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Deliberative Democracy, the Discursive Dilemma, and Republican Theory

Philip Pettit

The ideal of deliberative democracy argues that voters should vote in a way that reflects their deliberatively informed judgments on matters relevant to the common good but it says nothing on how those votes should be aggregated into collective judgments. This makes for a problem, since there are two ways in which the aggregation of judgments might go, as the discursive dilemma shows. One would ensure that collective judgments are maximally responsive to individual judgments but risk the rationality of the judgments collectively maintained. The other would ensure the rationality of collective judgments but reduce the responsiveness of those judgments to individual views. One would preserve the democratic aspect of the ideal and compromise the deliberative; the other would preserve the deliberative and compromise the democratic.

Which way should the ideal be extended to cope with this hard choice? I argue that the republican defense of deliberative democracy suggests that the ideal ought to be extended so that collective rationality is prized over responsiveness to individual views: the deliberative aspect should be given priority over the democratic.

There are five sections to the paper. In the first, I give a brief account of the ideal of deliberative democracy. In the second, I introduce the discursive dilemma, and then in the third section I show why the issue that it raises is of relevance to the deliberative–democratic ideal. How should deliberative democrats resolve that issue? I maintain in the fourth section that the role in which republican theory casts deliberative democracy argues for resolving it so that collective rationality is given more importance than responsiveness to individual views. And then in the final section I argue for the consistency of that position with the main sorts of argument put forward by others in defense of the ideal.

1. The Ideal of Deliberative Democracy

There are three issues on which deliberative democrats divide among themselves. First, the question of how many contexts – electoral, parliamentary, bureaucratic, industrial, educational, and so on – ought to be democratised. Second, the question of how many issues in any democratised context ought to be under democratic control: just the choice of office-holders, or also the choice of general programs, or perhaps the choice of detailed policies. And third, the question of how far a democratic character serves to justify or legitimate a regime and pattern of decision-making, or at least to give them a presumptive authority: to place the onus of argument on the shoulders of those who would not comply.

But no matter what their differences on such questions, deliberative democrats show a remarkable degree of consensus on how democracy should be organized when it is established at a given site. They agree that any democratic way of doing things should be inclusive, judgmental and dialogical in character. These three constraints, then, articulate the deliberative–democratic ideal that they share.¹

- *The inclusive constraint:* all members should be equally entitled to vote on how to resolve relevant collective issues, or bundles of issues, with something less than a unanimous vote being sufficient to determine the outcome.
- *The judgmental constraint:* before voting, members should deliberate on the basis of presumptively common concerns about which resolution is to be preferred.
- *The dialogical constraint:* members should conduct this deliberation in open and unforced dialogue with one another, whether in a centralized forum or in various decentralized contexts.

The inclusive constraint means that deliberative democracy is to be contrasted with elitist or authoritarian schemes, even ones in which deliberation and dialogue have an important place. It will be satisfied in any context by having a representative democracy, if democratic control only runs to the choice of office-holders, but the general assumption is that, other things being equal, direct participation by all members will be preferred to indirect representation. The constraint includes the stipulation that unanimity is not required for the determination of an outcome, since a combination of inclusiveness and unanimity would lead to a group's being unable to reach a common view on most significant issues; unanimity is probably achievable, at best, only on very abstract constitutional matters.

The judgmental constraint has got two sides to it. First, it requires voters to deliberate or reason about how they should vote, not just vote in an unreflective or spontaneous or reflex manner. And second, it requires voters to deliberate

about how they should vote on the basis of considerations as to what is best for the society or group as a whole: what is likely to advance those common interests that members are capable of recognising as common interests. This constraint need not itself specify any particular conception of such common, avowable interests: that may itself be matter for the sort of deliberation recommended. What it counsels against is any pattern of voting in which each individual voter takes account only of what is good for his or her particular corner or circle. The model of voting recommended under this constraint can be described as judgment-voting rather than preference-voting. The idea is that each voter should make up his or her own mind as to what is for the good of the group in question and should vote on the basis of that judgment, not on the basis of brute preference or bargained compromise.

The third, dialogical constraint in the ideal of deliberative democracy marks a further, important level of differentiation. It rules out the sort of plebiscitarian dispensation in which each participant privately forms his or her judgment about common avowable interests, rather than doing so in dialogue with others, and then votes on the basis of that judgment. It is sometimes thought, on the basis of his remarks about the danger of faction, that Rousseau embraced this plebiscitarian ideal. According to Rousseau, so it is said, 'each voter is polled about his independently reached choice, without any group deliberation'.² But this interpretation is almost certainly mistaken, if only because it makes no sense of Rousseau's requiring that the people come together in an assembly. What he was anxious to guard against was not dialogue and debate, with the formation of individual judgment that this fosters, but rather the threat of some individuals' being so intimidated or impressed by others – so deferential towards them – that they vote according to the judgments of those others, not according to their own.³

The third constraint requires that the dialogue envisaged be open and unforced, while allowing that it may be centralized or decentralized. It must be open in the sense that each can get a hearing and it must be unforced in the sense that no one need fear to speak their mind; it must approximate the conditions for ideal speech that Jürgen Habermas emphasizes.⁴ Some will insist that dialogue must be centralized in a single forum, if talk of deliberative democracy is to be justified. But I think that it is better to leave that question open and to take the centralized or collective picture of deliberative democracy as a more specific version of a broader ideal.

2. The Discursive Dilemma

The doctrinal paradox

So much for the different elements in the ideal of deliberative democracy. Now for the discursive dilemma. The dilemma represents the generalisation of a prob-

lem that scholars of jurisprudence have recently called the doctrinal paradox.⁵ This is a paradox that arises when a multimember court has to make a decision about some matter on the basis of received doctrine as to the considerations that ought to be taken into account.

Consider the case of a three-member court casting votes as to whether someone is liable in tort for something they did that affected another. Legal doctrine requires the judges to make judgments, not just on liability, but also on the related issues of whether there was harm done and whether there was a duty of care. And, more specifically, legal doctrine requires them to let the resolution of those other issues determine the resolution of the liability question. Imagine, then, that the members of the court vote on the pattern in the following matrix about the issues facing it.

Matrix 1			
	Was harm done?	Was there a duty of care?	Liable?
Judge A	Yes	No	No
Judge B	No	Yes	No
Judge C	Yes	Yes	Yes

The judges represented in this example are each individually consistent in the way they cast their votes. And furthermore they are consistent, so we may assume, out of compliance with legal doctrine. That is to say, they first decide on the issue of harm and on the issue of care and then they each let their vote on liability be driven – driven in consistency – by their votes on those issues. If we look at the majority vote on each issue, however, we see that collectively the court is inconsistent. It supports affirmative judgments on the first two issues – there are two Yes's on each question – and a negative judgment on the third: there are two No's in the final column. Hence the court as a collective body breaches legal doctrine, because it does not draw the conclusion on liability that its positions on the other issues require.

