppose the truth of liberal values and thus give non-liberals no reason to embrace deliberation. In contrast, I reject consensus theories in virtue of their general inability to explain or model the distinctive benefits of deliberation, a point that applies even to communities in which liberal values are universally accepted and entrenched.

Convergence values generally include, not only what is broadly referred to as “stability,” but also the kind of efficiency and productivity that cannot be achieved without coordinating the activities of large groups around a common purpose. In the classic example, a community realizes an important value by agreeing to drive on one side of the road rather than another. Realizing that value depends, not on the rational advantages of a right/left-side rule over its competitor but rather on the value of adopting a common rule for the community.

In the second sense of rational consensus, the parties agree because they all recognize the advantages of a specified view over its competitors. The agreement is supported by the value that is realized by making that particular decision, rather than the value of simply making a decision at all. I will call any such value an *epistemic value*. Notably, this sort of consensus results not from a concern for the value of consensus itself but, rather, from a scrupulous regard for the differential merits of competing points of view. Here, the paradigm example would seem to be consensus among scientists. To be sure, the aim of agreement is often implicit, and at times explicit, in the deliberations among scientists about available evidence.<sup>11</sup> But consensus in such cases figures as a relevant consideration in scientific deliberations only to the extent that there is good reason to see it as a reliable indicator of epistemic success. For example, while the repeatability of experimental results constitutes an important piece of evidence in scientific debate, the value of repeatability derives from the evidence it provides that the results were not produced by irrelevant variables, that they were not deliberately fudged, and so forth. The fact that it provides such evidence in this way provides additional grounds to believe that the recorded results give evidence of what is true.<sup>12</sup> Notably, if we had reason to think that scientists

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<sup>11</sup> I thank Joseph Raz and Jeff Helzner for pressing this point on me in a particularly forceful way.

<sup>12</sup> Some do nonetheless argue that some form of agreement is constitutive of scientific success, or otherwise primary in guiding the actions of scientists. See, for example, Richard Rorty, "Science as Solidarity," in *Objectivity, Relativism, and Truth*, (New York: Cambridge University Press, 1991).

had modified their claims in some way out of a desire to agree (perhaps because they wished to present a unified front to the public, for example), then we would also have reason to question the truth of those claims. That is because sameness of belief has no intrinsic bearing on truth. It has a bearing on truth only if it is achieved because of a common sensitivity to epistemically significant concerns.<sup>13</sup> This fact explain why scientific unanimity is likely to arouse suspicions among us; given the complexity of scientific issues, a complete absence of dissent suggests that agreement may have non-epistemic causes.<sup>14</sup> For the scientific community, then, (valuable) consensus arises as an essential byproduct of individual scientists' aiming at epistemically warranted belief.

For my purposes, the key feature of epistemic standards is that they hold agents accountable for their beliefs in the following respect: meeting those standards depends on substantially more than whether an inquirer believes or desires that she has met them.<sup>15</sup> We may say that such standards are *minimally objective* in that sense.<sup>16</sup> Thus, in order to be justified in believing that the Earth is not flat, one must actually be in a state in which one is entitled to that belief. It is not enough that one does, it so happens, believe that one is entitled to that belief (even if these sorts of higher-order beliefs may be necessary for entitlement). Likewise, there seem to be a range of cases in which one is entitled to a belief without believing that one is so entitled (e.g., *S* offers a brilliant and sound argument for a new theorem even though, suffering from a lack of confidence, *S* doubts that the argument is good). I will use the phrase *warranted belief* to refer to beliefs that satisfy epistemic standards. Political deliberation aims at epistemic

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<sup>13</sup> Nicholas Rescher, *Pluralism: Against the Demand for Consensus* (New York: Clarendon Press, 1993), p. 17

<sup>14</sup> John Beatty and Alfred Moore, "Should We Aim For Consensus?," *Episteme* 7 (2010): 198-214

<sup>15</sup> Misak, *Truth, Politics, Morality: Pragmatism and Deliberation*, Ch. 2.

<sup>16</sup> David Estlund, "Who's Afraid of Deliberative Democracy?: On the Strategic/Deliberative Dichotomy in Recent Constitutional Jurisprudence," *Texas Law Review* 71 (1993): 1437-77, p. 1451 proposes a similar notion of "objective" standards of judgment.

value, then, when those engaged in it aim to have warranted beliefs about the objects of their deliberation. I take no stand on which particular norms of inquiry count as epistemic, but I assume that these will fall within the range of norms conventionally labeled as such. These would at least include standard constraints of rational argument, empirical reasoning, logical inference, and reliability of evidence. The application of epistemic standards implies that there is a right (or at least best) answer to questions about the proper resolution of political issues that is independent of how people believe the issues ought to be resolved. That is the sense in which, as I noted in the Introduction, an issue is epistemic in nature.<sup>17</sup>

The idea that political deliberation might be directed first and foremost towards the satisfaction of epistemic standards is suggested by our ordinary experience of political debate itself. Suppose someone argues that the death penalty should be abolished because it does not have a meaningful deterrent effect. We might hold her accountable by considering the empirical quality of the studies to which she appeals and the plausibility of the conclusions she draws on their basis. If she argues that the death penalty is immoral because it violates the dignity of persons, then our assessment will navigate the murkier waters of moral and political philosophy: Is the conception of dignity invoked morally defensible? Are there cases in which the state may legitimately violate such dignity? What are the implications of this conception of dignity in other cases and are they plausible? These are all fraught questions to be sure, but the point is just that, in answering them, we are holding one another accountable by reference to a familiar package of rational standards. An epistemic perspective on this sort of deliberative exchange

