

## Against Legitimacy

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Résumé de l'article

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# AGAINST LEGITIMACY

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## ABSTRACT

Francis Dupuis-Déri confronts the domestication of radical ideas in his superb and stimulating essay, “Global Protestors Versus Global Elites: Are Direct Action and Deliberative Politics Compatible?”, and leads to the intriguing claim that the legitimacy of radical anti-capitalist protest rests ultimately on its internally deliberative quality. This account, however compelling as it stands in many ways, seems to give undue predominance to legitimacy claims. The problem of democracy and global capitalism today is that the global justice movement’s designated constituency does not exist as an actor, for the simple reason that the majority of its putative members have yet to accept the problem forwarded by the global justice movement. People must be convinced to join movements against corporate control, democratic weakening, and income inequality; fortifying legitimacy among the already committed does not seem to be helping.

## RÉSUMÉ

Francis Dupuis-Déri aborde la domestication des idées radicales dans son superbe et stimulant article sur la compatibilité entre l’action directe et la politique délibérative. Les thèses présentées conduisent à la position plutôt étonnante que la légitimité des protestations radicales et anticapitalistes repose en fin de compte sur leur qualité délibérative interne. Aussi convaincante soit-elle à bien des égards, cette analyse semble conférer une prédominance excessive aux revendications de légitimité. Le problème actuel de la démocratie et du capitalisme mondial est que le mouvement altermondialiste n’existe pas en tant qu’acteur, pour la simple raison que la majorité de ses membres présumés n’ont pas encore saisi le problème décrié par le mouvement altermondialiste. Les gens doivent être convaincus de rejoindre les mouvements sociaux contre le contrôle des entreprises, contre l’affaiblissement démocratique et contre l’inégalité des revenus; le fait de fortifier la légitimité des revendications à des personnes déjà convaincues ne semble pas être de la plus grande aide.

At least in the global North, the domestication of once-radical ideas is pervasive across many areas of social life. Transitions from social unionism to business unionism, from community animation to “partnerships” and “capacity-building,” from social movement multiculturalism to its neoliberalized variant—in political discourse and practice, these moves and others illustrate the trend of democratic narrowing so characteristic of our era. The contemporary academy is no exception, either. Compare John Dewey’s notion of social capital as collectively harnessed knowledge in the service of egalitarian democratization to Robert Putnam’s use of the same term to describe the civic ties and trust fostered by voluntary associations.<sup>1</sup> Recall Carole Pateman’s emphasis on democratized workplaces as avenues to increased civic competence in light of James Fishkin’s more recent promotion of deliberative polling as issue-specific citizen education.<sup>2</sup> Indeed, also notice the frequent contemporary use of “deliberation” to characterize what amount to managed focus-group consultations among pre-designated “stakeholder” groups.<sup>3</sup>

Francis Dupuis-Déri confronts these trends in his superb and stimulating essay, “Global Protestors Versus Global Elites: Are Direct Action and Deliberative Politics Compatible?”<sup>4</sup> His basic starting point is the manifold deliberative deficiencies of the core institutions of global neoliberalization. For example, powerful states at the World Trade Organization use debt and aid threats to ensure decisions favouring their interests; similarly, World Bank decision rules allocate votes proportionally based on member “shareholding,” accomplishing the same objective with starkly antidemocratic frankness.<sup>5</sup> Dupuis-Déri also points out that the proffered justifications for this kind of capitalist fundamentalism are anti-deliberative themselves; the plainly stated goal is, after all, to insulate markets from the supposed irrationality of public choice.<sup>6</sup>

## 1

There is of course more to the article than this. Dupuis-Déri’s first key claim follows from his insistence that the militantly confrontational actions of global protestors are not simply tactical manoeuvres aimed at particular substantive policy ends; instead, their occupations, marches, blockades, and similarly summit-disrupting moves must be grasped as deliberative acts in their own right. They explain, publicize, and expose the devastating impact of purposefully hidden processes and decisions; and they voice the concerns of those directly affected by, but yet unreasonably excluded from, international capitalism’s myriad pseudo- and anti-deliberations, thus stimulating new currents of global imagination and discussion. Hence Dupuis-Déri’s first key claim: “confrontational action may be viewed as a means to improve the quality of deliberation and to move ... toward a more participatory regime.”<sup>7</sup>