The doctrinal paradox consists in the fact that although each of the judges in a case like this complies with legal doctrine, they still come up with a collective set of judgments that is in breach of consistency and in conflict therefore with legal doctrine. The paradox will arise wherever a majority in the group supports each of the premises, different majorities support different premises, and the intersection or overlap of those majorities is not itself a majority in the group. The fact that those in that overlap are not themselves a majority – in the case considered there is only one judge, C, in the intersection – explains why there is only a minority in favor of the conclusion.⁶

The doctrinal paradox is not confined to cases where a court has to make a decision by reference to a conjunction of premises. It can also arise in cases where the court has to make its decision by reference to a disjunction of consid-

erations; that is, in cases where the support required for a positive conclusion is only that one or more of the premises be endorsed. This is unsurprising, of course, given that a disjunction of premises, p or q , is equivalent to the negation of a conjunction: not-(not- p and not- q). Still, it may be worth illustrating the possibility.

Imagine that three judges have to make a decision on whether or not someone should be given a retrial; that a retrial is required either in the event of inadmissible evidence having been used previously or in the event of the appellant's having been forced to confess; and that the voting goes as in the following matrix among the judges.

Matrix 2			
	Inadmissible evidence?	Forced confession?	Retrial?
Judge A	Yes	No	Yes
Judge B	No	Yes	Yes
Judge C	No	No	No

This case also illustrates a doctrinal paradox, since the normal procedure of looking at the majority in the last column will lead to giving the defendant a retrial but that collective judgment is out of kilter with the majority-supported judgments on the first two issues.

The doctrinal paradox raises a serious question for collegiate courts. Should things be organized, as they are in most jurisdictions, so that judgment on the issue under adjudication – the conclusion – is determined by whether a majority support it? Or should they be organized so that judgment on that issue is determined by the judgments that majorities support on the doctrinally prior issues: if you like, the doctrinal premises?

It should be clear that the doctrinal paradox will generalize in a number of dimensions, representing a possibility that may materialize with any number of decision-makers greater than two and with any number of premises greater than one, whether those premises be conjunctively or disjunctively organized. But there are other, perhaps less obvious ways in which it can be generalized also and I now look at three of these. I describe them respectively as the social generalization, the diachronic generalization, and the *modus tollens* generalization.⁷

The social generalization

A paradox of the sort illustrated does not require the presence of a legal doctrine which dictates that certain issues are prior to another – an issue on which a conclusion has to be reached – so that judgments on those prior issues ought in consistency to dictate the judgment on the conclusion. It will also arise when a group of people discourse together with a view to forming an opinion on a

certain matter and when they agree that the matter should be determined by the resolution of other, prior issues.

Consider an issue that might arise in a workplace, among the employees of a company: for simplicity, as we may assume, a company owned by the employees. The issue is whether to forgo a pay-rise in order to spend the money thereby saved on introducing a set of workplace safety measures: say, measures to guard against electrocution. Let us suppose for convenience that the employees are to make the decision – perhaps because of prior resolution – on the basis of considering three separable issues: first, how serious the danger is; second, how effective the safety measure that a pay-sacrifice would buy is likely to be; and third, whether the pay-sacrifice is bearable for members individually. If an employee thinks that the danger is sufficiently serious, the safety measure sufficiently effective, and the pay-sacrifice sufficiently bearable, he or she will vote for the sacrifice; otherwise they will vote against. And so each will have to consider those three epistemically prior issues – those premises – and then look to what should be concluded about the pay-sacrifice.

Imagine now that after appropriate dialogue and deliberation the employees are disposed to vote on the relevant premises and conclusion in the pattern illustrated by the following matrix for a group of three workers. The letters A, B and C represent the three employees and the ‘Yes’ or ‘No’ on any row represents the disposition of the relevant employee to admit or reject the corresponding premise or conclusion.

Matrix 3

	Serious danger?	Effective measure?	Bearable loss?	Pay-sacrifice?
A.	Yes	No	Yes	No
B.	No	Yes	Yes	No
C.	Yes	Yes	No	No

If this is the pattern in which the employees vote, then a different decision will be made, depending on whether the group judgment is driven by how members judge on the premises or by how they judge on the conclusion. Looking at the matrix, we can see that though everyone individually rejects the pay-sacrifice, a majority supports each of the premises. If we think that the views of the employees on the conclusion should determine the group-decision, then we will say that the group-conclusion should be to reject the pay-sacrifice: there are only ‘No’s’ in the final column. But if we think that the views of the employees on the premises should determine the group-decision, then we will say that the group-conclusion should be to accept the pay-sacrifice: there are more ‘Yes’s’ than ‘No’s’ in each of the premise columns.

There are familiar practices of group deliberation and decision-making corresponding to these two options. Thus the group would go one way if members

entered into deliberation and dialogue and then each cast their personal vote on whether to endorse the pay-sacrifice or not; in that case the decision would be against the pay-sacrifice. The group would go the other if there was a chairperson who took a vote on each of the premises – say, a show of hands – and then let logic decide the outcome; in this case the decision would be in favour of the pay-sacrifice.

This example is stylized but should serve to indicate that the paradox is not confined to the domain in which legal doctrine dictates that certain judgments are to be made by reference to certain considerations. There are many social groups that have to make judgments on various issues and that routinely do so by reference to considerations that are epistemically privileged within the group. Any groups that are charged by an external authority with making certain decisions on the basis of designated considerations will have to do this. And so will any groups that aspire to identifying such considerations for themselves, constitutionalizing the relations between members around a recognition of shared, decision-driving commitments.

The diachronic generalization

For all that has been said in this first stage of generalization, the paradox may seem unlikely to figure much in social and political life. The reason is that whereas the judges in a courtroom routinely have to make their judgments by reference to shared considerations, people in other social groups will often reach collective decisions on an incompletely theorised basis.⁸ There will be a majority, perhaps even a consensus, in favour of a certain line on some issue but there will be no agreement among the parties to that majority or consensus on the reasons that support the line. The parties will each vote that line for reasons of their own – reasons related to their own interests or their own judgments of the common interest – and there will only be a partial overlap between the different considerations they each take into account. Thus there will be no possibility of their resorting to common premises to determine the line that they ought to take.

But sound though this consideration is, social groups will still have to deal routinely with a problem akin to the doctrinal paradox. In the examples given from judicial life, and in the social parallel suggested, the issues involved – the premise-issues and the conclusion-issue – are up for determination at one and the same time, both by the individuals and by the group. But the problem involved can arise across time as well as at a time; it can have a diachronic as well as a synchronic character. And the fact that it can arise in this way means that incompletely theorized judgments are also vulnerable to it.