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<sup>17</sup> This idea of a “right answer” in the case of normative political questions introduces some metaphysical complexities that I cannot adequately address here. Instead, I defer to David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2008) and Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, NJ: Princeton University Press, 2013) where the idea of political “truth” is pursued in detail. Indeed, I have nothing to add to their statements on this issue. Rather than develop a fully articulated model of political truth or objectivity, I pursue a more indirect argument for an epistemic model of politics by trying to show that at least *some* version of that model is presupposed by our deliberative practices.

entails two things: First, that the rational standards we invoke are minimally objective and, second, that the aim of giving and receiving our arguments is to satisfy these standards.

Thus, on a conventional understanding, the fact that someone believes her empirical studies to be good does not make them good. Those studies must attain adequate standards of empirical reliability in the collection and analysis of relevant data. Likewise, the fact that someone believes her theory of dignity to be consistent with human liberty does not mean that her theory of dignity is consistent with human liberty. Such consistency depends among other things on how her arguments live up to basic rational standards of inference, whether the conception of liberty invoked fits adequately with human experience, whether it allows us to explain adequately the relevant range of moral phenomena, and whether it is compatible with our best theories of cognate moral notions such as responsibility. Notably, in a case like the death penalty debate, we typically continue to make our criticisms even when we know that doing so is likely to anger our opponents or exacerbate our political differences. An epistemic interpretation of deliberation provides a natural explanation for this fact: we persist because we think that achieving warranted belief is what should drive debate, even when it will make our disagreements worse.

It is worth emphasizing that we can apply this sort of analysis to political deliberation that targets the standards, procedures, and values underlying the political process itself, and not merely deliberation about concrete policy measures. Thus as deliberative theorists we may follow Dryzek and Niemeyer, for example, in emphasizing the importance of “meta-consensus.” Or, following Mansbridge et al., we may pursue a fully cooperative distributive negotiation. But in these cases, precisely the same set of considerations apply. Thus, Mansbridge et al. describe a fully cooperative distributive negotiation as one in which “...participants enter deliberation with



conflicting interests, but, after deliberating on the contents of those interests and on the principles of fairness appropriate to adjudicating them, adopt a distributive agreement that all consider fair.”<sup>18</sup> But, like policy arguments, an argument about our interests and the principles for weighing them can be naturally interpreted as an endeavor to determine what way of proceeding is best supported by the preponderance of evidence. In that way, following an epistemic interpretation, the pursuit of a fully cooperative distributive negotiation is premised on our accountability to minimally objective standards, albeit at the level of fair procedure rather than policy substance.

These examples are intended to suggest what an epistemic interpretation of political deliberation involves, and to show that such an interpretation is at least consistent with some important aspects of ordinary political issues. They do not show, however, that an epistemic interpretation of ordinary political deliberation is the right one. I turn in the next two sections to pressing that claim.

### **3. Why Democratic Citizens Should Not Aim at Consensus**

The heart of my argument is this: Deliberation is typically characterized by difficult contestation and inquiry among individuals with a plurality of competing views. But the rational premise of contestation and inquiry is that there are worthwhile evaluative distinctions to be made between possible points of convergence. That is, such contestation has a point only if, of all the possible agreements to be had, only some are properly wanted, and some properly wanted more than others. But if it is only agreement that we are after, then that premise is false, since sameness of belief is a property equally well instantiated at any possible point of convergence. In this respect, the very act of deliberation seems by nature to aim at epistemic value, that is,

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<sup>18</sup> Mansbridge, et al., "The Place of Self-Interest and the Role of Power in Deliberative Democracy," pp. 71-72

conditions of doxastic success that are independent of commonality in our beliefs. Correlatively, deliberation seems to presuppose some respect in which answers to questions of political morality can be gotten right or wrong – what I called above a “fact of the matter” – that is independent of what deliberators believe would be a right or wrong answer.

Notably, when Habermas characterizes deliberation he speaks of “competing validity claims”<sup>19</sup> and famously insists that deliberation, in the ideal, must not cease until our claims “stand up” against “a test of reasons and reasons alone” in a “contest for the better arguments.”<sup>20</sup> Likewise, in describing his ideal deliberative procedure, Cohen cites Habermas’s proposal that “no force except that of the better argument is exercised.”<sup>21</sup> Oddly, this way of talking suggests that, in fact, deliberators are to be guided by characteristically epistemic concerns – validity, knowledge, and superiority of argument – rather than any desire to agree. After all, advancing better arguments is only sometimes, and with good fortune, the most effective route to agreement.<sup>22</sup> Here things get a bit complicated. Habermas does think that giving better arguments will foster consensus, but only under the perfectly exacting conditions of ideal discourse. Thus, one possibility is that while political legitimacy is to be defined by reference to the agreement of ideal deliberators, real deliberators need not themselves aim at real agreement. Rather, they should aim simply to figure out what their ideal counterparts would all accept, and pursuing that aim might very well involve robust and enduring disagreements.

