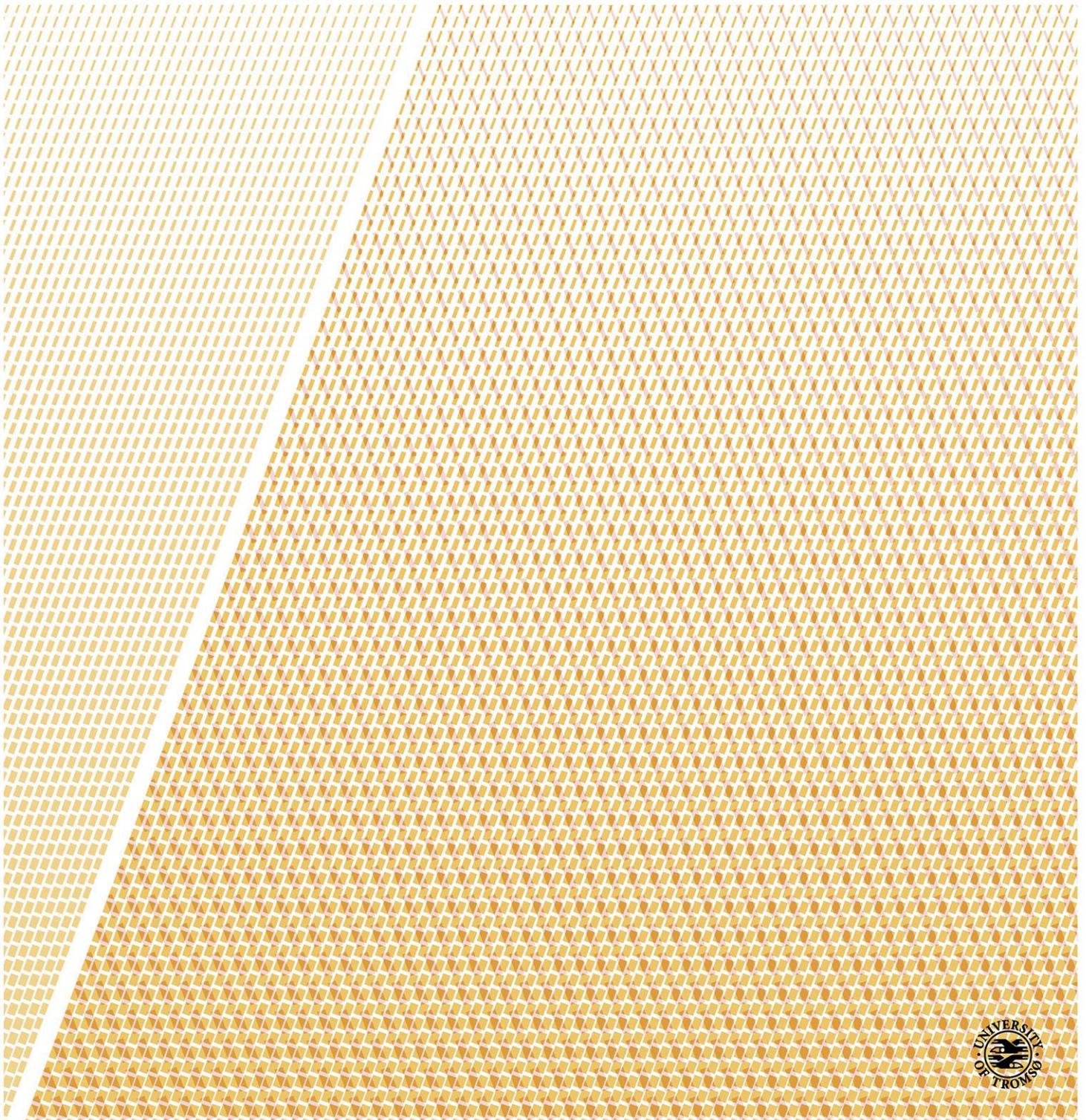


Democratic Deliberation in the Context of Deep Pluralism and Mass Democracy

A Case for an Epistemic Idea of Public Reason

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PART I

1. Introduction

This doctoral dissertation is about how people should talk to each other. It may seem a trivial problem since when asked about what a good conversation requires, everyone will say that people should listen attentively, respond to arguments and criticism and show respect, even in the case of a disagreement. However, this talking becomes more difficult when we place it in the context of a democratic deliberation whose aim is to arrive collectively at decisions that are binding for everyone. Moreover, we will then realise that we are going to speak to people who not only have different opinions or interests, but also differ from us in terms of what kinds of reasons they find valid, how to adjudicate political problems or how to divide controversial issues into moral and ethical ones. In other words, we will speak to people who have different ideas about what good deliberation requires. The problem is further compounded when we find that democratic deliberation takes place everywhere, from everyday talk in private, through more or less organised venues of informal public spheres and media, to official bodies whose impact is more direct on a decision-making process. This is because there is no special place in a democratic system with such a high deliberative value that alone can realise a system's legitimacy, rationality and ethical function of enhancing mutual respect between citizens. Everyone is responsible for how democracy functions, either directly, as members of the official public sphere, or indirectly, when they contribute to the formation of public opinion.

By talking I mean political deliberation; nevertheless, it does not have to be that far away from actual everyday talk. As I will explore and discuss in this dissertation, deliberation takes place when there is an exchange of more or less rational arguments that have at least an indirect impact on issues of common interest. As such, deliberation covers all the instances of exchange of arguments on different levels of society, from everyday talk to very structured forums in the official public sphere. Contemporary democracies abound in conflicts. There are conflicts between defenders of absolute right to freedom of expression and those who claim that free speech should be limited to curb hate speech. There are conflicts involving cultural identities and the meaning of liberal values such as those concerning the right to display one's religious identity in public or the right to homosexual partnerships sanctioned by the law. There are conflicts within liberalism concerning the use of vaccination or the costs society is

ready to bear to limit the effects of global warming. Recently, we have been witnessing conflicts about refugees in the European Union and whether they should be granted asylum rights there. The list could go on. This dissertation grew out of concern for contemporary democracies that seem to handle different conflicts poorly. The liberal solution to them, which is effective depoliticisation by limiting democracy to negative freedom, does not seem to help. Rather, conflicts are turning into fierce competition between various tribes that do not seem to have anything in common with each other. Those clashes between citizens involve conflicting values, preferences and interests. Moreover, the impossibility of solving or at least managing them stems, to a considerable extent, from the fact that there is no meta-consensus about how deliberation on those issues should proceed. In other words, parties to the conflict have different ideas about what kinds of reasons are valid in the public sphere, what equal respect requires or what the requirements of public reason are. For example, in the clash concerning gay citizens' right to marry there is a conflict between cultural identities, including both religious ones and some of the liberal ones, and the value of equality, and there is no common idea of how to adjudicate between these two.

One of the tasks of normative political philosophy is to identify kinds of conditions democratic deliberation should fulfil to make it inclusive and responsive to citizens' claim. At the same time, while considering normative issues, political theory should take into account the social facts of deep pluralism and the mass character of contemporary democracies. My project attempts to combine an attention to the inherent social facts with an epistemic version of deliberative democracy that reconciles deep pluralism with an epistemic idea that the outcomes of democratic deliberation should be responsive to citizens' needs and preferences. The moral basis of this project will consist in the substantive-procedural idea of equal respect that entails a demanding idea of public reason. I will argue against a minimal account of democratic deliberation that is reduced only to formal equality and negative freedom and with a minimal or no account of public reason (Post, 2011; Eberle, 2009). Such an account actually increases the problem of domination of minorities since negative freedom and formal equality only give an illusion that all citizens can enjoy their freedom equally in the space carved out by this conception of freedom. The new social problems need to be politicised in order to enter democratic deliberation and be solved or managed. Instead, they tend to be depoliticised as not belonging to the realm of the political.