Suppose that over a period of time a group makes a judgment on each of a set of issues, deciding them all by majority vote and on incompletely theorised grounds: different members of the group are moved by different considerations.

Sooner or later such a group is bound to face an issue such that how it should judge on that issue is determined by the judgments it previously endorsed on other issues. And in such an event the group will face the familiar problem that majority voting on the new issue may generate a collective pattern of voting that is inconsistent in character – inconsistent, in this case, across time.

The courts will often face this diachronic version of the problem as well as the synchronic version that we considered; this will happen when previous judgments of the court dictate the judgment that it ought to make on an issue currently before it. But, more important for our purposes, even social groups that differ from the courts in routinely securing only incompletely theorized agreements will have to confront the diachronic version of the problem. They may escape the synchronic problem through not being capable of agreeing on common considerations by which different issues are to be judged. But that is no guarantee that they will be able to escape the problem as it arises in diachronic form.

The diachronic problem is going to affect a wide range of groups. Suppose, to take an illustrative example, that a political party announces in March, say on the basis of majority voting among its members, that it will not increase taxes if it gets into government. Suppose that it announces in June, again on the basis of majority vote, that it will increase defense spending. And now imagine that it faces the issue in September as to whether it will increase government spending in other areas of policy or organization. Should it allow a majority vote on that issue too?

If the party does allow a majority vote, then we know that even in the event of individual members being perfectly consistent across time, the vote may favor increasing government spending in other areas. The members may vote in the pattern of members A to C in the following matrix.

Matrix 4

	Increase taxes?	Increase defense spending?	Increase other spending?
A.	No	Yes	No (reduce)
B.	No	No (reduce)	Yes
C.	Yes	Yes	Yes

Thus the party will face the hard choice between being responsive to the views of its individual members and ensuring the collective rationality of the views it endorses.

The *modus tollens* generalization

In the legal case it is taken to be important, not just that judges be consistent, but that their judgments on the doctrinally prior issues dictate in consistency how

they vote on the matter to be adjudicated. Similarly in the shop floor example, it is taken to be important, not just that the workers be consistent, but that their judgments on the epistemically prior issues of danger, effectiveness and bearability of cost determine how they vote on the pay-sacrifice. But the assumption that there are any issues which stand out as doctrinally or epistemically prior is unnecessary. The sort of problem involved will arise just on the assumption that whatever judgments are made on all the issues, they have to be consistent with one another. When we see this, we see a third and still more important way in which the doctrinal paradox generalizes. For reasons that will be clear shortly, I describe it as the *modus tollens* generalization.

When an individual or group relies on an assumption of doctrinal or epistemic priority and argues from the way earlier issues in one of our matrices are resolved to how the last issue is resolved, then they practise what we might loosely describe in the old scholastic term as *modus ponens*: they move from the assertion of certain views on the earlier issues to an assertion of the view that has to be taken on the last. But if no assumption of priority is made among the issues, then it is possible to achieve consistency, either by complying with *modus ponens* or by complying with the traditionally described alternative, *modus tollens*. Under this alternative, the individual or group would stick with the view to which they are independently attracted on the last issue and then argue for the need to withdraw one of the commitments made on the earlier issues.

Consider how the group in the worker example might try to achieve consistency, if the assumption of epistemic priority is lifted. It might still ignore the majority vote on the pay-rise issue, as *modus ponens* would require, and let the majority votes on the other issues dictate the collective view on that conclusion. But another equally salient possibility would be to ignore the majority vote on one of those earlier issues, letting the majority votes on the other earlier issues together with the majority vote on the conclusion dictate the collective view to be taken on that particular issue. Or consider the case of the political party. The members of the party might allow the earlier commitments to determine the commitment on the later issue, thereby achieving consistency. Or they might decide to stick with the majority view on that later issue and then look to withdrawing one of the earlier commitments.

It should now be clear why I speak of a discursive dilemma rather than a doctrinal paradox. The doctrinal paradox arises when certain judicial issues that are up for resolution have to be resolved at one and the same time; and are prioritised among themselves under legal doctrine. The discursive dilemma can arise outside the judicial domain; it can arise even when the issues involved come up over time, not simultaneously; and it can arise just in virtue of the requirement of consistency, not on the basis of any assumed priority among the issues. In these respects it is a problem that is general to discourse, not just a problem associated with legal doctrine.

The problem posed represents a hard choice or dilemma, not anything that strictly deserves to be called a paradox. The hard choice that a group in this dilemma faces is whether to let the views of the collectivity on any issue be fully responsive to the individual views of members – the views they form prior to feedback on the collective pattern – thereby running the risk of collective inconsistency; or whether to ensure that the views of the group are collectively consistent, even where that means compromising responsiveness to the initial views of individual members on one or another issue. You can have individual responsiveness or collective rationality but you cannot have both – or at least you cannot be sure of being able to have both.

3. The Relevance of the Dilemma for Deliberative Democracy

The participatory and regulatory questions raised

Under the regime of deliberative democracy, it is required that with any logically connected propositions in the domain of discussion – they may or may not be cast in the role of premises and conclusion – people make up their minds about the propositions in such a way that reason is satisfied. They do not endorse inconsistent or otherwise incoherent sets of propositions; they do not fail to derive conclusions that are supported, even saliently supported, by what they already endorse; and they do not follow a procedure – say, one of unanimitarian voting – that gives them nothing to say on most issues. This means that they therefore face the prospect of a discursive dilemma; indeed there is a general impossibility theorem that can be invoked to establish the point.⁹

There are two broad questions that will be raised for deliberative democracy by the discursive dilemma. The first is the question of how a group should be organized if majority voting on certain issues is liable, no matter how deliberative, to generate collective inconsistency and there is nothing that members can do in response to feedback about that inconsistency: nothing that they can do to put it right. This, in effect, is the old participatory question as to whether such a group should be allowed to address issues that can give rise to inconsistency or whether the domain of its decision-making should be restricted to the choice of representatives. If the domain of decision-making is restricted in this way, so that members of the group have a say only on the personnel who will represent them and on the platforms that they prefer such personnel to advance, then the spectre of collective inconsistency will disappear.