Though tempting, this proposal fails. It fails, first, because it severs the important connections that idealized deliberation is supposed to have with the real political context.

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<sup>19</sup> Habermas, *BFN*, p. 119

<sup>20</sup> *Ibid.*, p. 228

<sup>21</sup> Cohen, "Deliberation and Democratic Legitimacy," p. 74. The original quotation is from Jürgen Habermas, *Legitimation Crisis* (Cambridge, MA: Beacon Press, 1975), p. 108.

<sup>22</sup> For relevant empirical discussion see Jürg Steiner, *The Foundations of Deliberative Democracy: Empirical Research and Normative Implications* (Cambridge: Cambridge University Press, 2012), pp. 139-52.

Consensus theorists take themselves to be providing a sort of blueprint for civil society and not only a standard of correctness against which to measure decisions. If consensus is conceived strictly in the ideal then it is entirely possible that a specialized elite, for example, would do the best job of working through the elaborate counterfactual sociology of ideal deliberation. The connection between consensus theory and democracy becomes tenuous. Even setting aside this point, however, the focus on ideal consensus simply transfers the difficulties with consensus theory from the real to the ideal context. For what is driving debate among our ideal counterparts? If it is a strict preoccupation with agreement, then there is no basis for establishing differential merits among possible points of agreement. But if it is a preoccupation with epistemic value, then we are left wondering once again how the commitment to agreement should guide deliberators' actions.

A more promising defense of the consensus ideal would focus on the real and significant convergence values that consensus possesses. Notably, there are many times in politics when multiple options are defensible on the merits. In these cases, there may be reasons to prefer those options that enjoy the most support in spite of epistemic considerations. For one thing, political actions that enjoy more support will normally be easier to implement. More important perhaps is that government actions that are widely supported better respect citizens' autonomy and thereby enjoy more moral legitimacy. In these respects, there is clear convergence value in the political context that is realized through agreement. Perhaps that is the value at which deliberators should aim?

The problem with this suggestion is that, in fact, if we all recognize that the available options are equally defensible on their epistemic merits then rational debate has run its course. What we have reason to do is abide by the least costly decision procedure for choosing among

the options. Nothing beyond that is added by calling upon deliberators to strive to agree. Still, one might reasonably think that in the political context epistemic merit only goes so far. In a democracy, one might think, it is the desires of citizens that determine which among equally defensible actions we should pursue. Should we build soccer fields or a new music venue in the park? Maybe after we've talked about the rational merits of budgets, justice, physical fitness, and noise levels, this is simply a question of which option is preferred by more citizens.

But even if this is the right way of thinking about democratic decisions it does not provide a good premise for deliberation, precisely because deliberation is, as I have already emphasized, an endeavor to assess the comparative advantages of alternatives. If we suppose that preferences are proper targets for normative evaluation then we cannot rest content with simply tallying them up, since there remains a question of whether the distribution of preferences is actually warranted. But if there is really no appropriate question of which preferences ought/ought not be held, then the role for deliberation has been exhausted.<sup>23</sup>

A far more typical political scenario is that we disagree about which option is better on the merits but see, nonetheless, that there is something to be gained by coalescing around a common position. In these cases we commonly speak of compromising or “giving a little” to our interlocutors as a way of respecting the important convergence reasons that exist. But when we seek to compromise on an issue such as reform of the healthcare system, or austerity measures to reduce national debt, or the imposition of economic sanctions, the question at issue is “whose version of compromise?” In the United States, for example, some view more or less any government intervention in the healthcare system as a fatal lapse into fascism. Others view anything short of a government run, single-payer model as medical apartheid. Attempts to seek

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<sup>23</sup> I draw here on the critique of preference-based approaches to social choice in Henry S. Richardson, *Democratic Autonomy: Public Reasoning About the Ends of Policy* (Oxford: Oxford University Press, 2002), pp. 119-29.

consensus around this issue have faltered precisely because the concessions demanded from each side are viewed by the other as effectively beyond the pale. Deliberation has thus centered, not only on the first-order merits of competing policy views, but on the second-order question of what policy concessions would actually constitute a legitimate solution to first-order disagreement. As I pointed out earlier in my discussion of fully cooperative distributive negotiations, a disagreement about what counts as a fair balancing among our concerns is itself a disagreement about the epistemic merits of competing points of view.

Even if we think that democratic citizens must – if only partially and within certain constraints – abandon epistemic considerations at the first-order level of argument, such considerations remain essential in the evaluation of precisely how to proceed at the secondary level (concerning what counts as a morally appropriate resolution of our dispute, what must be given up in the name of compromise or accommodation, etc.). That is because, as the healthcare example suggests, our secondary claims have morally significant implications for the outcomes of our deliberations, and because such claims are normally subject to reasonable contestation on their merits. To say that democratic politics requires a “give and take,” mutual accommodation, or fair compromise thus does not properly translate into aiming at agreement because these are all contestable evaluative standards that some points of agreement realize and others do not. On the contrary, we cannot hope to reliably achieve some ideal of fair compromise unless we vigorously attend to the features of different possible agreements that realize the relevant notion of fairness. Adopting a commitment to fair compromise thus entails vigorous epistemic disputation at all stages of deliberation; it cannot obviate such disputation.