I am writing from the standpoint of deliberative democracy theory. It is a normative theory that stresses communication or deliberation rather than voting or aggregation of preferences. The aim of this theory is to enhance democracy through deliberation that is authentic, inclusive and consequential (Dryzek, 2009: 1382). Authenticity means that deliberation must induce reflection on preferences, and make them generalisable and reciprocal. Inclusivity refers to interests, preferences and themes that can become topics for deliberation. Consequentiality requires that deliberation should have an influence on the outcomes of decision-making processes. It is also concerned with the task of reforming institutions so that they maintain the proper conditions for such deliberation. This model of democracy originated from Juergen Habermas's (e.g. 1991; 1996; 2006) work on discourse ethics and an ideal speech situation and his theory of democracy and has been followed up in a more critical fashion¹ by theorists such as James Bohman (1998; 2000; 2006), Simone Chambers (2009; 2012; 2013), Dryzek (2000; 2009; 2010), Jane Mansbridge (1999; 2012), Christian Rostbøll (2008) and many more. Discourse ethics specifies basic principles underlying the claims of a deliberate model to legitimacy. It establishes that only those norms that would be agreed on by all those affected by the consequences of a deliberative process are valid (Habermas, 1996: 10). In a democratic context, this translates into a particular idealised way in which deliberation should take place. Participants of deliberation are treated as equals and citizens introduce their proposals and criticise others' with reasons that others can accept on reflection (see also Bohman, 2009). This is a procedural justification of the legitimacy of a democratic process and its outcomes. After the final decision is taken, citizens should cooperate according to its results even if they disagree with it. This is because it is the procedure that legitimises the decision and not its correctness.

In this dissertation, I focus on the democratic process that takes place in a wide public sphere. This brings into focus citizens that ideally deliberate with the view to the common good. The wide public sphere is constituted by a particular structure of communication (Habermas, 1996: 360). This structure is marked by orientation towards mutual understanding and rationality. Such a form of communication facilitates the learning process through which citizens find out about their own preferences and interests as well as others'. They are also able to revise their position on reflection, which makes deliberation authentic. This

¹ See the chapter "Deliberative Democracy theory – an Overview"

deliberation extends from everyday talk between private persons to debates within institutions of civil society and the media. As such, the wide public sphere consists of many differentiated but permeable sites. The sites are permeable because knowledge created in public spaces is transferred both horizontally to other sites and vertically to legal, representative and administrative sites. This also makes deliberation consequential and inclusive on a systemic level (Mansbridge, 2012; Dryzek, 2009). The topics of deliberation are not limited. They are relevant for public discussion if they are deemed to require social coordination. The wide public sphere also includes critical counter civil society, including activism, that are instrumental for democracy that needs to address constantly renewed claims for justice (Fraser, 1990: 61). The focus on the wide public sphere also means that the kind of communication is not, and should not, be limited to rational argumentation but should include rhetoric, storytelling, demonstrations, civil disobedience and protest (Dryzek, 2000: 167). The wide public sphere is part of a deliberative system. The systemic thinking about democracy means that sites with high- and low-quality deliberation may contribute to a deliberative system in the name of a division of labour (Mansbridge, 2012; Dryzek, 2009). For example, activism's politics, including rhetoric, civil disobedience and protest, can nevertheless increase the legitimacy and epistemic value of a deliberative system if its message takes part in processes of deliberation and is transferred into democratic outcomes.

More specifically, my dissertation is a contribution to the debate on public reason within deliberative theory democracy. It is reason or collective intelligence that society exercises to produce laws that are binding for everyone. First, the exercise of public reason should be inclusive, which means not only open to everyone, but also its agenda should not be restricted a priori to particular matters. Second, it is exercised by a widely understood civil society and official state institutions. Finally, it imposes restrictions on how citizens should deliberate for the process to be legitimate, where legitimacy entails everyone considering themselves the authors of the laws they are subject to. A democratic procedure is legitimate if the rules of democratic deliberation are justified or acceptable to all participants (Benhabib, 1996).

The idea of public reason is much contested because it assumes different degrees of constraint on a democratic process depending on ideal presuppositions of democratic deliberation. Those differences are normative responses to social facts of mass democracy and deep pluralism. Mass democracy is understood here as all processes of opinion formation or mass participation (Chambers, 2012) in widely understood civil society including not only

non-state institutions but also activism and everyday talk about public matters (Mansbridge, 1999). The social fact of mass democracy introduces the non-ideal element into my normative thinking. The mechanisms of what produces and reproduces injustice should inform ideal theory; otherwise, it does not have anything normative to say about the world in which the ideal conditions for perfect deliberation have not been realised, yet (see also Fung, 2005). I borrow the term “deep pluralism” from James Bohman (1995; 2003; 2006) because he describes this phenomenon in the most detailed and accurate way by disaggregating it into its different constituents. He claims that “the main problem of deep pluralism [is] second-order challenges as well as overlapping and intersecting deep disagreements” (2003: 774). In other words, disagreements occur in opinions, values and perspectives and involve meta-consideration such as what a legitimate argument is, what equal respect requires and what the demands of public reason are. Bohman uses “perspective” to define pretheoretical and theoretical knowledge that is brought to the deliberative table. Perspectives are not reducible to values, preferences or opinions, rather they give them coherence and meaning, which makes claims more convincing. As such, it is the perspectives that carry the most epistemic value. It is knowledge that is valuable as an input for democratic deliberation whose aim is to solve social problems. This is knowledge that is produced intersubjectively between subjects who have the capacity for reason. This can take the form of, for example, testimonial exchange or evidence assessment. This knowledge is situated in accordance with the social position of the subject that produces it. Deep pluralism develops when a conflict involves two dimensions, for example values and opinions. A typical example here would be debates on homosexual marriages, where religious citizens’ opinion about them is not only negative but also becomes part of their identity. As a result, we have a clash between the right to cultural preservation and equality, which cannot be reasonably limited. This is because religious citizens present their own idea of equality that is radically differently from a liberal one and have a different way of solving this problem, which is arguing with non-public reasons, thereby undermining the epistemic value of publicity as well.

Deliberative democracy theory² responds to the fact of deep pluralism by proposing an epistemic idea of reasonability that, on the one hand, stresses the importance of inclusivity of the process but, on the other hand, emphasises mutual learning between citizens and limits

² Here and throughout this dissertation I am writing from the standpoint of deliberative democracy theory that stems from Habermas’s work and more broadly from critical theory.

the content of reasons that can be used as justification for final decisions. As such, the term “reasonable” is both processual and epistemic. Participants not only clarify their own interests and preferences but also find out about others’ preferences during deliberation. They learn what kinds of reasons are actually acceptable and convincing and what kinds of reasons need to be revised. This is an epistemic process since final decisions are products of collective learning processes.

A different and less demanding solution to the problem of deep pluralism and mass democracy comes from political theorists that either eschew the idea of public reason (Post, 2005; 2011) or treat it as a civility norm that ultimately does not make any difference in terms of the outcomes of democratic deliberation (Eberle, 2009). Those two theorists are important for two reasons. First, they offer a significant critique of a more demanding idea of public reason that goes to its core since its epistemic version demands a standard against which we could measure the rightness of political decisions. According to them, deep pluralism and mass democracy make such a standard practically and normatively impossible. Secondly, Post’s freedom of speech theory and Eberle’s version of public reason directly compete with deliberative democracy’s account. This is because they both accept the fact of deep pluralism and mass democracy and their theories have a similar goal to that of deliberative democracy theory, which is making democracy more inclusive. These are the reasons why their positions are worth engaging with. They tackle the problem of deep pluralism by proposing negative freedom and formal equality as the basis of democratic deliberation. This is the most basic common denominator among diverging comprehensive doctrines and, as such, prevents anybody from imposing their own doctrines on others. Robert Post, who is a theorist of freedom of speech and the American First Amendment, writes very little about public reason proper; however, his one-dimensional idea of freedom reduced to formal equality and negative freedom boils down to a democratic procedure having only procedural content (2011). This pure procedure does not care about whether its outcome is substantively good. In other words, the procedure is fair because everybody has an equal chance of participation, but it does not have any regard for whether it actually reflects participants’ interests or preferences in its outcomes or whether it is executed properly.³ Any substantive idea of equal respect that would make a procedure consequential,⁴ including the one I advocate, is a

³ This is similar to Estlund’s intrinsic procedural fairness. See Estlund, 2008: 70.

⁴ By “consequential” deliberation I mean that which has an effective influence on decision-making processes.

community norm that is devoid of any context-transcending value. Another example is Christopher Eberle (2009) who proposes non-restraint liberalism where any reasons, including non-public ones, can be used in the justification of coercive laws. However, to retain the liberal idea of negative freedom that protects against illegitimate coercion, he proposes an ideal of civility of listening and responding to reasons. Yet, this kind of civility does not make any normative difference given his non-restraint liberalism, and, as such, amounts to a case of pure proceduralism where the interests and preferences of all the participants have no guarantee of being respected in the outcomes of democratic deliberation.