This path of argument also leads Dupuis-Déri to an intriguing second claim. This claim is that the legitimacy of radical anti-capitalist protest rests ultimately on its internally deliberative quality.<sup>8</sup> For Dupuis-Déri, basing confrontation on a deliberative justification makes determining its internally deliberative character crucial. Accordingly, perhaps the article’s most distinctive contribution is to

turn the classic mantra of “being the change you wish to see” into a more specific ethic of constraint for protest planning and decisions. This connection between a deliberative justification for confrontational protest and a normative insistence on protest’s internally deliberative quality establishes a usable activist bulwark against movement oligarchization, a strong riposte to accusations of mob rule, and a conceptual normative basis for building deliberative-democratic counter-publics. In these constructive ways, then, Dupuis-Déri’s attack on the democratic deficiencies of the contemporary globalization era bucks the prevailing tide and returns the notion of deliberation to its radical roots.

In its basic boldness and in its evaluative focus on internal deliberation, I also think Dupuis-Déri’s argument superior to a similar yet ultimately competing account. The competitor account is that of Archon Fung, who also argues for the deliberative legitimacy of forms of protest that are dismissed more typically as mob disruption.<sup>9</sup> Fung’s particular concern is the deliberative literature’s traditional insistence on social equality as a vital prerequisite of fair deliberation, which, he argues, has made deliberation an emptily hypothetical and thus endlessly deferred goal. For Fung, the progressive deliberative democrat must figure out how to advance socially transformative deliberative ideals in manifestly unequal circumstances. So, he asks: what to do when social inequalities and elite intransigence make deliberation impossible? And like Dupuis-Déri, Fung argues that in such circumstances relatively confrontational approaches may not only be appropriate but can actually be justified as deliberative moves in their own right.

For Fung, it is deliberatively legitimate to abandon straightforwardly dialogical and discursive attempts at “persuasion” in favour of tactics more commonly associated with power politics and “coercion”—but provided that two basic conditions are met. First, standard “persuasive” avenues must really be foreclosed. Second, any departure from deliberative tactics must be calibrated so as not to exceed the deliberative shortcomings of the circumstances: abandoning the deliberative purist’s refusal to fight fire with fire shouldn’t mean going berserk at the first hint of anything less than full compliance.<sup>10</sup> Accordingly, Fung argues that traditionally coercive tactics, such as mocking and shaming public figures or occupying public buildings, are deliberatively justified when good faith efforts at conventional deliberation have been unreasonably rebuffed, and when the departure from deliberative norms is not disproportionate to the circumstances. This, then, is Fung’s account of “deliberative activism”: an approach adapted to the here and now of the fallen present but still fully within and fully committed to advancing the deliberative tradition of the free and fair public exchange of public reasons.<sup>11</sup>

So both thinkers contend that what Fung calls “coercive” rather than “persuasive” approaches may, at least potentially, be understood as principled deliberative moves whose legitimacy is to be judged and defended in deliberative-democratic terms. Where they start to diverge is when it comes to drawing the line between deliberative and non-deliberative protest. As we have

seen, Dupuis-Déri argues that various direct action tactics, including not only blockades and political trespassing, but perhaps also in some cases the destruction of property, can be deliberative acts aimed at enlarging imagination, amplifying the voices of the silenced, and prompting discussion about alternatives. When faced with antidemocratic and undeliberative forms of decision-making whose results have destructive impacts on the purposefully excluded, it may be legitimate to use militant, confrontational tactics.