The second question raised for deliberative democracy by the discursive dilemma arises when the group in question does have a feasible choice between following a procedure that ensures responsiveness to individual views, while

risking collective rationality, and following a procedure that ensures collective rationality but compromises responsiveness to initial, individual views. The first procedure will obviously involve having members vote, on a majoritarian or at least non-unanimitarian basis, about each of the issues before the group, and then letting that vote determine the collective view. But what will the second procedure involve? Consistently with behaving in a deliberative democratic manner, the group might let the presumptive set of collective views be determined by having members vote on each issue and only consider moderating those views – amending one or other of them – in the event of feedback to the effect that collective views are irrational in some way. The amendment chosen might involve letting the views with the presumptive status of premise-judgments – if that can be agreed – determine the view on the conclusion. Or it might involve holding on to that conclusion and revising the collectively endorsed view on one of the other issues. It might involve practising *modus ponens* or *modus tollens*.

I describe the question that the dilemma raises for this second sort of group as regulatory rather than participatory in character, since it bears on how the group should regulate its decision-making. The group that confronts this question faces the hard choice that is characteristic of the discursive dilemma. If the procedure adopted favors responsiveness and risks rationality, then it will reduce the deliberative component in the ideal of deliberative democracy. If it favors rationality and compromises responsiveness, then it will reduce the democratic component in that ideal.

The participatory and regulatory questions come up for the ideal of deliberative democracy in different fora and we should look briefly at where in particular they get a grip. We already know that the regulatory question comes up in the judicial context, since that is what the doctrinal paradox establishes. But we should also say a little about three other contexts that are particularly salient in the working of a state: the electoral, the administrative, and the parliamentary.

The electoral context

The members of the electorate in any society, however large-scale, will be individually capable of making judgments in a deliberative and dialogical way and of casting votes that reflect those judgments. But if an electorate proves to support an inconsistent set of positions, say in a series of referendums, there is little or nothing that it may be able to do about that inconsistency. The group will be too loosely jointed and unorganized in any large-scale society to have the capacity to register the inconsistency at group level, to debate the different ways – those associated with *modus ponens* or *modus tollens* – in which consistency might be restored, and to organize a vote on which approach to adopt. Almost any procedure we can imagine whereby the electorate could regulate itself with a

view to ensuring collective consistency would be impossibly cumbersome or would involve giving over power to representatives.

This means that if the electorate as a whole is allowed to judge on policy issues, then that will jeopardize consistency in such judgments; the discursive dilemma shows that inconsistency will represent a permanent possibility. Even if the members of the electorate are individually rational and consistent in the judgments they make, still the electorate as a group may give support to inconsistent and irrational collective judgments. The only way for the electorate as a whole to be assured of avoiding such inconsistency will be for the domain of its judgments to be limited to selecting representatives and to identifying preferred programs of policy-making.

The question raised by the discursive dilemma for the case of the large-scale electorate, then, is the old, participatory issue of whether large-scale electoral democracy should extend to policy questions: whether, despite the scale involved, it should be direct rather than representative. Let the electorate serve solely in the selection of representatives – and indirectly in the identification of preferred programs – and inconsistency can be avoided. Let it serve in the selection of policies and inconsistency is likely to prove inevitable.

The administrative context

What of the relevance of the discursive dilemma to the smaller bodies that are of such importance in the administration of any democracy: the committees, agencies and commissions in which so many public decisions are made? What is the relevance of the dilemma, in particular, given the assumption that they are to be organized democratically?

Some of these bodies will be governed by assumptions that identify certain of the issues they confront as prior to others; the bodies will have terms of reference enjoining them to judge on the posterior issues – these may be matters of adjudication or advice or interpretation – by reference to the matters that are designated as prior. In such cases the discursive dilemma will clearly raise the question as to whether the bodies in question should police themselves to ensure collective consistency or whether they should go with the votes on each issue before them, even if this gives rise to collective inconsistency. The question that arises will be almost identical to the question raised in the judicial context by the original doctrinal paradox. Should the bodies envisaged regulate themselves with a view to displaying collective rationality or should they be content to recognise that they are just aggregates of individuals and to support sets of judgments, even inconsistent sets of judgments, that faithfully reflect the views of their members?

What of the administrative bodies in public life where members also vote on rationally connected issues but are free to vote on the basis of their own individual reasons? What, in other words, of the bodies whose members share no

predetermined view as to the relative importance of the issues that they face? Does the discursive dilemma raise the same regulatory question here?

Yes, it does. Each of the bodies envisaged will have purposes such that members have to be willing to promote them. And each of the bodies in question will have to make judgments on issues related to those purposes – say, issues of opportunity, issues of cost or issues of means-end connection – as they come up for resolution over time. It is inevitable that sooner or later an issue will arise that is rationally connected with issues on which the group has already judged. And when that happens the group will face the regulatory question raised by the discursive dilemma. Is it to make a collective judgment about the new issue on a majoritarian basis, thereby risking collective inconsistency over time? Or is it to address any inconsistency that majority voting may generate and have recourse to a procedure whereby the inconsistency may be remedied? The problem is well illustrated by the challenge facing the political party in the example given in Matrix 4.

The parliamentary context

We have identified a participatory question that the discursive dilemma raises for deliberative democracy in a large-scale electorate and a regulatory question that it raises for administrative committees, agencies and commissions that are also expected to operate in a deliberative democratic way. What of the houses of parliament or congress, however? What question, if any, does the dilemma raise here?

The houses of parliament may operate, roughly, on a Westminster or a Washington pattern. Under the Westminster system parliament works in the manner of the electorate in a large-scale, wholly representative democracy. It serves to select the members of the government on the basis of which party or alliance of parties commands majority support, and it provides a forum to which the governing party or alliance, its decisions already made, comes to be interrogated for the consistency of its policies and for their more general merits. And that is all that it does. Or at least that is all that it does in the main. Private members' bills make the situation more complex, as does the fact that the decisions of the governing party or alliance have to be ratified by a parliamentary vote, so that they may occasionally be modified or even – a rare event indeed – reversed.

Under the Washington system, parliament has a different role, even though it divides along party lines on many issues. While its decisions may be overturned by the President, they are precisely that: decisions. If the Westminster houses of parliament resemble the electorate in a representative democracy, the Washington houses of congress resemble the electorate in a democracy where referendums – advisory referendums, to be sure – are the order of the day. And as referendums may generate inconsistency across time, so may the votes that the

houses of congress support. In the case of congress, of course, members are few enough to be able to register the prospect of inconsistency and try to do something about it; and should they fail to do this, they may rely on the Supreme Court to provide an interpretation of their decisions that restores consistency to them.

Given the availability of these two systems, the discursive dilemma raises the same participatory question on the parliamentary front as it does on the electoral. The question is whether to give parliament the sort of role associated with the electorate in a representative democracy or whether to give it the richer, participatory role of an electorate that rules by referendum: whether to organize it, roughly, on a Westminster or a Washington model. And if a decision is made in favor of giving parliament as such a participatory role in governmental decision-making – parliament as distinct from the governing party or alliance of parties – then the dilemma raises the further, regulatory question as to whether parliament ought to impose the discipline of reason on itself at the collective or at the individual level.