#### **4. Consensus and Reciprocity**

Let me now articulate one crucial way in which my argument up to this point might seem to have gone wrong. Democracy has traditionally been understood as a process through which citizens construct their own standards of action through public institutions that allow them to express and act on their political beliefs. From this point of view, deliberation is a means through which citizens tutor and adjust their beliefs about political action in light of what matters to their fellow citizens. The “right thing for the government to do,” then, is to be defined as the result of this social, civically virtuous process, and cannot be specified independently of it. Deliberation thus is understood to aim at consensus insofar as this process aims at the identification of mutually agreeable terms of cooperation through the work of continual, reciprocally motivated refinement in our positions. And the “fairness” of a compromise is constituted by the fact that the citizens governed by it come to see it as fair through a process that embodies norms of mutual respect. The general worry, then, is that in casting democratic consensus as a byproduct of attending to epistemic standards, we may be overlooking this essentially constructive aspect of democratic political morality.

But what exactly is involved in this process of “reciprocally motivated refinement?” What norms are supposed to guide citizens in their quest for common ground? In their landmark statement on deliberative democracy, Amy Gutmann and Dennis Thompson treat reciprocity as a pillar of the deliberative democratic ideal, defining it as the requirement that citizens “...offer reasons that can be accepted by others who are similarly motivated to find reasons that can be accepted by others.”<sup>24</sup> Here they draw on Rawls’s idea of an “overlapping consensus,” which holds that our constitutional essentials (the “basic structure”) should be justifiable exclusively by appeal to reasons that are acceptable from all “reasonable” points of view, an idea that also

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<sup>24</sup> Amy Gutmann and Dennis F. Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot be Avoided in Politics and What Should Be Done About It* (Cambridge, MA: Belknap Press, 1996), p. 53

figures prominently in Cohen's conception of deliberative democracy.<sup>25</sup> In contrast to Rawls, however, Gutmann and Thompson seek to apply reciprocity beyond debate about the basic structure to policy debate more generally. Crucially, this Rawlsian notion of reciprocity is moral rather than epistemic; we are to set aside reasons that are not acceptable to (reasonable) others, and we are to do so specifically because we respect them and care about their autonomy.

Unfortunately, reciprocity fails as an alternative to epistemically motivated deliberation, and it fails in revealing ways. To show this, I will consider one of Gutmann and Thompson's central examples: abortion. In response to the abortion controversy they tentatively propose, as a reciprocally motivated resolution, that abortions continue to receive government funding, but that pro-lifers have the option of diverting their tax dollars in order to reduce their "complicity in actions [they regard] as murder."<sup>26</sup> They argue that this proposal is a plausible outcome of a process in which pro-lifers and pro-choicers reason strictly from two shared principles: (i) "Innocent people should not be killed," and (ii) "Women have a basic liberty to live their own lives and control their own bodies."<sup>27</sup> The basic idea is that this policy solution represents a recognition of both parties that the other's moral convictions are worthy of respect: it allows pro-lifers to refrain from contributing funds to an act they regard as murder, while also respecting, from a pro-choice perspective, the central role that government funding plays in assuring women genuine freedom over their lives and bodies.

Of course, as Gutmann and Thompson concede, the implications of principles (i) and (ii) depend entirely on how we interpret notions like personhood and liberty, and how the various values at stake are to be weighed against each other. Any hope of achieving agreement on specific policy claims of the sort that Gutmann and Thompson introduce is premised on

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<sup>25</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993)

<sup>26</sup> Gutmann and Thompson, *Democracy and Disagreement*, p. 89

<sup>27</sup> *Ibid.*, p. 74

negotiating such interpretive issues. But since those issues are themselves substantial and reasonably contested normative matters, the imperative to avoid reasonably controversial premises cannot suffice as a response to moral disagreement. Indeed, it seems to me that at least a very large portion of the abortion debate *just is* a dispute about how to make sense of principles (i) and (ii) and the relationship between them. To choose another significant example, much of the small-government vs. welfare-state argument can plausibly be characterized as a dispute over how to understand the mutually recognized value of freedom and how to weigh that value against others. Appealing to reasons that everyone accepts (or could accept under appropriate circumstances) – such as the value of freedom, moral equality, or human dignity – in this, and many other policy cases, is only the beginning rather than the end of morally significant conflict.

Given that Gutmann and Thompson explicitly characterize the aim of deliberation as the resolution of disagreement,<sup>28</sup> a natural way of interpreting the reciprocity ideal would include, not only an imperative to avoid reasonably disputed reasons, but also to pursue a mutually agreeable policy resolution on the basis of those reasons. The presumption of Gutmann and Thompson's reasoning on abortion seems to be that, were both sides sufficiently motivated by the desire to find mutually agreeable terms of cooperation, they might converge on a view that would under other circumstances be cast aside as morally anathema. Here is how it seems like reciprocity should work in this case. Both the pro-lifer and the pro-choicer ask themselves what position the other would accept were the other similarly committed to finding a mutually acceptable position. Of course, given the high moral stakes, neither party wants to concede more