The four papers that follow this introduction tell the story beginning from a critique and a rejection of a regime of freedom based on a marketplace of ideas through a case for an epistemic conception of democracy and ending in advocating a strong role of activism within democracy. The opening paper, “Robert Post’s Theory of Freedom of Speech: A Critique of the Reductive Conception of Political Liberty”, and the second paper, “Free Speech and the Public Sphere in Robert Post’s Theory of Freedom of Expression”, are a critical engagement with Robert Post’s freedom of expression. The former gives a comprehensive overview of Post’s theory of speech, whereas the latter deals with the make-up of the public sphere that is the consequence of the normative basis of his account. Post defends his account of freedom of speech based on negative freedom and formal equality. I argue that the norms of democratic deliberation that are so minimally justified give rise to the marketplace of ideas as a model for a public sphere. My hypothesis is that this model does not solve the problem of deep pluralism and mass democracy. On the contrary, it makes the public sphere promote competition without any orientation to disenfranchised minorities and epistemic value. My next paper, “On Democratic Deliberation: Epistemically Better Outcomes and Equal Respect”, advocates an epistemic version of a deliberative procedure. I start with Christopher Eberle’s non-restraint liberalism and his idea of public reason that is devoid of any epistemic elements. This amounts to a case of pure proceduralism that is normatively not strong enough to make it responsive to all participants’ claims. I also criticise deliberative democrats James Bohman and Fabienne Peter for relying only on ideal procedure as justifying the epistemic value of their account of democratic deliberation. I argue that an ideal procedure does not make democratic deliberation epistemic enough to combine diversity and deep pluralism with rational reasonable outcomes. My hypothesis is that the procedural-substantive account of equal respect can serve as a much-needed quasi-independent standard of the deliberative

procedure that will support its epistemic claims. My last paper, “Activism within Deliberative systems An insight from the Epistemic Injustice Approach”, is an attempt to reconcile ideal preconditions for an epistemic dimension of democracy and social facts in which real democratic deliberation takes place. I argue that we cannot underestimate the role of activism in bringing new knowledge into the system. Activism’s use of rhetoric can be justified by scrutinising the mechanisms of epistemic injustice in knowledge production as well as by seeing activism’s politics as a demand for equal respect. However, my hypothesis is that activism needs deliberative limits for its politics and use of rhetoric. This is because only through deliberation can activism gain discursive status that can challenge epistemic injustice. Additionally, democratic deliberation offers epistemic value, which translates into better epistemic outcomes.

The rest of part I of my dissertation is organised as follows. In Chapter 2, I present the debates concerning public reason, the epistemic dimension of deliberative democracy and competing accounts of democratic procedures proposed by Robert Post and Christopher Eberle. I also present my idea of epistemic democratic procedure in more detail. I discuss how this demanding procedure can function as an ideal in non-ideal circumstances of deep pluralism and mass democracy. Chapter 3 presents the main tenants of deliberative democracy. I also single out the most important developments in this theory that have been crucial for me in writing this dissertation. Those include the problem of ideology, the systemic turn within deliberative democracy and the epistemic idea of democratic procedure, to name but a few. Chapter 4 is a brief overview of the methodology used in the dissertation. Chapter 5 elaborates on the significance of the norm of equal respect for deliberative democracy as well as for the argument of my dissertation. I start with the moral significance of equal respect and continue by elaborating on the objects of equal respect within deliberative democracy including different dimensions of freedom. The next three chapters serve as introductions to the papers that make up my dissertation. Chapter 6 elaborates on why Post’s marketplace of ideas cannot be the right model for the public sphere. It focuses on how his theory of freedom of speech affects normative ideas central to public justification, autonomy and the public sphere. I argue that pure procedure as advocated by Post is not the right answer for problems connected with deep pluralism and mass democracy. Chapter 7 discusses why the epistemic dimension of deliberative democracy must have the same respect as its guiding norm. I take religious reasons as a paradigmatic example of deep pluralism in the public sphere. I argue

that in order for religious reasons to become part of the debate but without excluding others, there is a need for an epistemic idea of public reason. This chapter also elaborates on why the epistemic idea of democratic procedure cannot be based only on ideal procedure without additional equal respect. Chapter 8 answers the question of why activism needs deliberative elements without sacrificing its contestatory power. I argue that in order for a deliberative system to both appreciate the role of activism and successfully accommodate it within its normative framework, there is a need to justify rhetoric as the mechanism of transmitting its message within unfavourable epistemic conditions. However, activism also has intrinsic and instrumental reasons to display deliberative capacity. This combination enables activism to find its rightful place within a deliberative system. Chapter 9 consists of summaries of the papers.

2. Contextualizing the debates on public reasons and the epistemic dimension of deliberative democracy

In this chapter, I want to present an extended overview of the positions I criticise as well as my contribution to the debate on public reasons and equal respect. I criticise the proponents of pure procedure as the answer to the problem of deep pluralism and mass democracy. Neither Post's theory of freedom of speech nor Eberle's non-restraint liberalism presents an account of democratic deliberation that makes deliberation inclusive and consequential. Instead, I propose a substantive procedural account of equal respect that gives rise to an epistemic account of public reason. Such an interpretation of public reason allows for a deliberation that reflects citizens' interests, preferences and beliefs in its outcomes. I also argue that this demanding idea of equal respect and public reason is feasible within mass democracy if processes of opinion formation are open to both contestatory and deliberative politics. I single out activism as the best example of such a combination.

Both Post and Eberle advocate a normatively minimal idea of democratic procedure. Their liberal accounts see the fact of deep pluralism as fatal to conceptions of democratic deliberation that are more demanding than pure proceduralism. I borrow the term "pure proceduralism" from Estlund (2008: 65–66), who defines it as "the view that democratic arrangements are justified by being procedurally fair to participants, and not by any tendency of democratic procedures to produce good decisions". Since people are so diverse, anything less basic than pure proceduralism is a threat to citizens' self-governance and democratic values. In their accounts, there are no other requirements for inclusive deliberation since what deep pluralism does is devoid us of any master value that could govern deliberation about public matters.

Post understands any kind of respect as the product of community values that cannot be imposed on other communities. This is a consequence of deep pluralism that cannot be overcome by anything so demanding as public reasons and respect. As a result, he reduces his conception of freedom to the lowest common denominator, which is negative freedom and formal equality. He bases his theory of freedom of speech on democratic self-governance whose purpose is purely negative. It should protect citizens' private autonomy against interference from the state. This interference is an infringement on basic rights that are

predetermined before deliberation since citizens are expected to enjoy their greatest freedom in personal life within the scope delineated by negative freedom.

Christopher Eberle proposes non-restraint liberalism. This is liberalism where any reasons, including non-sharable ones, can be both brought to a deliberative table and used as a justification for final decisions even if they infringe basic rights, as is the case with the right to self-defence in Eberle's example (Eberle, 2009). In other words, all the reasons are ultimately valid in public deliberation. Eberle defends his account against the charge of being at odds with the tenants of liberalism by offering a civility norm (*ibid.*, 165–166). He calls it conscientious engagement where citizens should listen and respond to reasons and are ready to revise their position; however, if not convinced by others' arguments, they can vote according to their original proposal.

Neither Eberle nor Post provide any extra procedural mechanisms that would protect citizens from being dominated by a majority. As a result, their proposal amounts to pure procedure governed only by negative freedom and formal equality. Such a procedure means exclusion of many perspectives from public deliberation and a minimal account of public reason, which makes the question of the responsiveness of democratic systems to all perspectives irrelevant. Similarly, any interests and preferences that cannot be satisfied within a domain of negative freedom whose scope is predetermined outside of politics become illegitimate. In this way, democratic deliberation becomes a competition based on power, and minorities are in danger of being dominated. It makes a marketplace of ideas⁵ a model of public discourse, however this time even devoid of truth as its instrumental value since that would introduce some norms of self-reflection and mutual learning through a backdoor. Such accounts of public discourse do not realise their self-professed goals, that is, "robust democracy" (Post, 2011) and "inclusive democracy" (Eberle, 2009).

