Enough of Deliberation

Politics Is about Interests and Power

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Many of the substantive arguments in Democracy and Disagreement resonate favorably with me, but it should be said that this is not a particularly demanding test. To know how effective Amy Gutmann and Dennis Thompson’s deliberative model would be, either at reducing moral disagreement or at promoting accommodation of irresolvable differences in American politics, one would have to see it in action in debates among pro-lifers and pro-choicers, parties to the Mozart v. Hawkins litigation, or protagonists in debates over redistricting, affirmative action, welfare reform, child support, and the other contentious issues that Gutmann and Thompson describe. Their claim is that if the various protagonists “seek fair terms of cooperation for their own sake,” committing themselves to appeal, in their arguments, “to reasons that are recognizable moral in form and mutually acceptable in content,” then disagreements will be minimized and accommodation will be promoted. 1 Gutmann and Thompson report how they believe these and other public policy debates ought to come out when the model is applied, or, in some cases, that it cannot resolve them. This is different, however, from demonstrating that it would actually happen in practice. Gutmann and Thompson do offer qualified praise of some actual deliberative processes, such as the 1990 meetings that were held in Oregon to help set health care priorities for Medicaid recipients (see below). But I did not detect mention in their discussion of any actual deliberative process that they did not insist falls significantly short of their deliberative ideal. Nor can I think of one. Accordingly, the assertion that the model would have the beneficial effects claimed for it remains speculative.

I start with this observation because I doubt that the failure to resolve many of the issues discussed by Gutmann and Thompson has much to do with a “deliberative deficit” resulting from insufficient attention to “the need for ongoing discussion of moral disagreement in everyday political life.” (12). Sometimes, perhaps, people might better resolve differences and accommodate themselves to views they reject by more deliberation of the prescribed sort. But what reason is there to think that failure to attempt this is the principal reason why the public policy issues they examine are not resolved along the lines Gutmann and Thompson advocate? It is one thing to think, as I do, along with them, that much of what divides people politically is susceptible to rational analysis more often than people realize; it is quite another to believe that what prevents better resolution of prevailing disagreements is insufficient deliberation of the Gutmann Thompson sort. In my view, Gutmann and Thompson’s emphasis on deliberation attends too little to the degree to which moral disagreements in politics are shaped by differences of interest and power. I think they give a plausible account of the nature of some moral disagreements and of possible argumentative strategies for constructive responses to them when protagonists are appropriately inclined. It is as response to moral disagreement in politics that their account seems to me to be lacking.

Gutmann and Thompson never claim that deliberation will, or even that it should, vanquish all moral disagreement in politics. But certainly they expect it to reduce disagreements and to help people who disagree better to converge on mutually acceptable policies. Deliberation both presumes and promotes the value of their leading principle of reciprocity, which requires people to find “mutually acceptable ways of resolving moral disagreements.” (2). Thus Gutmann and Thompson tell us that democratic citizens with moral disagreements “should deliberate with one another, seeking moral agreement when they can, and maintaining mutual respect when they cannot.” Although they defend the deliberative perspective as a method of resolving some moral disagreements in politics, they suspect that “its greater contribution can be to help citizens treat one another with mutual respect as they deal with the disagreements that invariably remain” (346, 2, 9).

Why deliberation? The principal reason that suggests itself to Gutmann and Thompson is that there seems to be so little of it in the political debate they observe. “In the practice of our democratic politics, communicating by sound bite, competing by character assassination, and resolving political conflicts through self-seeking bargaining too often substitute for deliberation on the merits of controversial issues.” Nor is the deficiency limited to public debate. It is reflected in academic commentary on democracy as well, which
is “surprisingly silent about the need for ongoing discussion of moral disagreement in everyday political life. As a result, we suffer from a deliberative deficit not only in our democratic politics but also in our democratic theory.” Gutmann and Thompson think that we are unlikely to lower the deficit in our politics if we do not also reduce it in our theory (12).