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<sup>28</sup> Among many similar statements, consider: "When citizens reason reciprocally...they try to find mutually acceptable ways of resolving moral disagreements" (Ibid., p. 4). In this place and others, the notion of "acceptability" seems intended by the authors to refer to actual rather than in-principle acceptance. The distinction between the aim of in-principle and actual acceptance is significant, since the mere possibility of acceptance in principle is entirely compatible with entrenched disagreement as a matter of actuality. For useful discussion of the problems associated with a standard of acceptability rather than actual acceptance, see Bohman and Richardson, "Liberalism, Deliberative Democracy, and 'Reasons that All Can Accept'."



than is strictly necessary to secure the acceptance of the other. Thus the pro-lifer must estimate what the pro-choicer's maximally sympathetic offering would be, given the pro-choicer's own motivation to find mutually agreeable terms. How far would the pro-choicer go and how could the pro-lifer assess how far the pro-choicer would go? Well, since the pro-choicer is committed to reciprocity, she is willing to make concessions, but – to repeat – only to the extent that she must to secure the agreement towards which reciprocity recommends she strive. To answer that question, of course, the pro-choicer must herself figure out what terms the pro-lifer would accept given the pro-lifer's identical commitment to finding (the maximally sympathetic) terms that she, the pro-choicer, would accept. But since the question of the terms that the pro-lifer would accept depends on her own application of the principle of reciprocity, we have now arrived back at the very question with which we started: what terms of agreement ought the pro-lifer accept given her commitment to the principle of reciprocity? Answering that question will require that we set in motion the same series of counterfactuals, which now produces an infinite regress.

The basic problem is that the results of each party's application of the reciprocity criterion is indeterminate pending the other party's application of the criterion. The consequence, however, is that neither party has a basis for figuring out what concessions she ought to make given reasonable disagreement. This is not merely a technical problem with Gutmann and Thompson's presentation. Rather, the problem identified here parallels the problem with ideals of fair compromise considered earlier. The issue there, recall, is that there are rational disputes about what constitutes a fair compromise. Without settling those (epistemic) disputes, there is no way of specifying what concessions from each side are morally appropriate. Likewise, in the case of reciprocity, the general requirement to make respectful concessions to one's interlocutor is not a significant moral demand absent some way of distinguishing between those concessions

that respect actually requires and those that it does not. But that is once again an epistemic question, for reasons that I have repeatedly emphasized: If agreeing that some set of concessions were required by reciprocity were, in itself, sufficient to make them morally required by reciprocity, then any disagreement about the matter would be irrational. The way to be a good reciprocal citizen would be to instantly accede to the position of others, thereby achieving agreement, thereby morally ratifying the position agreed upon. The absurdity of this idea shows that our civic duties require attending in good faith to the epistemic merits of different forms of mutual accommodation and that, in turn, entails ongoing contestation rather than trying to agree.

### **5. Can Epistemic Deliberation Properly Value Individual Freedom?**

Even assuming that the problems I have raised with consensus theory are compelling, the epistemic alternative that I have proposed is likely to seem seriously problematic in its own right. Here is the primary concern: However precisely we characterize it, democracy is at its core the ideal of a community governing itself in a way that displays equal respect for the freedom and moral worth of all. On the democratic model we must therefore proceed through, and not around, the will of citizens when we produce coercive law. By *the will of citizens* I refer specifically to the reflectively held beliefs of individual citizens about what ought to be done in light of their reflectively held values. By pursuing agreement through deliberation, democratic communities aim to avoid violating the conscientiously held values of their members. In that respect consensus theory can be seen as a straightforward attempt to realize the ideal of a government that proceeds through rather than around the will of citizens. In contrast, epistemic deliberation aims at policies that are justified by the lights of our best epistemic standards, independently of the extent to which those policies are reflectively endorsed by the members of the democratic

community. As such an epistemic model of deliberation may seem to raise the prospect of a divided civil society, some substantial portion of which is alienated and dominated by whatever the ruling order of the day happens to be. Indeed, one might reasonably think, this is precisely why the analogy between scientific and political deliberation breaks down. Unlike science, democratic politics aims at respect for autonomy. In addition, beyond the moral value of autonomy, the feasibility and efficacy of any given policy is often closely tied to the extent of its endorsement among the citizenry.

In response to this cluster of concerns let me begin by observing that, under any foreseeable circumstances, the contents of the will of a large portion of individual citizens are likely to stand in significant tension with a broad range of other morally fundamental values in a democracy. Such values include justice, efficacy, economic affordability, equal opportunity, respect for the natural environment, and human rights, to name a few. Even if we hold that respect for citizens' will stands first and foremost in the list of things that should be valued in democratic practice, no one seems to be arguing that this value obviates everything else worth caring about in forging political action. Indeed, the relevant point is stronger than this for reasons that closely parallel our general line of attack on consensus theory. I have argued that deliberative contestation is premised on there being something at stake other than agreement. This point can be framed in reference to the will as follows: it is precisely because there are will-independent things worth caring about that we should regard respect for the will as morally imperative in the first place. If there is nothing worth caring about except the will, then the attitudes of care manifest in willings – directed towards matters of justice, equality, human rights, etc. – would be arbitrary. It is hard to see how under such circumstances the will could properly claim the special status that it enjoys within democratic theory.