However, the problem of deep pluralism is a serious one, not least because it cannot be ignored as simply representing the divide between reasonable and unreasonable people where the latter can be dismissed as not fit for democratic deliberation. We are tempted to think about social conflicts in terms of hardliners versus a dominant group that accepts

⁵ This idea was first explicitly used as "free trade of ideas" in a "competition of the market" by Judge Oliver Wendell Holmes Jr's dissent (1919). "This theory assumes that a process of robust debate, if uninhibited by governmental interference, will lead to the discovery of truth, or at least the best perspectives or solutions for societal problems. A properly functioning marketplace of ideas, in Holmes's perspective, ultimately assures the proper evolution of society, wherever that evolution might lead" (Ingber, 1984: 3).

constitutional rights with religious minorities being the paradigmatic source of the conflict. Members of such minorities are supposed to be authoritarian, as they do not consider others' arguments, use cryptic reasons themselves and refuse to revise their own position. However, the problem with this picture is that in fact conflicts rarely unfold this way. First, any minority can participate in a conflict whether ethnicity, religion or just common interests bind them. In other words, difficult social conflicts can be about a variety of things ranging from abortion and homosexual marriages, through environmental issues and labour law to the economy and vaccination in children. Moreover, there is a need to bear in mind that any liberalism is always an interpretation of its ideal presuppositions in a given context, which means that within an ongoing conflict both minorities and the liberal majority must redefine their position simply because liberal democracy is always an incomplete project. Second, it is more usual that participants in a conflict not only talk to each other but also try to couch their arguments in terms that others can relate to in a language of rights, and in principle not rule out the possibility that they could revise their position. In other words, what is usually at stake in conflicts is not citizens who exercise public reason against those who do not, but rather citizens who are in conflict over which model of public reason is legitimate or which interpretation of what it means to be free and equal is better.

There is a need for an idea of public reason that is open enough to include the widest possible range of topics and discourses. However, it should also create the conditions for a viable political community where processes of decision-making and opinion formation are governed by such rules that everyone can feel the authors of the laws they are subject to. Public reason governs the relationships between citizens and imposes limits on how they may behave during democratic deliberation. Reasonability is a norm of a democratic deliberation that forms a set of ideal presuppositions that should guide it. According to Rostbøll (2008: 120), "reasonableness" can refer to participation, the form in which reasons are given and their content. Citizens are reasonable if they are willing to participate in deliberation by presenting their claims and listening and responding to challenges from other citizens. This seems to be uncontroversial among deliberative democrats because the lack of participation reasonableness would undermine the very core of deliberative democracy theory (e.g. Dryzek, 2000; Chambers, 2009; Rostbøll, 2008). "Form reasonableness" is about differentiation between using reasons and threats or manipulation. "Content reasonableness" refers either to the kinds of reasons that are accepted as input to the deliberation or the kinds of reasons

that are accepted as justifications for the decisions. The standard formulation of acceptability entails reasons being general and reciprocal. Generality or publicity of reasons applies the quality of their sharability,⁶ not just among dominant discourses but among everyone affected. Reciprocity relates to the idea that no one in deliberation should make claims to resources or rights that they deny to others based on projection of their own values, interests and opinions onto others. Political theorists such as Bohman (2006), Chambers (2009), Dryzek (2000), Rostbøll (2008) and many others agree that there should not be any constraint on reasons as input to deliberation other than they should not make deliberation coercive and manipulative. That also refers to the constraint on form since the use of rhetoric is allowed (Dryzek, 2000; Chambers, 2012). However, the claims must be open to learning processes such that final decisions, especially those influencing basic rights, should be based on reasons that are general and reciprocal.

Democratic decisions should not only be freely endorsed, but they should be made based on the best available reasons that can be found. This means that public reason should not hesitate to criticise people's comprehensive doctrines. Deliberation is an intersubjective process where citizens exercising their public autonomy understand and learn about their own and others' views for the benefit of everyone involved. In other words, citizens do not enter the public sphere with ready-made interests and preferences. What is more, they need to take into account other citizens' views when they consider their political goals. This requires that citizens form their own values, interests and preferences in an undistorted way based on best arguments. Otherwise, their political goals may be mistaken and as such may interfere with their fellow citizens' freedom. As a result, deliberation is a learning process that entails openness to revisions of one's positions. Furthermore, the emphasis on those processes and the ability to transform one's positions means that in order to be free, citizens must enjoy their internal autonomy; that is, they should be free to form their value, opinion and preferences free from the ideology that would distort them.

The exchange of reasons during democratic deliberation should be based on the epistemic idea of public reason, which demands a particular procedure and structure of justification. I propose a democratic procedure that contains procedural and substantive elements. Justification consists of several components. The procedural component requires that the

⁶ The reasons do not have to be universal or endorsed but rather sharable from the point of view of diverse discourses within the public sphere.

process be inclusive and treat everyone on an equal footing. Furthermore, participants should offer other regarding arguments that ultimately should be couched in reciprocal and general terms. This amounts to procedural respect. The principles of reciprocity and generality also acquire substantive interpretation as they constrain the kinds of reasons that can be offered in the public justification. Public reason is epistemic and therefore reasons offered in the justification must also be based on relevant knowledge or evidence depending on the kind of matter at hand. However, all those substantive requirements for reasons are still procedural since they do not form an independent standard according to which participants would have to restrain themselves or change their own ideas about what reasonability requires. In other words, we need a quasi-independent standard that would form a constraint on the acceptable reasons offered for democratic decisions. It needs to be only partially independent from procedure because otherwise we would offer a standard of correctness that would be imposed and not freely agreed on by participants of deliberation.

What can happen when democratic procedure consists of only procedural elements and we live in a society marked by deep pluralism? We can imagine a citizen who argues that gay teachers should not teach children based on his religious convictions. He can treat everyone including the LGBTQ⁷ community as equal and answer their criticism. He can offer non-religious reasons that in his opinion should resonate with others; however, ultimately, we would have a stand-off that could only be resolved by voting. Therefore we need a second component of justification, which is a substantive element based on equal respect. It guarantees that in the face of deep pluralism everyone's perspectives are taken into account on their merits; that is to say, their private autonomy needs to be respected so that they can freely pursue their lives. This respect for private autonomy is a weak constraint on a democratic process since it imposes limits on the acceptable reasons for decisions. The substantive constraint enables procedure to have epistemic value and lead to substantively just results. The epistemic dimension of democracy means that it tends to lead to epistemically correct and substantively just decisions because they are based on rules of justification that are acceptable to all participants. The structure of justification is conducive to citizens forming justified opinions, interests and preferences. Moreover, it not only requires exchange of reasons but reasons must be based on relevant knowledge and/or evidence.

⁷ This stands for Lesbian, Gay, Bisexual, Transgender and Queer.

I am not only interested in the critique of pure proceduralism but also in the critique of an epistemic version of proceduralism within deliberative democracy theory exemplified by Bohman and Peter. The aim of this version is to stave off the criticism that the epistemic dimension of democratic deliberation must lead to the rule of experts who know the right answer, which would be exclusionary and perfectionist. Bohman (2006) and Peter (2007) present what they term “pure epistemic proceduralism”, which relies on ideal procedure for real-life procedure to have epistemic value. Ideal democratic procedure means inclusion of all those that are affected by the decisions reached. It also requires that everyone is respected as reason-giving persons and such inclusion is not affected by time constraints, manipulation or threats, which is the case because the participants are guided by impartial motivations only. Such procedure embodies public reason and equal respect. Hence, the better real-life procedure emulates this ideal one, the more epistemic value it should have. Bohman supplements this reliance on ideal procedure with an emphasis on participants’ perspectives, which are the most reliable carriers of epistemic value. The idea of pure epistemic proceduralism is that it rejects any standard of correctness and instead relies on ideal procedure, which is supposed to give epistemic value to real-life deliberation with an emphasis on participants’ perspectives as epistemic value. To make real-life procedure as inclusive as possible, it advocates the idea of public reason that is quite wide. Within this procedure, all reasons are accepted as input to deliberation. However, the reasons for the final justification of the actual decisions should be acceptable to all. The prevailing idea of acceptability within a given background culture should be open to revisions if it is challenged from within deep pluralism. This way it is not only challengers that need to learn from liberal culture, but also the liberal majority needs to be open to revisions. Both Bohman and Peter’s accounts are weakly epistemic since the outcomes of the procedure can be measured according to whether the procedure was inclusive enough and whether its generality and reciprocity truly resemble the presuppositions of ideal procedure.⁸

I reject deliberative democracy theory’s accounts based only on ideal procedure as offering an account that makes minimal difference in terms of democratic outcomes. In other words, it is not strong enough to fully support its epistemic claims in the face of deep pluralism. I

⁸ For example, Forst also presents a similar idea of epistemic account of deliberate democracy; however, he realises that the procedural idea of respect is too thin to make any epistemic difference. This is because reciprocity may fail to make any epistemic difference if there are overriding general reasons to deny it (see 2012: 87–88).

propose that deliberative democracy theory should openly acknowledge that its epistemic account of deliberation has an extraprocedural element built into the ideal procedure that justifies its epistemic claims. This element is the only possible condition for democratic deliberation to have epistemic value, which makes it responsive to all the participants' perspectives. Democratic procedure should be based on epistemic proceduralism that offers a standard against which the outcomes of deliberation should be held; however, the exact meaning of this standard is realised during deliberation. In other words, equal respect demands that LGBTQ citizens' interests and preferences are taken into account; however, there is no objectively right answer as to how this should be actually realised other than the answer should be arrived at in the course of actual deliberation. Consequently, equal respect is substantive, procedural and only logically independent from actual procedure. I argue that a standard of substantive procedural equal respect will serve as a weak moral constraint on a democratic process. The procedural element is part of collective deliberation where the actual form that respect takes in a given moment is realised in the give and take of reasons. However, in order to prevent minorities from being dominated and to make sure that their interests are reflected in the democratic outcomes, the substantive element demands that all the perspectives of citizens affected by the outcomes of deliberation should be taken into consideration. In other words, the epistemic qualities of a democratic procedure such as learning from each other, willingness to revise and restraint where it comes to justification for basic rights are made possible by a substantive idea of equal respect. Since the outcomes are procedure-dependent, minorities will not necessarily have their say after all; however, they should be provided with good reasons for why this happened apart from that they were outvoted by the majority. Because the authority and legitimacy of the procedure are based ultimately on procedure and not on some independent standard, such a procedure may fail in its epistemic aims. As a result, this failure is not a reason to reject the procedure. Rather, an appeal to moral standards is a way to retroactively judge the procedure and ultimately press for its improvement.