But how would it be possible to tell? Fung requires deliberative activists to make good-faith deliberative efforts and then to calibrate their response to the intensity of the obstacles preventing conventional deliberation. Dupuis-Déri also considers the issue of deliberative obstacles; he argues that the rule-formation and goods-allocation processes of capitalist global governance violate the basic tenets of deliberative politics. Yet after reaching this basic judgment of anti-deliberative unfairness, Dupuis-Déri looks in a different direction. As noted earlier, what is ultimately decisive in Dupuis-Déri's account of activist deliberative legitimacy is whether the protestors' own decision-making processes are internally deliberative themselves. When facing the anti-deliberative unfairness so typical of the rule-formation and goods-allocation processes of capitalist global governance, then, "collective actions of disobedience and resistance [that] are by and large the result of a participative deliberative process [may] be seen as legitimate according to the normative framework of deliberative politics."<sup>12</sup>

Fung disagrees. It is not that Fung is particularly concerned to pronounce radical action illegitimate; he simply thinks that truly confrontational protest tends to cross a line, beyond which judgments of legitimacy can no longer rest on deliberative grounds. These "beyond the line" cases are precisely the ones with which Dupuis-Déri is concerned. Fung calls them cases of "incorrigible hostility," ones where, despite good-faith efforts at persuasion, gross inequalities of power and implacable elite opposition leave open no deliberative route—not even a deliberative activist one—to advancing deliberation.<sup>13</sup> Like Dupuis-Déri, the quintessential case that Fung has exactly in mind is "The governance arrangements that set the terms of world trade and international finance among states."<sup>14</sup> But Fung rejects Dupuis-Déri's deliberative justification for confrontational militancy. Instead, he says of the militant encounter with incorrigible hostility: "In this degenerative category in which deliberation is *ex hypothesi* impossible to advance, the deliberative activist becomes an activist *simpliciter*."<sup>15</sup> Thus, for Fung the question of legitimacy in situations of incorrigible hostility is simply not a deliberative one. It is instead a matter of whether the protest actions employed fall into the range of "otherwise permissible political tactics" in liberal-democratic pluralism.

My sympathies here tend to lie with Dupuis-Déri. By rejecting deliberative justifications in situations of incorrigible hostility, Fung abandons Dupuis-Déri's internal deliberative constraint on protest planning and action. If we are on the ground of standardly "coercive" interest-group pluralism, then whatever forms of internal organization appear tactically effective or are imposed by group

elites—and are “otherwise permissible”—are the ones to be used. This leaves radicals with no internal democratic ethic at all save the rules of a liberal political system and philosophy many of them reject. Moreover, if we restrict deliberative considerations only to those situations where hostility is corrigible then we are segregating deliberative ideals away from any confrontation with the deepest injustices of our time. On this score, it is surely telling that Fung’s two examples of legitimate deliberative activism involve a state-organized health consultation process in which low-income groups were under-represented and an elite university that proved stubbornly unresponsive in the face of a living wage campaign.<sup>16</sup>

## 2

Yet, despite these differences, Fung and Dupuis-Déri approach the question of deliberation and protest in a broadly similar way. For both, the primary task is determining legitimacy. They certainly push our understanding of deliberative legitimacy beyond the conventional focus on considering and exchanging reasons, with Dupuis-Déri going further than Fung by insisting that, in some cases, the boundaries of deliberative legitimacy are likely to lie well beyond the bounds of what are standardly permissible. But do these authors make a mistake in treating the present era’s quintessential problem trioka of global capitalism, democratic narrowing, and incorrigible hostility primarily from the standpoint of legitimacy?

This is not a complaint about the sub-disciplines of ethics and moral philosophy. Rather, it is about what seems to me the undue predominance of legitimacy claims in some areas of contemporary social movement politics. Claims of legitimacy are in many ways essential and inevitable. In social movement campaigns, they respond to accusations of wrongfulness and galvanize group members; they say, “the cause is just, right is on our side—we are entitled to do this.” This kind of insistence is especially important in cases where the group doing the claiming is what U.S. jurisprudence calls “discrete and insular,” that is, sociologically bounded and defined in ways that make oppression and marginalization all too easy and appeals to shared understandings and interests extraordinarily difficult. Classic, indisputable cases involve oppressed minorities under the thumb of determinedly unjust and intransigent majorities (as was so clearly the case for African-Americans in the Jim Crow South) and tyrannized majorities confronting police-state controlling minorities (as was so clearly the case in apartheid South Africa).