Furthermore, even if we think that freedom is the sole or dominant value that guides the democratic ideal, a plausible conception of freedom must encompass a broader spectrum of goods than respect for the will or the avoidance of morally objectionable coercion. That is because our very capacity to exercise our will in valuable ways is dependent on the extent to which we are able, collectively, to secure a broad range of goods of the sort just noted – justice, sustainable economic growth, human rights, etc. – that make a life of uncoerced meaningful choice and self-determination possible across a diverse population. Certainly, a society that pursues these goods in a way that comprehensively tramples the actual convictions of citizens will fail to respect the democratic value of autonomy. But this shows, not that all goods in a democracy are reducible to respect for the will of citizens but rather, once again, that respect for the will of citizens is one among a number of crucial goods that democracies must aim to realize. When citizens hold false beliefs about justice, or the effects of climate change on the poor, or the moral status of individuals bearing a different skin pigmentation, for example, our respect for the will of those citizens comes into conflict with other kinds of autonomy-promoting considerations. In instances where such conflict arises, it may very well be the case that citizens are obliged to make some reciprocally motivated adjustment of their views. But, as I have tried to argue in this paper, the question of what type and extent of adjustment is required must be understood as a minimally objective normative issue. And that issue gains its significance in virtue of the fact that the will is one among a range of goods that democratic citizens should aim to respect.

We are now in a position to address the worry that an epistemic model of deliberation cannot be reconciled with the priority that democracy places on autonomy. An epistemic model of deliberation does not entail that we should run roughshod over anyone whose beliefs about government policy conflict with our own. Rather it entails that as deliberators we must

determine how appropriately to display respect for others' will within the full spectrum of concerns that properly animate the democratic ideal. And it entails that we do this by reference to minimally objective standards. The spectrum of properly democratic concerns is presumably centered around some version of the ideal of freedom in a sense that encompasses but is not limited to respect for the will. Without attempting to offer a full theory of freedom, let me suggest a conventional understanding of some of its core components in the democratic context: people are free to the extent that they have the opportunity to lead a life which they themselves can understand as good, according to a conception of the good which they have substantial opportunity to shape by their own lights, but within the necessary constraints of a society in which other people have the chance to lead a similarly self-determined life. The relevant epistemic imperative then is to achieve warranted beliefs, but specifically about how to realize some such ideal of freedom on a social scale. The facts of the matter at stake are those which concern the realization of that ideal.

What does this amount to as a matter of practice? Let's return to the example of abortion. As a question about how to promote equal human freedom the issue of abortion policy plausibly takes within its purview, at a minimum, the following goods (listed without regard to relative significance): (a) the rights of women, (b) the dignity of human life, (c) the opportunities of future persons for a good life, (d) the opportunities of pregnant women for a good life, (e) the rights of future persons (if they have any), (f) the social costs and benefits associated with rights to terminate unwanted pregnancies, and (g) respect for the will of citizens. If the pro-choicer makes an all things considered judgment in favor of abortion rights on the basis of (a)-(f), what should she do in light of (g)?

In keeping with Gutmann and Thompson, she might seek ways of reducing the complicity of pro-lifers in the social institutions that support abortions. That might come, as Gutmann and Thompson propose, in the form of exemptions that divert pro-lifers' tax dollars away from the relevant institutions, or (as they do not propose) via exceptions for relevant religiously affiliated medical institutions, for example. Alternatively, the pro-choicer may judge that there is no way of reducing the pro-lifer's complicity without making morally unacceptable sacrifices to other aspects of freedom. In that case, what she judges to be an appropriate way of respecting the pro-lifer's will is likely to be different. Rather than pursuing exemptions of various sorts, it might involve instead lending support to social programs that seek to reduce abortions, for example, by providing more resources (such as subsidized childcare) to young mothers confronting the prospect of an unplanned child. All of these proposals introduce further complexities that would have to be explored, and there are of course many other possibilities. Each option is to be assessed by considering the particular respects in which it is likely to conflict with the conscientious convictions of citizens, the extent to which that conflict can be reduced without undermining the conscientious convictions of other citizens, the distinctive significance of those convictions in the lives citizens, and the relationship between that option and other freedom-related concerns that constrain morally viable compromise. How to attend to this complex of considerations, it seems to me, is a difficult exercise in applied moral and political philosophy that does not fall under the rubric of some general principle or tidy rule of priority. In any case, to model deliberation epistemically is not to propose any specific conception of moral priorities, nor is it to suggest that these kinds of deliberations will be easy. It is only to propose an interpretation of the deliberative negotiation among those priorities as a

matter of aiming to respect the preponderance of evidence and experience about the promotion of human freedom.

I have been trying to address the challenge that an epistemic model of deliberation cannot properly accommodate the priority that democratic theory places on respect for the will (in the specific sense that I defined it above). My response to this charge has been that, on an epistemic model of deliberation, the value of respect for the will is to be represented as part of a spectrum of concerns involved in the democratic objective of realizing freedom on a social scale. Epistemic deliberation aims at achieving epistemically warranted beliefs about that objective. Because respect for the will is so integral to promoting freedom, a competent assessment of epistemic considerations will typically give citizens defeasible reason to do precisely the sorts of things that consensus theorists have recommended in various forms: making concessions to others, compromising, refraining from sectarian argument, etc.