Yet it is by no means obvious that deliberation exhibits the felicitous political properties Gutmann and Thompson attribute to it. As they concede at one point, sometimes deliberation can promote disagreement and conflict (44). The cases they have in mind here are moral issues that arouse intense passions, paradigmatically the issues liberals have sought to defuse politically since the seventeenth-century wars of religion. Skeptics of deliberation in these areas proceed from the assumption that there are “moral fanatics as well as moral sages, and in politics the former are likely to be more vocal than the latter.” Gutmann and Thompson’s response to this claim is that although moral argument “can arouse moral fanatics,” it can also “combat their claims on their own terms.” Deliberation undermines moral extremists, who “must assume that they already know what constitutes the best resolution of a moral conflict without deliberating with their fellow citizens who will be bound by the resolution.” In the everyday political forums, Gutmann and Thompson insist, “the assumption that we know the political truth can rarely if ever be justified before we deliberate with others who have something to say about the issues that affect their lives as well as ours.” Accordingly, they conclude with a presumption in deliberation’s favor: “by refusing to give deliberation a chance, moral extremists forsake the most defensible ground for an uncompromising position” (44-45).

Alluring as this reasoning might be to you and me, I find it hard to imagine a fundamentalist being much impressed by it, particularly when she learns that any empirical claims she makes must be consistent with “relatively reliable methods of inquiry” (56). Nor will she be much comforted by Gutmann and Thompson’s gloss to the effect that this does not “exclude religious appeals per se” (why not, one wonders?), so long as these do not include taking the Bible literally. The reason for this latter constraint is that “virtually all contemporary fundamentalists subject biblical claims to interpretation, accepting some as literally true and revising the meaning of others. To reject moral claims that rely on implausible premises is therefore not to repudiate religion” (56). If the syllogistic force of this claim was not lost on the fundamentalist in the abstract, surely it would be once it was explained to her that it denies her the right to insist on the literal truth of any particular biblical imperative. From her perspective it would look as though she were being told that it is fine to be a fundamentalist so long as she abandons her fundamentalism. At bottom, the difficulty here is that the fundamentalist believes exactly what Gutmann and Thompson decry as illegitimate: that it is necessary to adopt her “sectarian way of life as a condition for gaining access to the moral understanding that is essential to judging the validity” of her moral claims. (57). She will agree with Gutmann and Thompson that she cannot justify her views on grounds they can accept, but for her this will be conclusive evidence of the inadequacy of those grounds. She will rightly expect to come out on the short end of any deliberative exchange conducted on that terrain. The Gutmann/Thompson model works only for those fundamentalists who also count themselves fallibilist democrats. That, I fear, is an empty class, destined to remain uninhabited.

Gutmann and Thompson are plausibly skeptical of those, like Owen Fiss and Ronald Dworkin, who believe that courts are better suited to achieving principled resolution among contending moral perspectives in the public realm than are other political institutions (45-47). Neither a compelling theoretical argument nor any persuasive evidence has ever been adduced in support of this view. Contrary to what they seem to suppose, however, this is scarcely relevant to the standard constitutionalist argument for avoiding, or limiting, public deliberation about intense, particularly religious, differences. This turns not on any illusion that courts can resolve them in a principled fashion but rather on the recognition that no one can. The idea is that their explosive potential is so great that it is better, for the welfare of both religious adherents and the democratic polity, if they are kept out of organized politics as much as possible, subjected to what Stephen Holmes describes as “gag rules.” Hence such devices as the Establishment Clause of the First Amendment. That is the serious constitutionalist case against promoting attempts to resolve religious disagreements in the public sphere. Perhaps there is a reply to it from the deliberative democratic perspective, but Gutmann and Thompson do not supply it.

Their brief remarks on the disquieting possibility that deliberation might move politics away from the agreement and accommodation they value seem to me to skirt the tip of another rather large and multifaceted iceberg. Leaving uncompromising religious values to one side, Adam Przeworski has recently reminded us of a different class of circumstances in which deliberation might promote disagreement and enhance conflict. People with opposed interests are not always aware of just how opposed those interests actually are. Deliberation can bring differences to the surface, widening the political divisions rather than narrowing them. This is what Marxists hoped would result from “consciousness-raising.” It would lead workers to discover that they share interests that are fundamentally at odds with those of employers, assisting in the transformation of the proletariat from a class-in-itself to a revolutionary class-for-itself. These hopes proved naïve. The general point remains, however, that there is no particular reason to think deliberation will bring people together, even if they hope it will and want it to. A couple with a distant but not
collapsing marriage might begin therapy with a mutual commitment to settling some long-standing differences and learning to accommodate one another better on matters that cannot be resolved. Once honest exchange gets under way, however, they might unearth new irreconcilable differences, with the effect that the relationship worsens and perhaps even falls apart in acrimony. Deliberation can reasonably be expected to shed light on human interaction, but this may reveal hidden differences as well as hidden possibilities for convergence. It all depends on what the underlying interests at stake actually are.