Is this a perfectionist account of public reason? Is the reflexivity that it demands too much of a burden for some citizens? Robert Post and Christopher Eberle's positions block the epistemic idea of public reason since it supposedly excludes citizens who hold a non-epistemic view of public reason. Similarly, they consider such an idea perfectionist since public reason's insistence on autonomy, self-reflection, learning and revising is a particular style of a good life

– perfectionist in the sense of imposing an objectively good set of values on how deliberation should proceed and what should be its legitimate outcomes. This also implies that the state should pursue similar perfectionist goals, which can in principle make for an exclusionary politics that should be accepted by everyone regardless of their value commitments. In other words, the kinds of constraints that public reason imposes on democratic deliberation are already a product of some dominant discourse and as a result, they discriminate against citizens in their role as authors of the laws they are subject to. However, the epistemic conception of public reason does not demand such reflexivity at all times nor in all places and not in all matters. Rather, the substantive procedural idea of equal respect demands at least instrumental reflexivity for matters concerning cooperation with others, which affects everyone in the polity. My idea of weak moral restraint, while not perfectionist (it demands reflexivity and the terms of respect are ultimately settled in collective deliberation), is best guaranteed by the substantive procedural idea of respect and the epistemic idea of public reason.

It seems that the facts of mass democracy and deep pluralism make democratic deliberation more difficult. Very different people must come to some form of agreement on basic principles. Mass democracy with its multiplicity of discourses and power relations makes healthy public opinion formation very challenging. The most pressing question then is how ideal presuppositions can take into account the non-ideal conditions of mass democracy and deep pluralism. I argue that the systemic account of democracy with an emphasis on its epistemic properties allows us to combine the contestatory elements of mass democracy and deliberative capacity to accomplish a democratic system that is conducive to authentic, inclusive and consequential deliberation. A recent systemic turn within deliberative democracy theory developed by Mansbridge and Dryzek recognises the perceived lack of legitimacy of deliberative democracy theory that focuses on mini publics that are artificial or real-life deliberative bodies where an approximation of ideal conditions should obtain. This is because they are not inclusive enough to legitimize all the decisions in democracy. In other words, if deliberation is located only in small-scale bodies and institutions, then it turns out to be not only exclusionary but also epistemically lacking. Furthermore, it begs the question as to what the connection is between all the opinion formation processes in mass democracy that should provide inclusivity and epistemic value to democracy and high-quality deliberation in official bodies. Systemic thinking about democracy means that various sites, including those

shaping public opinion on a mass scale, can contribute in principle to a deliberative system in the name of a division of labour. Mass democracy is now seen as a deliberating body within a larger deliberative system. A deliberative system comprises official institutions of the centre such as legislative and administrative bodies but also institutions of civil society, the media and everyday talk relating to common concerns, that is, those that the public should talk about. This way mass democracy becomes a potential asset for the whole system since it should provide new issues on the agenda that have so far been ignored by the institutions, media and citizens and other informal institutions of civil society.

However, the problem with mass democracy is its quality of deliberation, which is often low not only within activism but also among citizens who do not form their opinions intersubjectively and as such are not open to dialogue. In other words, in non-ideal contexts it is very often the case that democratic deliberation is far from what we consider acceptable from the viewpoint of deliberative democracy theory. However, if mass democracy can potentially increase legitimacy, then we need to understand whether it is able to deliberate. Otherwise, the link between the pool of reasons coming from mass democracy and other parts of the system is unclear. This in turn would make the processes of intersubjective opinion formation and mutual learning impossible. Dryzek and Mansbridge's accounts place a lot of faith in activism, which can potentially contribute to the deliberative system as a whole. However, without strong systemic tests of how to judge activism in a system, this latest theoretical development in the field invites the charge of abandoning the central tenants of deliberative democracy, which are inclusivity, equal respect and intersubjective formation of preferences (Owen and Smith, 2015).

I consider activism an invaluable part of deliberative systems since it politicises so far ignored perspectives in democratic deliberation. In this way, it contributes equality, epistemic value and participation to the deliberative system as a whole. However, to solve the problem of how new ideas coming from activism can be put on the agenda and become part of democratic deliberation, we need to justify activism that is able to combine jarring rhetoric and deliberative capacity. In other words, I postulate a kind of activism that is able to participate in the collective generation of perspectives, that is, an intersubjective process of opinion formation, which would result in mutual learning. However, whether activism's deliberative capacity remains dormant or active is dependent on the epistemic context it operates in.

As it stands now, the systemic turn does not give us adequate tools that would perform the function of judging activism's contributions because we need to take into account the epistemic system that systemically prevents new information from getting across to other sites of the deliberative system as well. This is why it is important to answer questions such as: What are the mechanisms of such exclusion? Why are epistemic systems so resistant to change? Why is the target of activism ignorant? I believe that the approach of epistemic injustice originated by Miranda Fricker (2007) can answer those questions. I refer to "epistemic injustice" as "a matter of the subject being wronged specifically in their capacity as an epistemic subject" (Fricker, 2013: 1320). In other words, there are members of the polity whose contributions to deliberation and thus to the common discursive resources are rendered unintelligible and invalid through exclusion, whose mechanism is based on unfair distribution of credibility markers and a systemic lack of a common interpretative framework. The mechanisms of such exclusions are systemic since what makes this kind of oppression possible is an accepted right to dominate others conferred upon a dominating majority and public institutions. Disenfranchised minorities are excluded from the common discursive practices of meaning generation (Fricker, 2013: 1332). I define the term "epistemic system" as "a holistic concept that refers to all the conditions for the possibility of knowledge production and possession" (Dotson, 2012: 121). It is responsible not only for the mechanisms of knowledge production but also for social imaginary,⁹ that is, it delineates the limits of what kind of social change is possible and desirable. Fricker (2007: 23) and Medina (2011: 22) analyse specific instances of epistemic injustice in a work of fiction, *To Kill a Mocking Bird* (Lee, 1988), others analyse real-life examples (see Catala, 2015 on various symbolic conflicts including the USA, France and Belgium and the problem of trust; and Daukas, 2006 on trust and social location). Therefore, political theory can also analyse activism and the epistemic context it operates in. I think we can use the epistemic injustice approach to highlight all the systemic mechanisms that cause this kind of exclusion. Specifically, by attending to the features of epistemic systems in a concrete context, we will be able to ascertain whether a given act of activism will or was an acceptable example of the trade-offs from the normative point of view.

⁹ According to Medina, "social imaginary is a repository of images and scripts that become collectively shared. This symbolic repository provides the representational background against which people tend to share their thoughts and listen to each other in a culture" (2011: 33).

Furthermore, by placing epistemic oppression in the framework of deliberative democracy theory, we can see activism as not only a perpetrator of disrespect but also as a movement that strives for an equal respect of its discursive status. Rostbøll defines it as “the status of respecting each other as free persons in the sense of persons worth arguing with, as persons who can contribute with and respond appropriately to reasons” (2008: 208). Discursive status as opposed to public autonomy is concerned with oppression that has a systemic dimension. In other words, some citizens’ contributions to deliberation are rendered invalid or unintelligible, not only because of prejudice but also because the mechanisms of knowledge production and as a result social imaginary exclude those citizens from a common interpretative framework. Those mechanisms are beyond individuals’ agency, which calls for systemic ways of correcting them. Putting epistemic oppression in the context of deliberative democracy also has the advantage of providing activism with instrumental and intrinsic reasons to participate in deliberation. It is only through joint deliberation that minorities can gain discursive status and thus have an influence on the outcomes of deliberation. Moreover, because of the structure of deliberation, activism can overcome the epistemic weakness of its epistemic perspective being situated and thus limited.