The upshot, then, is this. The discursive dilemma is of relevance for large-scale electoral and parliamentary democracy so far as it raises the participatory question as to whether the group as a whole should be allowed to determine policy matters, as well as matters of personnel and program. And the dilemma is of relevance to administrative bodies in public life – as it is relevant to judicial bodies and perhaps also to parliament – so far as it raises the regulatory question as to whether a body should strive for the consistency of a unified collective presence or allow its judgments, even perhaps at the cost of inconsistency, to reflect the views of its members. In each case of that kind there will be a question as to whether the members of the body should impose the discipline of reason on themselves at the collective or at the individual level.

4. The Resolution in Republican Theory

The republican argument for deliberative democracy

Republican theory, as I have argued elsewhere, puts a premium on people's enjoying freedom as non-domination: that is, on people's having a status such that ideally no one else is able to interfere arbitrarily in their lives.¹⁰ If any other person or agency is able to interfere in their lives, then they must be forced to track people's avowed or readily avowable interests in the interference they practise; they must not have a power of arbitrary interference. My aim in this section is, first, to characterize the case made in republican theory for deliberative democracy and, second, to show that that case argues for a distinctive resolution of the issues raised for deliberative democracy by the discursive dilemma.

The republican image of freedom raises the question of how the state can be blocked from enjoying a power of arbitrary interference in the lives of citizens. The state is a necessary institution and it necessarily has a power of interfering with people: it cannot operate without being able to tax, legislate and penalize the governed. So how is its power of interference to be made non-arbitrary? How is the coercive state to be forced to track people's common avowed or avowable interests? Republican constitutional theory is built around that question and has consistently sought to describe various devices whereby non-arbitrariness may be furthered. These include familiar mechanisms such as democratic election, rule of law, separation of powers, limitation of tenure, rotation of office, and so on.

One important strand in this republican tradition of constitutional discussion has been the idea that if the state's power of interference is to be rendered non-arbitrary, then whatever other devices are in place, people must be able to contest the decisions made by various arms of government. They must have access to the reasons supporting those decisions and they must be able to contest the soundness of those reasons or the degree of support they offer to the decisions made. Moreover they must be in a position, ideally, to expect that such contestations will be heard, will be impartially adjudicated and, if necessary, will be implemented against those in government. The general message is that so far as a government is effectively contestable, to that extent it is less likely to enjoy arbitrary power.

The effective promotion of contestability in the political sphere requires a variety of institutions, especially if it is to guard against unwieldy levels of complaint.¹¹ From our point of view, however, only two observations are relevant. The first is that putting in place a regime of electoral democracy is essential in guarding against certain possibilities of non-contestability and domination: the colonial, the authoritarian, and so on. And the second is that any such regime still leaves striking possibilities of non-contestability and domination in place: possibilities associated with the tyranny of the democratic majority, in particular, and the tyranny of what we might describe as the democratic elite: those in the corridors of power – for example, in the bureaucracy, the cabinet, the courts, the prisons, or the police force – who can impose their own will in how they interpret and implement democratic policy.

How are people to be empowered in relation to democratic majorities and democratic elites? How are they to be given a power of contestation against them? Whatever else is necessary, it seems clear that they must be able to ask after the reasons that support the decisions, they must be able to question the relevance of the reasons and they must be in a position to expect a fair hearing. And all of that is going to be possible, of course, only so far as the democratic bodies in question operate in a deliberative mode. There must be a dispensation of deliberation in place in the community as a whole, and in the microcosm of parliament, which establishes a currency of considerations that are admitted on

all sides to connect with common avowable interests and to be relevant to the doings of government. There must be a commitment in the different arms of government to justifying whatever decisions are taken by reference to the considerations that are relevant, by common consent, in their case. And it must be possible for private individuals, or perhaps for designated representatives, to challenge such decisions on the grounds that the reasons quoted are not sound or do not offer the requisite support for the decisions taken. It is only in the event of democracy having this deliberative cast that contestability, and ultimately non-arbitrariness, can be furthered.

This republican argument for deliberative democracy applies also, of course, to fora beyond those of government. Take the workplace community or the community organization, or indeed the family. Even if decisions are taken democratically in such a body, there will be little protection against arbitrariness – short of exit – unless the democracy in question operates in deliberative mode, giving individuals a chance to contest the decisions made. If decisions are made on the basis of interest-group politics, or bargaining from different levels of power, then there will be no grounds on which any contestation can be made. Brute force or naked preference will rule.

Cass Sunstein probably has the republican case for deliberative–democratic procedure in mind when he describes deliberative democracy as a ‘republic of reasons’.¹² Just as people are in a position to know where they stand in relation to a judge only so far as the judge has to provide statements of reasons for his or her decisions, so more generally people can know where they stand in relation to public decisions only if they know what the grounds adduced in support of those decisions are. They will not be able to take a stand in relation to public decisions, if those decisions are the outcome of interest-group bargaining or of voting on the basis of naked, unargued preference. Such non-deliberatively generated decisions would have the profile of dictats or fiats from on high, where the products of deliberative–democratic procedure would present themselves as reasoned – well-reasoned or badly reasoned – judgments that people are in a position to examine, assess and, if necessary, challenge.

The contestability argument for deliberative democracy ought to have persuasive force, quite apart from its connection with republican theory. It is of particular interest here because – unusually among such arguments, as we shall see in the next section – it provides a firm ground, at least in most contexts, for taking a position on the participatory and regulatory questions raised by the discursive dilemma.

The implications for the participatory question

The republican, contestability argument does not offer a quick resolution of the question as to whether parliaments ought to conform to the Washington model,

having effective control of legislative decisions, or ought to play the restricted, Westminster role; there are too many issues of detail involved for this to be readily tractable. But the argument does support a firm line on the question as to whether large-scale electorates – large-scale electorates as distinct, for example, from town meetings – should be given control of policy issues or restricted to issues of personnel and platform. It supports a restriction of electoral control to the selection of representatives.

The reason is palpable in light of the discursive dilemma. For that dilemma shows that no matter how deliberative an electorate is, it is liable to give rise to a collectively inconsistent position on related policy issues. And no group that supports such a position is forced to track considerations of common avowable interest, as political powers are required to do under the republican ideal. The inconsistency of the judgments maintained means that the group tracks no single set of considerations or reasons, and no considerations therefore that bear on matters of common avowable interest. If the electorate as a whole is given direct control of policy issues, therefore, then it is liable to be the most arbitrary of powers. It will relate to individuals and smaller groups in the role of an arbitrary despot.