Another respect in which Gutmann and Thompson’s appeal to deliberation pays insufficient attention to the contending interests at stake is revealed in their discussion of health care reform in Oregon in the early 1990s. Rationing of health care procedures for the non-elderly poor by the legislature followed a series of “town meetings” in which citizens and various health professionals were asked to rank medical procedures. The object was to find a way of settling disagreements about priorities in health care insurance, given the hard choices that public budget constraints impose. Gutmann and Thompson note that this procedure was flawed because the plan covered only the nonelderly poor. They describe this as a “basic injustice” that “may have adversely influenced the surveys and community meetings, which in any case fell short of the deliberative ideal.” Y et they commend the process on the grounds that it “forced officials and citizens to confront a serious problem that they had previously evaded and to confront it in a cooperative (‘first-person plural’) spirit.” They go on to claim that the process helped ameliorate the underlying injustice, because when the legislators “finally saw what treatments on the list would have to be eliminated under the projected budget, they managed to find more resources and increased the total budget for health care for the poor” (143–44).

Notice that the legislature’s decision to appropriate additional funds was unrelated to the substance of the deliberative meetings, which never dealt with what the overall budget should be or how health care resources should be traded off against other demands on the state treasury. It was not a product of citizens with moral disagreements reducing them through reciprocal deliberative exchange. It was, rather, a fortunate externality, for the uninsured poor, of the deliberative process, such as it was, in that the publicity it generated helped spotlight their plight in the media and the legislature. If this is the proffered defense of the Oregon process, one would have to compare it to other ways in which the condition of the uninsured poor might have been publicized with similar or better effect, such as publicity campaigns, public protests, or class action lawsuits. I will not pursue this issue further, since, as I have said, it does not bear on Gutmann and Thompson’s defense of deliberation: that it reduces disagreement and increases mutual accommodation of differences that cannot be resolved.

In fact, as a device for settling disagreements about how hard choices should be made in rationing health care resources, the Oregon deliberative process was a notable failure. Gutmann and Thompson acknowledge, as have others, that it is hard to find a relationship between the final rankings and the results of the deliberative process, which eventually became little more than a vehicle for public outrage at attempts to introduce a measure of prudence into Oregon’s health care priorities. Nonetheless, Gutmann and Thompson conclude that the deliberations “evidently helped citizens, legislators, and health care professionals arrive at an improved understanding of their own values—those they shared and those that they did not” (144). But whose values are we really talking about? The “citizens, legislators, and health care professionals” by and large excluded those who would be covered under the Oregon Plan: the nonelderly poor. I am not talking here about the injustice that Gutmann and Thompson acknowledge—that in effect this choice was really about “making some poor citizens sacrifice health care that they need so that other poor citizens can receive health they need even more urgently, while better-off citizens can get whatever treatment they need” (143). Rather, my question is: Why should we attach any legitimacy at all to a deliberative process that involved very few of those whose health care priorities were actually being discussed? Gutmann and Thompson themselves make a similar point in criticizing workfare and welfare reform later in the book. There they suggest the need for participatory processes that “encourage the participation of economically and educationally disadvantaged citizens” (303–6). That seems right to me, and generalizable, so far as it goes. But it needs to be taken further.