The above analysis necessitates an activism that can make use of contestatory politics including protest, subversive language and civil disobedience. The contestatory part satisfies the need for participation and the critical role of democracy that enhances the system’s legitimacy and epistemic value. Taking into account the epistemic analysis of the system, we know that there will be some loss of respect; however, given the lack of reciprocity and generality of the target of activism, this loss can be made acceptable. Postulating this kind of activism is the most promising way to secure assumed synergy between mass democracy and more deliberative bodies. Otherwise, it is hard to see how such radically different sites could together be part of deliberation.

3. Deliberative democracy theory – an overview

The aim of this chapter is to give the reader an overview of deliberative democracy theory. However, I do not aim to give a chronological description of how the deliberative model developed, let alone a comprehensive one, but to give an overview of some of the theoretical innovations that made this project evolve to retain its critical edge. This chapter will proceed as follows. I will start by emphasising that this is an emancipatory project at heart and as such is better suited to empowering civil society than liberal, republican and aggregative models. Later I will present Habermas's contribution to the deliberative project since his discourse ethics and ideal speech situation form the moral basis of the deliberative model of democracy. I will also briefly present his model of democracy as he described it in his 1996 book *Facts and Norms*. Next, I will focus on an ideology critique as being very important to the deliberative project (Bohman, 2000; Rostbøll, 2008). I will also explain briefly how the concept of democratic deliberation was extended to be more inclusive (Dryzek, 2000; Chambers, 2012; Bohman, 2006). Furthermore, I will also include deliberative theorists' interest in the epistemic dimension of the deliberative model of democracy (Bohman, 2006; Marti, 2006) as well as the recent development of the systemic turn whose aim is to include mass democracy in the deliberative model (Dryzek, 2009; Mansbridge, 2012).

I write from the standpoint of deliberative democracy theory. This is because I am mostly interested in the talk-based political process that take place before a decision is taken. Furthermore, I focus on how deliberative processes of opinion formation can influence democratic outcomes. In my opinion, deliberative theory is best suited to the task because it combines the concern for basic rights with openness regarding their exact meaning that must be decided in actual deliberation. As such, it is a radical conception of democracy that can solve or manage problems caused by deep pluralism and mass democracy. Deliberative democracy theory is a normative theory whose source lies in a critical theory. Broadly speaking, critical theory focuses on emancipation of human beings from all the oppressive forces that enslave them, such as ideology, state and capital domination and technology. It combines philosophy and social sciences to provide a descriptive and normative social enquiry into the conditions of oppression and ways to overcome it. As such, deliberative democracy theory emerged as a critique of aggregative as well as liberal and republican models of democracy. Those models are not particularly well suited to emancipation since they treat

people's preferences as given and are not interested in whether they are formed freely or distorted by ideology. The problem is not that they do not consider preferences malleable or subject to transformation, but that they focus only on external freedom from domination (cf. Rostbøll, 2008: 22). Aggregative democracy is concerned with people's preferences and aggregating them in order to construct policies according to who won the vote. As a result, participation is limited to voting. Liberalism creates the laws that are supposed to guard citizens against distortion of political processes, including constitutional rights, but fail to see other distortions that influence opinion formation such as dominant discourses, ideologies, money and power, which render minorities' claims to justice illegitimate. Republicanism, based on an ethical community, criticises the liberal priority of the right over the good. Habermas's critique is that it limits democratic deliberation through a particular idea of shared ethical life and overburdens citizens with excessive ethical demands in their civic roles (Habermas, 1994: 4).

However, it would be wrong to say that deliberative democracy theory stands outside of those traditions. In fact, it occupies a middle position between republicanism and liberalism and a supplementary position to aggregative democracy.¹⁰ Deliberative democracy theory cannot replace aggregation since contemporary democracies are too complex and full of contingent constraints such as time constraints to leave all decisions to deliberation. Furthermore, deliberation is a process that should have global effects on aggregated interests; as a result, deliberation and aggregation should be complementary with deliberation as the primary process before a decision is taken. Deliberative democracy theory accepts moral, ethical and pragmatic considerations as input into public deliberation as well as compromises. As a result, it appreciates both liberal and republican elements, which are liberal attachment to basic rights and republican understanding that cultural and ethical elements are important for how those rights are understood. However, deliberative democracy theory proposes a procedural view of democratic deliberation with generality and reciprocity as guiding procedural norms with the presumption that it will give reasonable and fair outcomes. As such, it steps back from specifying the exact content of the basic rights or ethical substance of a given community, focusing instead on rules of discourse and argumentation (Habermas, 1994: 6).

¹⁰ Contrasting deliberative democracy theory with republicanism and liberalism is a quite common way to define it. See, for example, Habermas, 1994; Forst, 2001; Rostbøll, 2008.

Deliberation is a primary way of legitimising a binding decision in a democratic system. It is a discussion aimed at producing reasonable and well-informed decisions. Citizens are willing to revise their positions in light of new information and reasoned dialogue. Legitimacy of the process demands effective participation in an authentic deliberation ultimately with a view for a common good.¹¹ Recognising this, there is no limit to the content of reasons as input in deliberation. Furthermore, the use of rhetoric is allowed since it is virtually impossible to differentiate between rational arguments and rhetorical speech. As a result, the opposite of deliberation becomes manipulation and coercion and not rhetoric. The emphasis on transformation of preferences under the right conditions means that deliberative democracy theory asks questions such as: How can deliberation enhance free formation of preferences? What are the systemic conditions for empowering discourses that have been marginalised? How may the fact of deep pluralism and mass democracy actually contribute to the reasonability of the process? What are the institutional conditions for facilitating deliberation and implementation of its outcomes?

Habermas's discourse ethics and ideal speech situation inform the deliberative model of democracy since it is those ideal presuppositions of practical discourses that underline normative claims of deliberative democracy theory. Habermas extracts moral principles from presuppositions that make communication and argumentation possible (Benhabib, 1985). In order for normative, factual and practical statements to gain validity there must be a process of rational argumentation in their favour or against them where only the force of a better argument counts. In other words, the aim of practical argumentation or a discourse is justification of factual, theoretical and normative claims where facts and norms must be open to challenges and not taken for granted. Furthermore, the structure of argumentation is such that it relevant arguments are included, and all the participants are motivated by the concern for the better argument. In this context, Habermas introduces the concept of an ideal speech situation, which specifies the formal properties of argumentation in order for an attained consensus to be normatively differentiated from manipulation or coercion. Those conditions are: first, each participant must have an equal chance to initiate and to continue communication; second, each must have an equal chance to make assertions, recommendations and explanations, and to challenge justifications; third, each must have

¹¹ Dryzek specifies that an "authentic" democracy exists to the degree that the reflective preferences influence the collective outcomes (2000: 2).

equal chances as an actor to express their wishes, feelings and intentions; and fourth, the speaker must act as if in the context of action there is an equal distribution of chances “to order and resist orders, to promise and to refuse, to be accountable for their conduct and to demand accountability from others” (Habermas, 1973; in Benhabib, 1985: 87).

The discourse model of ethics is not directly transferable to democratic theory since the latter needs to take into account the complexity of democratic arrangements and practical feasibility. However, this model can be used as a measuring stick for determining how far the actual deliberative practices are from their ideal presuppositions. As such, the discourse model of ethics constitutes a moral foundation for a procedural account of the legitimacy and rationality of democratic deliberation. The presupposition of the rationality of practical discourses comes from epistemic mechanisms that result from an ideal speech situation. An ideal speech situation is conducive to pooling new information, exchanging reasons for or against a given proposal, as well as orientation to the common good, all of which boost the potential for rationality of democratic outcomes (see, for example, Martí, 2006: 42–3). The procedural idea of legitimacy is nonetheless underdetermined since it does not dictate the quality of reasons used in deliberation, nor the outcomes of deliberation. However, the ideal mechanisms built into the procedure, such as the opportunity to challenge the rules of deliberation at the meta-level as well as its fallibility, guard in certain respects the democratic procedure against its abuses.