A political power is non-arbitrary, under the republican account, to the extent that it is forced to track the common avowable interest of members of the society. The electorate or populace that is given the participatory role envisaged would fail to be non-arbitrary in the most dramatic of ways. It would fail to achieve this desired profile, not through tracking considerations that are more special than they ought to be – not through serving just the interests of a majority or an elite – but rather through failing to track considerations of any sort. It would represent, not a corrupt form of government, but an utterly capricious one.

Not only would the people as a whole represent an arbitrary, capricious government of this kind, were they allowed the sort of participatory role described. Unlike most capricious governments that we might envisage – say, the rule of a Caligula – they would represent a capricious government that could hope to be morally as well as legally unchallengeable. The ethos of democracy gives any decision that can be described as representing the people's voice a certain morally special status, so that empowering the people in referendums could introduce the worst of all imaginable despotisms: a regime under which the most capricious of powers remains morally as well as legally uncontestable.

This is not to deny, of course, that consistently with republican theory it might be useful in certain predicaments for government to resort to referendum or even for government to allow citizen-initiated referendums on whether to repeal existing legislation.¹³ And it is certainly not to downplay the importance of electoral democracy, let alone the importance of civic culture and involvement. Under the representative regime that republicanism would support, it is

going to be of the first importance that there is widespread public debate related to the choice of personnel and the identification of preferred platforms. For only debate of that kind can establish the currency of considerations in terms of which it is appropriate to interrogate government. And it is only in the light of the part they play in such debate that representatives can be held to later account. The message is not that electoral apathy is desirable – far from it – but rather that electoral democracy should not have the sort of participatory cast associated with rule by referendum.

There is also a further thought to add. In arguing for the importance of contestability – that is, of effective access to contestation – the republican approach gives support to the idea that people should have discursive standing in relation to government: they should relate to government as parties that can only be interfered with when it is claimed – and the claim can be put to the test – that interference is justified by common avowed or readily avowable interests. The enjoyment of such discursive status is of the first importance in people's personal and political life.¹⁴ While it falls short of the active, discursive participation prized by many deliberative democrats, it offers an attractive substitute for the participatory ideal and may even represent the deeper, motivating value.

The implications for the regulatory question

But what of the administrative and perhaps parliamentary bodies that are given carriage of policy issues and that do have the capacity, like a collegiate court, to regulate themselves for the achievement of collective rationality? Should bodies of this kind work at ensuring such collective rationality? Or should they allow themselves to adopt positions which, at the cost of collective rationality, represent the views of their members faithfully?

Here it should be clear that short of the bodies being so small that contestability can be achieved in relation to the separate individuals involved, it is vital from a republican point of view that the groups work at ensuring collective rationality. The reason, as in the other case, is that a group which does not ensure the consistency of the overall position it takes on issues within its control will be an arbitrary, capricious power in the lives of those whom it affects. People may try to contest its individual decisions but since the potential inconsistency of its views means that it is not subject to any rule of reasons, there are no reasons with which they can hope to confront and confound it.

The uncontestability and arbitrariness of such a group appears in the fact that it will be essentially unanswerable. It will be a body with which it is inherently impossible to enter discussion, reasoning with it as to what it ought to do or ought to have done in a given case. Consider the workforce in our earlier example. We might discover that the majority view among its members is that electrocution is a serious danger, that a pay-sacrifice would solve the problem, and that the loss

involved is bearable – and that those premises imply that a pay-sacrifice would be desirable; and yet it should be no surprise to find that the group comes down against a pay-sacrifice. There is no talking to a group that operates like this. It will represent a completely capricious center of decision-making.

Might the demands of contestability be satisfied to the extent that the individuals in the group, though not the group itself, are conversable and contestable agents? Might they be satisfied in the way in which they might be thought to be satisfied by the ordinary collegiate court?

I am prepared to concede that where numbers are very small, as in the judicial case, contestability can be achieved in significant measure at the individual level. The court may not represent a capricious power, so far as it is seen as a collection of individually contestable judges. This contestability will be reinforced by the fact that while the court operates as a set of individual judges in dealing with the different issues that come up in a particular case, those judges do look to the consistency of the collective court over time. They recognise the force of precedent and only ignore it when they think that there are good reasons why the court as a whole should set a precedent aside.

I am loathe to think, however, that contestability is best achieved at the individual level, even when numbers are small. It is not clear how satisfactory a model the judicial bench offers, given evidence that members switch votes in order to avoid problems and given recent critiques of the system.¹⁵ And in any case the group, being an entity that continues through changes of membership, is the salient agency that we should want to have in a contestable and conversable role. With many groups, the court included, it will be important that contestability in relation to judgments at different times is ensured, not just contestability in relation to judgments at one and the same time. Since it is only the group that is guaranteed to survive over time – the individual members will come and go – it has to be the group as such that is required to be contestable.¹⁶

5. This Resolution and Other Arguments for the Ideal

There are many different arguments in support of deliberative democracy to be found in the recent literature and we have been looking only at the implications of one. The question that we must consider, finally, is whether the position taken here on republican grounds runs seriously counter to any of those other arguments. I devote this last section to trying to show that it does not. No devotees of deliberative democracy, whatever the basis of their devotion, are blocked from embracing the position defended in the last section; in particular none are blocked from insisting on the importance of ensuring that collective decision-making bodies regulate themselves for consistency in their judgments and actions.

Arguments for making democracy deliberative

Most of the arguments for deliberative democracy focus on the virtue of making democracy deliberative: that is, on the benefit to a democratic process or society of having deliberation of an inclusive, dialogical kind. Some assert that making democracy deliberative should help to ensure that people's preferences are reflective and informed, not just the brute product of their adaptation to circumstance; or that it should enable people to do better in reaching beyond the chasms of difference that separate the members of certain groups, even if it does not bring them into consensus; or that it should stretch people's imagination and empathy as they are forced to take a general point of view. Without alleging any such psychological transformation, other arguments maintain that making democracy deliberative should at least have the effect of screening out self-regarding concerns in favour of more public-spirited considerations, thereby approximating or advancing an ideal of public reasoning among free and equal participants. And yet a further range of arguments urge that making democracy deliberative would promote such effects as legitimising whatever decisions are reached, making them more likely to take account of the relatively powerless, increasing transparency among members of the group, or promoting just outcomes.

There is no likelihood that any arguments of this kind can be invoked against the view that where this is possible, deliberative democracy ought to require collective rationality; and that where this is not possible, it ought to allow for a purely representative regime. We do not eliminate deliberation by shaping deliberative democracy in this way, and benefits of the kind invoked in these arguments all look to be consistent with doing so.