Notice that only part of the infirmity in these cases is that those who must live with the results go more or less unrepresented in the decision-making; the other part is that most of those making the decisions know that they will never depend on the good whose rationing or provision is under discussion. In countries like Britain and Canada, where the great majority of the population use collectively rationed medical services, their participation in democratic decision-making through the political process lends legitimacy to the resulting policies. By contrast, in Oregon, more than 80 percent of the population is unaffected by the rationing program. The general point here is that the legitimacy of decision-making processes varies with the degree to which they are both inclusive and binding on those who make them. Deliberative processes are not exceptions. Gutmann and Thompson acknowledge this in principle. They define political decisions as collectively binding, adding that “they should therefore be justifiable, as far as possible, to everyone bound by them” (13). However, their discussion is not sensitive to the reality that different people are differently bound by collective decisions. When there is great variation in the impact of a decision, then interests diverge in ways that are relevant to assessing the decision’s legitimacy.
This is most obviously true when there are substantial differences in the capacities of different groups to escape the effects of policies on which they are deciding. Those who can easily avoid them do not have the same kind of interest at stake in a decision as those whose exit costs are prohibitively high. The story of apartheid in American public schools is eloquent testimony of what happens when this fact goes unrecognized. Urban public schools are starved of resources by middle-class voters who opt out either fiscally (to private urban schools) or physically (to suburban schools). It should be added that the latter may live in towns that are paragons of deliberative democracy. In 1995, for instance, a statewide Connecticut plan to reduce segregation in schools was duly deliberated upon at great length in New England town meeting in which the inner-city residents of Hartford and New Haven had no effective voice at all. As a result, their interests were simply ignored and the plan was easily defeated. Gutmann and Thompson place great stress on the importance of adequate elementary and secondary education, like adequate health care, in providing the necessary basic opportunities for living in a democracy. But they seem not to appreciate that as deliberation operates on the ground in what Douglas Rae has described as the “segmented democracies” that Americans increasingly inhabit, it can be an obstacle to providing these goods. When there are great differences in capacity for exit, what is often needed is not widespread deliberation but firm action from above to protect the vulnerable.

Another area in which Gutmann and Thompson’s account suffers from lack of due attention to conflicting interests has to do with what shapes the terms of deliberation in modern democracies. There are circumstances in which more deliberation would be a healthy thing in the formation of public policy, but often the principal obstacle is not the lack of will on the part of people with differing moral convictions to deliberate in ways that can minimize their differences. Rather, it results from decisions by powerful players who make it their business to shape the terms of public debate through the financial contributions they make available to politicians and political campaigns. Engels once described ballots as “paper stones.” In the post-Buckley v. Valeo world, when any credible political campaign requires multi-million-dollar war chests to buy the requisite television time to do political battle, public deliberation all too often consists of verbal stones hurled across the airwaves, with victory going to whoever has the most bountiful supply. Granted, this is a long way from what Gutmann and Thompson have in mind when they advocate deliberation, but I find it stunning that a book about the importance of enhancing deliberation in contemporary American politics can ignore the reality it creates.

For instance, in their discussion of the failure of the Clinton administration’s attempt at national health care reform, Gutmann and Thompson seek to lay blame on the secret meetings of Hillary Clinton’s Task Force on National Health Care Reform, along with other unmentioned factors. Endorsing the claims of critics who, at the time, said that support for the plan would be more difficult to achieve “if the policymakers did not show that they were responding to criticisms and taking into account diverse interests in the process of formulating the plan,” they conclude that even when “secrecy improves the quality of a deliberation, it may reduce the chances that a well-reasoned proposal will ever become law” (117). Perhaps Hillary’s secret meetings contributed something to the failure, along with the Clinton administration’s inexcusably failing to get essential Capitol Hill barons like Senators Moynihan and Nunn on board; the administration’s inability to come to grips with the sheer economic scope of the proposal (12 percent of a $3 trillion economy); and the structural deficit inherited from the Reagan and Bush administrations. But how can anyone who lived through the huge amounts of public misinformation that contributed to the steady decline in the bill’s popularity, and its eventual abandonment by the administration, not be struck by the importance of the $50 million public relations and lobbying campaign that the medical, insurance, and other corporate establishments waged to kill the legislation?

I am not taking issue, here, with Gutmann and Thompson’s convincing argument that secrecy is generally a bad thing in government. Rather, my point is that if we ask the question “What prevented meaningful public discussion of health care reform in 1993 and 1994?” secrecy’s significance seems trifling when compared to the way the options were presented in the war of words on television and the activities of political lobbyists. They ensured that important options (notably a Canadian-style single-payer system) were never seriously discussed and that the entire debate came to focus on issues that are irrelevant to the bill’s basic goal of achieving universal health care coverage. Arguments about the feasibility of managed competition and the freedom people may or may not have in selecting their own physicians dominated the discussion, as the plight of the 40 million uninsured fell by the wayside. It is difficult for me to see how any aspect of Gutmann and Thompson’s “deliberative deficit” was responsible for this, since the problem had nothing to do with reaching agreement among the contending views or finding an accommodation among those who could not agree. Rather, the problem was that some of what ought to have been the contending views never confronted one another in the public mind. This seems to me to have been due, more than any other single factor, to the blank check the United States Supreme Court has given those who have large amounts if money, or the capacity to raise it, to shape the terms of public debate. It creates a reality in which, rather than compete in the realm of ideas, politicians actually must compete for campaign contributions. The ideas they advance are those of their financial backers, and
those they avoid advancing too often are ideas that, though they may be in the interests of many in the public, would cause vast sums of money to be given to electoral opponents if they were seriously advanced. How else is one to explain the fact that a single-payer system could not be seriously mooted, even at the start of the public debate, despite a substantial body of academic commentary suggesting that it is easily the most cost-effective way of achieving affordable universal coverage? How else can one explain the fact that neither political party ever proposes massive hikes in the estate tax, although this move would be in the interest of all but a tiny fraction of the electorate?  