This may seem a somewhat odd place to have landed. Isn't the implication of this argument that epistemic deliberation will wind up producing exactly the same sort of deliberative practices as consensus theory recommends? I do not believe so. But let me bracket that question momentarily. Even assuming that, epistemic and consensus-oriented models of deliberation do not substantially differ as a matter of practice, the difference is significant from an analytical point of view. Specifically, an epistemic model of deliberation provides a way of responding to some of the most important challenges that consensus theory has faced without abandoning the values that animate the consensus ideal in the first place.

Difference democrats point to the way in which the drive for consensus can tend to lead to the suppression of dissent from marginalized groups.<sup>29</sup> If consensus is conceived as the

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<sup>29</sup> Iris Marion Young, "Activist Challenges to Deliberative Democracy," *Political Theory* 29 (2001): 670-90, Lynn M. Sanders, "Against Deliberation," *Political Theory* 25 (1997): 347-76

definitive goal for democratic deliberation, then this fact presents a problem for the deliberative democratic model itself, which is why some have favored a deliberately oppositional, “agonistic” alternative.<sup>30</sup> The epistemic approach under consideration creates the space for a viable middleground. If seeking to accommodate the perspective of others puts ethnic and religious minorities in a position where their interests and values are not given due representation in public policy then, from an epistemic point of view, that fact counts straightforwardly as a reason for persistent dissent on their part. That is, from an epistemic point of view, a refusal to mutual accommodation is appropriate just insofar as it makes morally unacceptable burdens on one group or the other. A morally unacceptable burden is one that fails properly to promote freedom on a social scale by the lights of our best evidence and experience. That ideal is of course contested itself which is why, as I noted earlier in the discussion, democratic deliberation tends to toggle between the negotiation of first-order claims about the merits of the policy case at hand, and second-order claims about what would count as a fair or freedom-respecting way to balance competing first-order views. But the fact that a vigorous oppositional stance is appropriate in some cases does not vitiate the general imperative to respect the will of others, nor does it threaten the deliberative ideal in general, which aims at epistemic goods rather than consensus. We need not understand the tension between oppositional and conciliatory modes of deliberation as forcing an either/or choice.

Thus, one analytical benefit of the epistemic alternative to consensus theory is that it provides a rationale for deliberation that represents the value of mutual, egalitarian respect for autonomy, while at the same time providing a legitimate rationale for the important democratic tradition of oppositional politics. But there are evidently practical implications of our most recent discussion as well. For I have pointed out that on an epistemic view of deliberation, when

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<sup>30</sup> Chantal Mouffe, *On the Political* (London: Routledge, 2005)



citizens are confronted with policy views that, upon due epistemic reflection, they believe make unjustified demands upon them, they should stand their ground. If necessary they should forcefully protest. Their refusal to budge under such circumstances would not count as a deliberative failure. In contrast, consensus theory is hard to reconcile with the distinguished tradition of oppositional, contestatory politics that has been integral to social progress in democratic history.

One useful case in point is that of same-sex marriage. In the United States, proponents of same-sex marriage have been standing on principle now for several decades, refusing to acquiesce in various forms of compromise (for example, the right to civil unions but not full-blown marriage) that they took to be unjust. Their refusal to acquiesce might be interpreted in some cases as a reflection of disrespect for the will of opponents. But one might also interpret this refusal as a reflection of the view that the proposed compromise would preserve the degrading stigma associated with homosexual relationships. In that respect a compromise on civil union-rights without marriage rights would not be morally legitimate. The steady gains in the social reception of same-sex marriage and the rights and status of homosexuals more generally (at least in the United States),<sup>31</sup> were only possible in virtue of the deliberative steadfastness of citizens on this and other points.

An epistemic account of deliberative norms provides a straightforward justification for deliberative steadfastness in this case. Steadfastness was justified in virtue of the fact that it was motivated by due epistemic regard for what reasonable sacrifices were entailed by a commitment to democratic freedom. From the standpoint of consensus theory, on the other hand, steadfastness

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<sup>31</sup> Pew Research Center for the People and the Press, "Most Say Homosexuality Should Be Accepted by Society" (2011). <<http://www.people-press.org/2011/05/13/most-say-homosexuality-should-be-accepted-by-society/>>. Accessed on January 28, 2014, "Changing Attitudes on Same Sex Marriage, Gay Friends and Family" (2013). <<http://www.people-press.org/2013/06/06/changing-attitudes-on-same-sex-marriage-gay-friends-and-family/>>. Accessed on January 28, 2014.

seems to stand directly in opposition to the overarching imperative of reciprocal accommodation. Cases like this need to be explained under special provisions for citizens who are “unreasonable,” or for views that otherwise violate fundamental liberal-democratic values. But it seems doubtful to me that every source of opposition to same-sex marriage can be neatly quarantined under the rubric of unreasonableness. And even if such quarantining were possible, the idea of unreasonableness only goes so far in the justification of principled opposition. From an epistemic point of view, the reasonableness of disagreement does not obviate the appropriateness of a steadfast refusal to acquiesce. To return to another example discussed earlier, many of those who reject government-run healthcare are quite reasonable by the conventional Rawlsian understanding of that term. But for those who see access to healthcare as a matter of fundamental human dignity and democratic equality, the plea to respect the will of opponents must be balanced against a due regard for the freedom of the impoverished and uninsured. From an epistemic point of view that entails some point at which the call for further compromise is rightly rejected.