We do not eliminate deliberation from the electorate, as already mentioned, by restricting electoral democracy to a representative profile. And neither do we eliminate deliberation by requiring other groups to impose reason at the collective level. Consider the workforce deliberating on whether to take a pay-sacrifice and use the money to introduce a safety measure. Even if they agree to reach a decision on the basis of certain premises, they will first be required under the deliberative-democratic ideal to discuss the matter in public. And the benefits that come of making democracy deliberative, according to the arguments under consideration, would all seem to be available under this way of doing things; in particular, they would seem to be available as readily and as richly as under the alternative.

Arguments for making deliberation democratic

A second sort of argument for the ideal of deliberative democracy makes a case, not for having deliberation present in democratic process, but rather for having democracy present in deliberative process; it argues for making deliberation demo-

cratic, not for making democracy deliberative. The claim is that if there are matters of truth involved in political deliberation – as in the question, most abstractly, of whether this or that is in the common interest – then the chance of reaching the truth, or of reaching the truth according to received views of reliability, is increased by having in place a regime of democratic decision-making. The argument may be recast for goals other than that of maximizing the chance of reaching the truth or minimizing the chance of falsehood. It applies just as readily to a more specific goal like that of minimizing the chance of a false negative, for example: say, minimizing the chance of finding an innocent defendant guilty. But I shall restrict myself here to the original truth-centered case.

The most famous version of this argument derives from the Marquis de Condorcet's work in defense of his so-called jury theorem.¹⁷ The theorem presupposes that the voters are independent of one another: while they may certainly form their opinions on the basis of dialogue, none of them votes in a way that is blindly deferential to others. It shows that if voters each have the same, greater than evens chance of being right on some yes-no issue then, first, their collective resolution of the issue, under majority rule, will have a yet greater chance of being right and, second, it will have a progressively greater chance of being right as the size of the group increases. Indeed the latter element is assured, even if some voters have a less than evens chance of being right; it will hold so long as the average chance of voters being individually right is greater than evens.¹⁸

Does the jury theorem provide any reason for resisting a mode of democratic judgment-making that imposes reason at the collective level? Does it run counter to the line taken under the republican approach?¹⁹

If the group does not enforce reason at the collective level – if it does not try to ensure the rationality of its collective judgments – then it will almost certainly be led to adopt inconsistent judgments, as the discursive dilemma shows. But inconsistent judgments cannot all be true at once and so in this respect at least the procedure would lead the group into despairing of the ideal of truth. The other procedure, by contrast, would ensure that no inconsistency was maintained and would keep open the possibility that the group can hold by a set of judgments that are all true.

This consideration is not conclusive, since it is possible to have more true judgments incorporated in an inconsistent set than there are true judgments in a counterpart, consistent collection. But it is hard to see why anyone would expect a group to do better in truth terms by not enforcing consistency than by enforcing it; there are no special considerations that would explain why this is so. And that being the case, the observation made would seem to suggest that those who are moved by Condorcetian or related claims should be inclined to go along with the line supported by the republican argument, not to challenge it.

I conclude, to return to the general theme, that the various arguments in the literature for deliberative democracy are consistent with the republican way of resolving the questions that the discursive dilemma raises for the ideal. The republican commitment to contestability makes a powerful case for wanting democratic procedure to support collective rationality, where that is achievable, and for restricting the scope of decision-making to the selection of representatives where it is not. And the other considerations that are invoked to support deliberative democracy do nothing to undermine the case made.²⁰

Notes

This is a thoroughly revised version of Pettit, P. (2001). 'Deliberative Democracy and the Discursive Dilemma', *Philosophical Issues (supp to Nous)* 11: 268–99. While it maintains the main thesis of that paper, it defends the thesis on the basis of a somewhat different presentation of the discursive dilemma: one which stresses more sharply the contrast between the dilemma and the doctrinal paradox in which it takes its origin, as explained in the second section. More detailed references to background material are provided in the earlier paper.

- 1 See the readings in Bohman, J. and W. Rehg, eds, *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass.: MIT Press, 1997); Elster, J., ed., *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998).
- 2 Grofman, B. N. and S. Feld (1988). 'Rousseau's General Will: A Condorcetian Perspective'. *American Political Science Review*, 82 (1988), 567–76.
- 3 Estlund, D. and J. Waldron, 'Democratic Theory and the Public Interest: Condorcet and Rousseau Revisited', *American Political Science Review*, 83 (1989), 1317–28.
- 4 Habermas, J. (1984, 1989). *A Theory of Communicative Action, vols 1 and 2*. Cambridge: Polity Press.
- 5 Chapman, B., 'Law, Incommensurability, and Conceptually Sequenced Argument', *University of Pennsylvania Law Review*, 146 (1998), 1487–1582; Chapman, B., 'More Easily Done than Said: Rules, Reason and Rational Social Choice'. *Oxford Journal of Legal Studies*, 18 (1998), 293–329; Kornhauser, L. A., 'Modelling Collegial Courts. I. Path-Dependence'. *International Review of Law and Economics*, 12 (1992), 169–85; Kornhauser, L. A., 'Modelling Collegial Courts. II. Legal Doctrine', *Journal of Law, Economics and Organization*, 8 (1992), 441–70; Kornhauser, L. A. and L. G. Sager, 'Unpacking the Court' *Yale Law Journal*, 82 (1986); Kornhauser, L. A. and L. G. Sager, 'The One and the Many: Adjudication in Collegial Courts', *California Law Review*, 81 (1993), 1–59.
- 6 The structure involved is this:
 - a. there is a conclusion to be decided among the judges by reference to a conjunction of independent or separable premises – the conclusion will be endorsed if relevant premises are endorsed, and otherwise it will be rejected;
 - b. each judge forms a judgment on each of the premises and a corresponding