Over the years, Habermas has been instrumental in developing deliberative democracy theory. Deliberative theorists have always recognised his importance; nevertheless, they have also been critical of his contributions to the field. My aim here is to briefly present this criticism before and after the publication of *Fact and Norms* in 1996. Dryzek is critical of his contribution before *Facts and Norms* for being too abstract and not concerned with real-life democracies to be used in a fruitful way for democratic theory. He criticises (2000: 25–26) Habermas’s ideal speech situation for being focused only on consensus and the force of a better argument and for a disregard for social and political structures that would be most desirable for bringing his ideal presupposition closer to the real world. Benhabib (1985: 92) indicates that Habermas was too focused on the standpoint of the generalised other as the only perspective representing the moral point of view. The generalised other’s point of view is concerned with self-determination oriented towards universalistic principles. However, she thinks it is also important to focus on the concrete, which stresses the difference instead of commonality.

According to her, this focus also represents moral categories such as responsibility, bonding and sharing, and as such can also be sites of possible emancipation. Nancy Fraser (1985) criticises Habermas for idealising the private sphere as a privileged place for meaningful conversation to the effect that he is blind to the discrimination of women, to the effect of idealising the private sphere, and blind to the emancipating possibility of empowering women through work and public participation.

In *Facts and Norms* Habermas puts more emphasis on the pluralism and the complexity of contemporary democracy. Since he recognises that political processes can take place within different political structures, he analyses the wide public sphere and how deliberation may proceed there. He looks at democracy as a system or a two-track model that is supposed to connect mass participation and the legislative and bureaucratic centre. He focuses on civil society and the public sphere¹² as the sites that feed new information to the bureaucratic system through parliamentary elections, that is, to the political public sphere. In other words, the communicative power is transformed into bureaucratic power through mass elections. Public reason is exercised in discursive structures that link the mass democracy and the official public spheres. The reliance on discourses allows him to state in a more precise way how mass democracy can realise the ideals of democratic deliberation. The state is structured to guarantee basic rights through law that is supposed to enable and maintain a robust public deliberation. The scope of permissible discourses in the public sphere is extended to comprise not only moral but also pragmatic and ethical dimensions to enable all new problems to be politicised in the public sphere. Habermas also considers bargaining a legitimate “only insofar as its procedures are discursively justified” (1996: 460). In the discussion between liberalism and republicanism on what should prevail – private autonomy and basic rights or public autonomy and democracy – he situates his project somewhere in the middle. His idea of co-originality promises to reconcile public and private autonomy. Human rights and public sovereignty are internally related and both presuppose each other:

Citizens can make an appropriate use of their public autonomy, as guaranteed by political rights, only if they are sufficiently independent in virtue of an equally protected private autonomy in their life conduct. But members of society actually enjoy their equal private autonomy to an equal extent—that is, equally distributed

¹² Habermas defines the public sphere as a “communication structure rooted in the lifeworld through the associational network of civil society” (1996: 359) where civil society represents a structural element of the public sphere exemplified by non-governmental organisations, unions, religious organisations, the media and others.

individual liberties have “equal value” for them—only if as citizens they make an appropriate use of their political autonomy. 2001: 767

In other words, we can be the authors of the law only if we are legal persons whose basic rights are protected. We are legal persons protected by basic rights only to the extent that we are the authors of the law. Democracy and the rule of law presuppose each other.

Habermas’s theory of democracy has met with many criticisms. Dryzek (2000: 26) claims that his theory does not have enough critical edge since it views elections as the only way for citizens to transform bureaucracy. Furthermore, there is no sense in which the economy or the state could be democratised further because Habermas’s social facts of complexity and pluralism are stylised in such a way as to confirm his conservative attitude to more radical democracy. Since all that matters is steering mechanisms justified by law, all the positive and negative forces in democracy, such as a robust public sphere including activism, lobbying, economic threats, the media and many others, go unnoticed. Bohman (1994: 918–919) claims that Habermas attaches too much importance to consensus and sees the majority of mechanisms as a necessary evil, whereas he himself proposes more focus on deliberative majorities that would retain the normative core of a deliberative model. He also agrees with Dryzek that Habermas overemphasises the complexity of democratic systems, which results in his abandoning the emancipatory project of further democratising the control of decision-making processes and execution of the laws. Chambers (2003: 310) claims that Habermas does not pay sufficient attention to the democratic institutional design that would be conducive to a deliberative empowerment. Furthermore, he devotes too much time to his descriptive project, disregarding the normative one; as a result, what emerges is “not so much different to what we have right now” (*ibid.*, 310). I think that all the criticisms have proved very fruitful for deliberative democracy theory. This is because it has made it more sensitive to difference, including the diversity of discourses and political processes in the wide public sphere.

The rest of this chapter will be devoted to major theoretical developments within deliberative theory democracy that make it more critical in the face of deep pluralism and mass democracy. They are especially important for my dissertation because I see deliberative democracy theory as an emancipatory project that should broadly focus on the formation of free public opinion and not only on institutional and constitutional arrangements (Dryzek, 2000: 2). The first development in deliberative democracy theory I would like to draw

attention to is ideology critique. Writings on ideology critique are still rare and they were not part of Habermas's contribution to democratic theory. This seems to be an oversight given the emancipatory ambitions of the deliberative model. Ideology constrains the internal autonomy of persons, which can be defined as freedom to form one's political opinions, that is, free from internal constraints, i.e., our internal beliefs and desires. Among the few deliberative theorists that actually have something to say on ideology critique are Rostbøll (2008) and Bohman (2000). Rostbøll (2008: 137) bases his ideology critique on a specific dimension of freedom, that is, internal autonomy. Ideology critique based on negative freedom looks only at external forces such as institutions that interfere with citizens' freedom. However, citizens' preferences may also be formed in an unfree way that they may not be immediately aware of, or those preferences can be self-imposed. This prevents them from exercising their internal autonomy. To avoid paternalism, ideology critique must be connected to the exercise of public autonomy, where citizens should revise their systemically distorted preferences in a free way without coercion or manipulation. Furthermore, ideology critique must combine substantive critique with the critique of structures of communications that prevent certain issues being politicised in a public sphere.

James Bohman (2000: 383) bases his theory of ideology on a critical dimension of formal pragmatics. Formal pragmatics reconstructs normative conditions for successful communication. The violations of those conditions can create deviant utterances that nevertheless make successful utterances: for example, tacitly limiting the topics of conversation that are accepted as going unchallenged by those whose rights are compromised as a result of this restriction. Bohman defines ideology not as a false consciousness but as asymmetric communication that may be the result of an unequal distribution of information, power status and cultural differences. The analysis of ideology should examine the structural restrictions of communication such as implicit limits on topics in the public sphere via implied threats or explicit limits on topics that are not only due to the lack of resources or money but also to unresponsiveness to reasons.

The first reason why interest in ideology critique is important is that as an emancipatory project deliberative democracy theory should not only reflect on the conditions that democratic deliberation should fulfil to make for a robust theory of democracy. The deliberative project should also attend to all situations where the reasons should be responded to but are not, or instances where the reasons that are illegitimate make for a

successful communication. In other words, it is important that deliberative democracy theory attends to systemic mechanisms of injustice to highlight all the invisible ways citizens can still be discriminated against. Those ways are invisible because most people do not treat them as discrimination, although they are experienced as such by disenfranchised citizens. The second reason is that this kind of critique draws our attention to the importance of the discursive status of citizens that needs to be recognised in order to treat their contribution to the public sphere seriously. It is the lack of this discursive status that is the cause of epistemic injustice that I am considering in the fourth paper.

The next development within deliberative democracy theory I want to talk about is the expansion of the idea of an acceptable content of a good reason that can be admitted into democratic deliberation. Theorists such as Bohman (2009), Chambers (2012), Dryzek (2000), Rostbøll (2008) and many others not only do not exclude any kinds of reasons prior to deliberation, but also claim that rhetoric should also become part of it. For Dryzek (2000: 169), this is a way to reach others across the difference, which makes deliberation more effective. Chambers (2012: 59) admits that one cannot differentiate between deliberation and other modes of communication simply on the basis of the form this deliberation takes. This leads her to define democratic deliberation as the opposite of manipulation and coercion. Bohman (2009: 256–7) claims that the phrase that defines acceptable reasons as the reasons that others could, would or might accept should lose its conditional phrasing since the kinds of reasons that can actually be accepted on reflection are a matter of deliberation and not of any prior constraints. Although deliberative theorists admit many different kinds of reasons into deliberation, they ultimately consider rational arguments to be decisive and legitimate when it comes to reasons for final decisions. However, they do not worry that this ultimate emphasis on rational argumentation leads to a lack of pluralism and dissent in the public sphere since the public sphere accommodates difference by allowing a plurality of discourses to deliberate. Similarly, Habermas (2006) in his paper “Religion in the Public Sphere” claims that there is no limit on the kinds of reasons accepted in the public sphere as long as there are learning processes between citizens and translation of ethical claims into the language of universality to arrive at the ultimate reasons for the outcome of deliberation. All those new developments are very important. Not only do they make deliberation more equal, they also shed new light under the surface of what is going on in the official public sphere where every day invisible discrimination takes place.