## **6. Limits of the Argument**

At the outset of the paper, I qualified my thesis in an important way. I claimed that consensus is an essential byproduct of epistemic deliberation, but only in cases where the issues at stake are epistemic. The argument above is intended to show that we have reason to regard a broad range of political issues as epistemic because doing so is crucial to explaining the value of deliberative contestation about political matters. But this paper does not show that all political issues are epistemic in nature, and the implications of the argument are limited by that fact.

One possibility is that – the discussion above notwithstanding – there are some political issues that lack any epistemic aspect whatsoever. These would be issues for which the question of a proper resolution is strictly a question of whether there is agreement on that resolution. Perhaps, as I suggested earlier, questions about rules of the road and other such coordination issues are of this nature. However, it is doubtful that many morally interesting objects of political deliberation can be modeled along these lines for reasons already discussed at length: our disputes about abortion, health-care, marriage, education, etc. are premised on the recognition that something is at stake beyond commonality among our endorsed views. More plausibly, there is an important body of political issues for which consensus is a partial and necessary condition of a morally appropriate resolution, even as epistemic considerations also play a crucial and necessary role. One plausible example of an issue like this would be the general framework of basic rights and responsibilities that define the conditions of social cooperation. If we are designing a constitution encompassing such things, then there is presumably much to be said about the epistemic merits of different proposals: Are they practicable? Do they satisfy principles of justice? Do they allow for sufficient flexibility over time? Still, given the fundamental importance of a constitution in shaping citizens’ lives, we are likely to be particularly concerned about the inability of some to endorse the constitutional framework as valid. Indeed, we might not even have a sense of how to judge such validity independently of facts about citizens’ endorsement. Deliberation surrounding an issue like this would thus properly encompass parallel efforts to achieve warranted belief while also pursuing a cooperative search to identify and develop points of commonality.<sup>32</sup> “Aiming at consensus” would amount to that kind of cooperative search, combined with a veto condition: no proposal,

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<sup>32</sup> I am grateful to André Bächtiger (private correspondence) for pressing the significance of this alternative on me, and for extended discussion of the distinctive features of “collaborative dialogue.”

however valid by epistemic lights, would be implemented except on the condition that it gains the endorsement of everyone. Even if unanimity were impossible in practice, the veto condition might function as a kind of aspiration according to which the bar for overriding dissent would be extremely high.

What proportion of political issues can be properly modeled in this way? The example of constitutional design is compelling precisely because our concerns about coercion are so weighty that, on our view, convergence values plausibly trump the epistemic values in play. In general, consensus-oriented deliberation seems most appropriate in cases where it is particularly important to maintain a close connection between citizens' conscientiously held beliefs – their “will” as I have called it – and the social order with which they will be forced to comply. Thus, for example, given the fundamental role that religious convictions play in the lives of many citizens, we might mark policies that concern religious practices as instances in which, above and beyond the epistemic considerations in play, we should try to agree. Similar considerations apply to fundamental matters of moral conscience or cultural identity, for example, where citizens seem vulnerable to notably severe forms of alienation from their core understanding of what constitutes a good life.

But these examples already raise questions that bring us back to the central concerns of this paper. Are all matters of cultural identity cases in which concerns about coercion are weighty enough that the drive for consensus should trump any epistemic matters in play? Or only some? Which ones? Are there particular claims of cultural identity that fall “beyond the pale” such that the drive for consensus is inappropriate? The significance of such questions is indicative of the fact that, as always, the values associated with consensus must be weighed against other goods at stake in the promotion of human freedom. Treating consensus,

everywhere and always, as a necessary condition (or even a necessary aspiration) of political action undermines our ability to represent the complex way in which convergence values interact with other essential goods. Relatedly, as I have argued, treating consensus in this way undermines our ability to explain the crucial role that steadfast opposition plays in democratic politics.

Even in cases where we think it appropriate to treat consensus as a firm and necessary condition for political action, we will be confronted with very significant questions about the precise requirements associated with a reciprocal “give and take,” for reasons explored in the discussion of Gutmann and Thompson earlier. If we treat deliberation as the cooperative attempt to identify and cultivate a common point of view, then we must provide a normative account of what sorts of good faith concessions are required from citizens in that process. This point is particularly significant given that even reasonable approximations of consensus remain far beyond reach in the context of real-world deliberation about most morally weighty issues. As I noted in criticizing Gutmann and Thompson’s conception of reciprocity, the evaluation of what concessions are properly asked of whom requires assessing the plausibility of the relevant views given an assessment of their (epistemic) merits. Thus, even within a process of deliberation that treats consensus as a definitive and necessary objective, the negotiation of the deliberative process will invoke epistemic values.

So there are presumably some important political issues for which consensus should not be treated as a byproduct of epistemic deliberation. My contention, however, has been that there are significant drawbacks to treating consensus as deliberation’s definitive aim, and that an epistemic alternative provides a superior account of the complex tradeoffs among values that are

involved in the promotion of freedom. That suggests that the proper place for consensus-oriented deliberation is significantly more limited than it has so often been taken to be.