In these kinds of situations, although change is imperative, attempts at persuasion and even coercion (at least of the permissible, interest-group liberalism variety) tend to be useless. Appeals to legitimacy then become indispensable, first-order business. Departures from peaceable or normally sanctioned forms of political participation have to be justified, particularly to potential participants who may be hesitant about taking steps in unfamiliar, radical directions. So arguments of legitimacy say to group members: “join the cause; it is just; we are defending our rights.”

To some extent, protestors in confrontation with global capitalism might seem to fit the bill. As Dupuis-Déri explains, they are adversely affected, silenced, and repressed. They face “exclusion, profound inequalities of power, and coercive attitudes.”<sup>17</sup> But they also lack exactly what the social movement appeal to legitimacy in “discrete and insular” cases presumes: a clear, pre-existing sense of solidarity and belonging on whose basis other group members might be expected to move from being passively supportive bystanders to active resisters. When strong pre-existing bases of solidarity and identity among the affected make the motivation for protest clear and the identity of the oppressor certain, what really matters is fortifying the group’s determination to go beyond the normally expected and sanctioned means of complaint. Insisting on legitimacy in these cases is basic and essential.

But in the overdeveloped countries at least, this is manifestly not the situation facing global capitalism’s critics today. Except perhaps among the very tight circles of committed activists who have bonded over past experiences of police repression, there is very little in the way of pre-existing senses of identity and belonging on which to draw. The problem is not primarily one of convincing some already or incipiently constituted actor to move to an uncustomary mode of action with insurances of moral rightness. It is instead one of convincing outsiders and sceptics that there is a nest of inter-related problems—say, corporate control, democratic weakening, and income inequality—that a not-yet-existent majority must be created to fight. The core question is not about tactical legitimacy but about building support for movement objectives. And on this question, the very attitude of legitimacy that legitimacy arguments aim to instil is counterproductive.

The problem of democracy and global capitalism today is that the global justice movement’s designated constituency—“the people” in Dupuis-Déri’s essay, or the “99%” in still more recent renderings—does not exist as an actor. It does not so exist for the simple reason that the majority of its putative members have yet to accept the problem construction forwarded by the global justice movement. Constructing such an actor requires projects of democratic persuasion that reach out across multiple kinds of group lines. People must be convinced to join movements against corporate control, democratic weakening, and income inequality. Fortifying extant convictions of legitimacy among the longstanding ranks of the already committed does not seem to be helping in the key task of building strong progressive majorities.

## NOTES

- <sup>1</sup> James Farr, "Social Capital: A Conceptual History," *Political Theory* 32:6 (2004): 6-33. Thanks to Jim Tully for this reference.
- <sup>2</sup> cf. Carole Pateman, *Democracy and Democratic Theory* (Cambridge: Cambridge University Press, 1970) and Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven CT: Yale University Press, 2004).
- <sup>3</sup> Christoph Görg and Joachim Hirsch, "Is International Democracy Possible?," *Review of International Political Economy* 5:4 (1998): 585-615.
- <sup>4</sup> Francis Dupuis-Déri, "Global Protestors Versus Global Elites: Are Direct Action and Deliberative Politics Compatible?," *New Political Science* 29:2 (2007) 167-186.
- <sup>5</sup> *Ibid.*, 175-177.
- <sup>6</sup> *Ibid.*, 178.
- <sup>7</sup> *Ibid.*, 174.
- <sup>8</sup> *Ibid.*, 181-184.
- <sup>9</sup> Archon Fung, "Deliberation before the Revolution: Toward an Ethics of Deliberative Democracy in an Unjust World," *Political Theory* 33:2 (2005): 397-419.
- <sup>10</sup> *Ibid.*, 402-404.
- <sup>11</sup> *Ibid.*, 402.
- <sup>12</sup> Dupuis-Déri, "Global Protestors," 183.
- <sup>13</sup> Fung, "Deliberation," 412.
- <sup>14</sup> *Ibid.*
- <sup>15</sup> *Ibid.*, 404.
- <sup>16</sup> *Ibid.*, 407-409.
- <sup>17</sup> Dupuis-Déri, "Global Protestors," 177.