- judgment on the conclusion;
- c. each of the premises is supported by a majority of judges but those majorities do not coincide with one another;
 - d. the intersection of those majorities will support the conclusion, and the others reject it, in view of a; and
 - e. the intersection of the majorities is not itself a majority; in our example only one judge out of the three is in that intersection.
- 7 The discussion that follows is based on Pettit, P., *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge and New York: Polity and Oxford University Press, 2001), ch. 5; Pettit, P., 'Groups with Minds of their Own', *Socializing Metaphysics*, ed. F. Schmitt. (New York: Rowan and Littlefield, 2002).
 - 8 Sunstein, C., *One Case At A Time* (Cambridge, Mass.: Harvard University Press, 1999).
 - 9 See List, C. and P. Pettit, 'Aggregating Sets of Judgments: Two Impossibility Results Compared' *Synthese* (forthcoming); List, C. and P. Pettit, 'The Aggregation of Sets of Judgments: An Impossibility Result', *Economics and Philosophy* 18 (2002), 89–110. Let the views of certain individuals on a rationally connected set of issues be rationally satisfactory in the sense of being consistent, complete and deductively closed. The impossibility theorem shows that any procedure whereby an equally satisfactory set of views may be derived from the individual views must fail in one of the following regards. It must be incapable of working with some profiles of individual views. Or it must fail to treat some individual or some issue even-handedly. That is to say, it must let some individual or individuals be treated as less important than another – at the limit, the other may be given the status of a dictator; or it must downgrade some issue in the sense of letting the collective view on that issue be determined, not by majority vote, by the collective views on other issues.
 - 10 Pettit, P., *Republicanism: A Theory of Freedom and Government*. (Oxford: Oxford University Press, 1997); Skinner, Q., *Liberty Before Liberalism*. (Cambridge: Cambridge University Press, 1997).
 - 11 For a review of some of these see Pettit, P., 'Democracy, Electoral and Contestatory', *Nomos*, 42 (2000), 105–44.
 - 12 Sunstein, C. R., *The Partial Constitution* (Cambridge, Mass.: Harvard University Press, 1993).
 - 13 Cf. Michelman, F. I., 'Protecting the People from Themselves', or 'How Direct Can Democracy Be?' *UCLA Law Review* 45 (1998), 1717–3 at p. 1734.
 - 14 See Pettit, P., *A Theory of Freedom: From the Psychology to the Politics of Agency*. (Cambridge and New York: Polity and Oxford University Press, 2001).
 - 15 Kornhauser, L. A. and L. G. Sager, 'The One and the Many: Adjudication in Collegial Courts', *California Law Review*, 81 (1993), 1–59; Stearns, M. L., *Constitutional Process: A Social Choice Analysis of Supreme Court Decision Making*. (Ann Arbor: Michigan University Press, 2000).
 - 16 Imagine that a court has to make a decision on whether or not someone should be given a retrial, as in the case presented in Matrix 2. And suppose that the individual judges vote in the pattern described in that matrix (which is drawn from Kornhauser and Sager 1993, 40).

	Inadmissible evidence?	Forced confession?	Retrial?
A.	Yes	No	Yes
B.	No	Yes	Yes
C.	No	No	No

It is plausible in such a case that the person ought to be given a retrial, despite the fact that a majority rejects each of the relevant grounds. Does this suggest that there is a general problem of plausibility attached to the procedure of requiring collective rationality and group-level contestability?

While it is certainly implausible in such a case that the defendant should be denied a retrial, that implausibility can easily be registered in the approach of a group that seeks to ensure group-level contestability. The implausibility can be taken by the group to indicate that the majority vote in favour of a retrial is more compelling than either of the other votes and that one or more of those votes should be revised. Or the group may think that there is only one proposition which they each have to make a judgment on: viz., the disjunctive claim that there was inadmissible evidence or a forced confession. Or the implausibility may prompt members of the group to argue that while the representation in the matrix is fine, what collective deliberation should be designed to secure in such a case is primarily the avoidance of a false negative – denying a retrial to a deserving appellant – and that only a unanimously rejected ground of appeal should be dismissed by the group. Under any of these interpretations, the procedure that requires collective rationality would enable the group to grant a retrial.

Kornhauser and Sager suggest that while the straightforward premise-driven procedure is generally more satisfactory – more satisfactory from the point of view, roughly, of contestability – the court should resort to a higher-level procedure in any case, like the one illustrated, where there is any doubt about this. It should take a majority meta-vote on which procedure to employ at the lower level, undertaking 'to justify its decision' (31; cf. 33–6): that is, presumably, undertaking to find agreed premises such that the meta-vote can be represented as itself driven by majority endorsement of those considerations in a premise-driven way. Thus the higher-level considerations might be, first, that going along with the lower-level premise-driven decision in this instance would generate a certain result and, second, that the court ought to avoid such a result. Such considerations, if endorsed by a majority, might provide a higher-level, premise-driven case for going along with a different result from that which was supported by a lower-level, premise-driven procedure.

- 17 See Black, D., *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958); Condorcet, M. d., *Condorcet: Selected Writings* (Indianapolis: Bobbs-Merrill, 1976). The most forceful defender of this sort of approach in the contemporary literature is David Estlund. See Estlund, D., 'Making Truth Safe for Democracy', *The Idea of Democracy* ed. D. Copp, J. Hampton and J. E. Roemer (Cambridge: Cambridge University Press, 1993), pp. 71–100; Estlund, D., 'Who's Afraid of Deliberative Democracy?' *Texas Law Review*, 71 (1993), 1437–77; Estlund, D., 'Opinion Leaders, Independence, and Condorcet's Jury Theorem', *Theory and Decision*, 36 (1994), 131–62; Estlund, D., 'Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority', *Deliberative Democracy: Essays on Reason and Politics*, ed. J. Bohman and W. Rehg (Cambridge, Mass.: MIT Press, 1997).

- 18 Owen, G., B. Grofman, et al., 'Proving a distribution-free generalization of the Condorcet jury theorem', *Mathematical Social Sciences*, 17 (1989), 1–16.
- 19 Wlodek Rabinowicz and I explored this question elsewhere in a special context; see the appendix to Pettit, P., 'Deliberative Democracy and the Discursive Dilemma', *Philosophical Issues (supp to Nous)*, 11 (2001), 268–99, and for a later, more comprehensive treatment see Luc Bovens and Wlodek Rabinowicz 'The Condorcet Jury Theorem and Complex Social Decisions', ms, Dept of Philosophy, Lund University, 2001. We took a case where a group agrees on the premises by which a certain conclusion is to be determined and asked how the prospect of their making a true judgment on the conclusion is best promoted: whether by having the members each vote on the premises, letting the premise-votes determine the conclusion, or by having them each draw the conclusion in their own case, allowing the conclusion-votes to determine the conclusion. But the question considered here is more general. It is the question of how the group may best hope to promote the prospect of its being right on the issues in general: how it may hope to maximize expected true-belief on no matter what issues.
- 20 I am indebted to Geoffrey Brennan, who first made me aware of the doctrinal paradox. See Brennan, G., 'Collective Coherence?', *International Review of Law and Economics*, 21 (2001). I was helped by comments received when versions of the paper were presented at a number of venues, in particular at the conference on 'Deliberating about Deliberative Democracy', University of Texas, Austin, Feb. 2000. I owe a particular debt to Wlodek Rabinowicz for his helpful comments and I was also greatly aided by exchanges with a number of other people: David Estlund, John Ferejohn, Christian List, Frank Michelman, Victoria McGeer and Fred Schick. Bruce Chapman and Lewis Kornhauser sent me useful written comments on an early version.