For anyone who is worried about the lack of deliberation in the health care debate, worrying about how money structured it seems to me to be the obvious first order of business. Yet Gutmann and Thompson never mention it. Perhaps they would say their book is simply not concerned with this subject, but I would find that difficult to square with the claims they make for their argument. They insist that their focus is on "the everyday forums of democratic politics," differentiating their deliberative perspective from other academic discussion, which is said to be "insensitive to the contexts of ordinary politics: the pressures of a power, the problems of inequality, the demands of diversity, the exigencies of persuasion" (2–3). As my discussion has indicated, their own account pays surprisingly little attention to these very features of politics. They are heartened by the fact that although "the quality of deliberation and the conditions under which it is conducted are far from ideal in the controversies we consider, the fact that in each case some citizens and some officials make arguments consistent with reciprocity, suggests that a deliberative perspective is not utopian" (2). I do not think we should be so easily fortified. Until it can be shown that these arguments can be made on a sufficient scale and garner enough institutional force to influence the ways that politics is structured by powerful interests, Gutmann and Thompson's case for deliberation's undernoticed political value is not established.

Notes

2. The example Gutmann and Thompson discuss (56) is the literal proscription of miscegenation, but if their argument is accepted in this case it must surely apply to every literal assertion in the Bible.
5. In 1990, forty-seven community meetings were held across Oregon, attended by about a thousand people total. The attendees were asked to rank categories of treatment by importance and articulate the values that guided their decisions. The state legislature then used the list as a yardstick to appropriate Medicaid funds. The Oregon Plan was intended to expand Medicaid eligibility from 68 percent of those at the federal poverty level to 100 percent and to finance the increased cost by prudent rationing of procedures. Although Oregon did end up expanding coverage to some 126,000 new members by February 1997, much of this expansion was actually achieved by appropriation of new funds by the legislature rather than from savings generated by the deliberations about rationing priorities. See Norman Daniels, "Is the Oregon Rationing Plan Fair?" Journal of the American Medical Association 265, no. 17 (May 1, 1991): 2232–35; Jim Montague, "Why Rationing Was Right for Oregon," Hospitals and Health Networks (February 5, 1997): 64–66.
7. Daniels reports that the meetings were attended predominantly by "college-educated, relatively well-off, and white" audiences, half of which consisted of health professionals. Of the attendees, 9.4 percent were uninsured (whereas 16 percent of the state's population was uninsured at the time), and Medicaid recipients (among other things, the only direct representatives of poor children) were underrepresented by half. "Is the Oregon Rationing Plan Fair?" 2234.
8. Daniels, "Is the Oregon Rationing Plan Fair?" 2233–34.
11. In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court held, inter alia, that Congress may regulate financial contributions to political parties or candidates, but it cannot otherwise regulate private expenditures on political speech, which are protected by the First Amendment. Although the Court has since allowed some minor constraints on corporate expenditures in Austin v. Michigan State Chamber of Commerce, 110 S.Ct. 1391 (1990), for all practical purposes the Buckley rule makes it impossible to limit privately funded political advertising.
14. The $50 million figure is reported by Tim Rinne, "The Rise and Fall of Single-Payer Health Care in Nebraska," Action for Universal Health Care 3, no. 10 (May 1995): 4–5. See also Tom Hamburger and Ted Marmor, "Dead on

15. See the papers collected in Marmor, *Understanding Health Care Reform*.

16. I am indebted to James Tobin's comments at the conference entitled “Rethinking Democracy for a New Century” held at Yale University, February 28–March 2, 1997, for this last point.