This brings us to the next development within deliberative democracy, namely an emphasis on the epistemic dimension of democratic deliberation. The epistemic dimension means that democracy can be justified instrumentally as having a tendency to lead to more rational and substantively more just outcomes than non-democratic systems. Democratic deliberation must not only be intrinsically valuable but also consequential, that is, responsive to citizens' needs and through collective deliberation they become more rational. Theorists such as Bohman (2006), Estlund (2008), Carlos Nino (2010), Jose Luis Martí (2006) and Peter (2007) see this dimension as indispensable in a coherent normative account of democratic deliberation. They also agree that the best possible account of such a dimension is an epistemic proceduralism that combines the intrinsic values of the process and its epistemic value. All those developments are important since deliberative democracy that is blind to processual unresponsiveness to citizens' needs or to being inconsequential does not offer a really robust and critical theory of democracy.

The last development that I want to mention is the systemic turn within deliberative democracy theory. Both Dryzek (2009) and Mansbridge (2012) claim that deliberation should not and does not take place only within liberal institutions. Rather, a deliberative system should combine the epistemic input coming from mass democracy including activism, various associations and the media with high-quality deliberation sites to make the whole system legitimate and responsive to the new challenges that have not been politicised enough thus far. The systemic turn is a move forward compared to Habermas's two-track model. First, it takes into account many ways in which the public sphere can influence bureaucracy and the parliament other than just through elections. Second, this system is more dynamic since it does not see a system as the centre and the periphery. Rather, various actors influence each other both vertically and horizontally and both the centre and the periphery can correct each other's deficiencies.

4. Some remarks on methodology

I theorise against the background of two social facts present in contemporary democracies, namely deep pluralism and mass democracy. The idea of deep pluralism meets the condition of reasonability only in a very abstract way, namely different citizens possess the idea of treating others as free and equal. The problem is how different conceptions of what it means to be reasonable play out in democratic deliberation. In other words, disagreements about what reasonability and respect require can make democratic deliberation difficult, since there is no agreement about meta-conditions regarding how to deliberate. This in turn creates a risk of domination of minorities unless a more demanding idea of democratic procedure is at work that is both fair and epistemic.

I conduct conceptual analysis of Robert Post's theory of freedom of speech based on pure proceduralism. This analysis shows that the concept of democracy must be thicker, that is, not only centred on the institutional dimension and official public sphere, but it should also take into account the formation of public opinion and conditions for its successful transmission to the state. If the rationale for democracy is empowering its citizens then this calls for a radical democracy with strong conditions for politicisations of new claims for justice. The idea of democracy that I favour as well as my emphasis on deep pluralism calls for intuition pumps (examples) that are taken from the context of minorities that are most susceptible to being dominated in the modern context. This way I am bringing out the difference and its significance for theorising.

I undertake reconstruction of democratic procedure so that it can contain a moral substantive presupposition. I argue that such understood respect already exists in everyday practice as exemplified by Bohman's story about Canadian indigenous citizens who were able to get back their own land on the basis of their tribal stories and not on the basis of modern understanding of legal obligations (2005). But for the lack of this kind of respect, their claims could have been rejected since they do not match how the law is created and executed in modern liberal democracy.

The standard is never attainable but forms a basis for an immanent critique of the actual deliberation, which is one of the tenants of critical theory. Critical theory is concerned with freedom as emancipation. This means that democratic procedure that has both intrinsic and epistemic value can be used to criticise both structurally and substantively democratic

procedures and institutional arrangements. I agree with Rostbøll that deliberative democracy can be viewed as critical theory that sees freedom as emancipation. According to him (2008: 7), in order to see how this emancipation can be attained and what its normative conditions are there is a need to disaggregate the concept of freedom into different dimensions of freedom.

I would like to elaborate on the difference between a concept, conceptions and dimensions of freedom. Concepts are less fully specified than conceptions. For example, the concept “freedom” can refer broadly to the lack of constraints; however, it does not specify the kinds of constraints, the agents or actions that matter. The concept of freedom that I refer to throughout my dissertation is not freedom per se but political freedom that is relevant for situations that call for a collective action and political institutions. Both conceptions and dimensions of freedom refer to the kinds of freedom that are well defined including the sorts of constraints, actions, and the agents that matter for a given conception or dimension of freedom. Political freedom can refer to public autonomy, negative freedom, internal autonomy, and freedom as a status. The difference between conceptions and dimensions of freedom does not lie in their content but in their relationship with each other. According to Rostbøll, “different conceptions are put forth as rivals that are competing about giving the best formulation of a concept” (Rostboll, 2008: 10). Moreover, they entail the whole worldviews, which means that different conceptions are inherently contestable and this contestation is endless. Dimensions of freedom stand in the complementary relationship with each other (*ibid.*, 12-13). One does not have to take sides in any dispute over them since one can respect different dimensions of freedom at the same time. There is a competition between them, nevertheless, not the one that needs a winner. Rather, the competition consists in how much weight we should give to a particular dimension compared to others.

Deliberative democracy should be committed to different dimensions of freedom to avoid reductionism to negative freedom (liberalism) or public autonomy (republicanism). Deliberative democracy can integrate those two, bringing our attention also to the third dimension of freedom, which is an internal one. It is freedom to form one’s preferences and beliefs without ideological distortions, which are internal and concern our preferences and beliefs. This emphasises the epistemic element in deliberative democracy theory since to get rid of ideological distortion, there is a need to establish such structures of deliberation that are conducive to reflection, learning and revisions. The last dimension of freedom is freedom

from structural domination (being granted respect for one's discursive status), which draws our attention to all the indirect ways that freedom can be constrained because of others' accepted right to interfere with our choices. Those dimensions give us an opportunity for a powerful social critique that can nevertheless avoid paternalism because the critique must actually be endorsed by the citizens concerned.

I consider normative thinking in the context of non-ideal conditions of mass democracy. Political theory, unlike moral theory, needs to take into account not only (deep) pluralism but also non-ideal conditions to take into account its feasibility. I borrow the idea of feasibility from Pablo Gilabert and Holly Lawford-Smith (2012). They treat such constraints as mass democracy and deep pluralism as soft constraints. They claim that a proposal is comparatively more feasible when it takes into account those constraints, but in a comparative and not in an absolute way. Soft constraints are crucial to feasibility in the comparative role. "We think economic, institutional and cultural (including religious) constraints are clear cases of soft constraints. They place limits on what people are comparatively more likely to do, but the limits are neither permanent nor absolute" (ibid., 813). Idealisations are unavoidable; rather, what we need to worry about is whether they are the right idealisations. I submit that without taking into account mass democracy and its place in a deliberative system we cannot talk about the right idealisation (List and Valentini, 2016: 545).

My paper "Activism in Deliberative Systems – An Insight from the Epistemic Injustice Approach" is an answer to the problem of feasibility of political theory. The right idealisation should take into account the structural conditions of mass democracy that make it very difficult for disenfranchised citizens to have any influence on decision-making processes. To make the feasibility of my normative thinking plausible, I needed to show that activism as a carrier of disenfranchised perspectives must use jarring rhetoric and have deliberative capacity, which would meet the conditions of democratic deliberation. I submit that it is not a right idealisation that abstracts from the pervasive structural problems of mass democracy, which makes it very hard to get activism's message across and thus become part of deliberation and democratic outcomes. This is because the epistemic context in which activism operates makes its message unintelligible and not worth engaging with. Given the power of rhetoric to reach across the deliberative system, the right idealisation needs to be able to both justify its use as the only way to cause friction in the epistemic system and make

it responsive. This non-ideal approach allows us to see why rhetoric is needed and how respect can mask ignorance and rejection.

5. The significance of equal respect in deliberative democracy theory

In this chapter, first, I will briefly present the general idea of equal respect, then I will show what the significance of equal respect for deliberative democracy theory is and what this conception requires in deliberative settings. The idea of equal respect is a major focus in this dissertation. This is because equal respect for persons is a moral foundation that imposes duties on citizens in democratic settings. It forms a moral basis for an idea of public reason that widens the scope of arguments valid in the public sphere. This way more citizens can participate in democratic deliberation on an equal footing. Furthermore, equal respect increases rationality. This is because not all ideas brought to the deliberative table can pass the test of reasonability given other people's preferences and interests. This makes it imperative for people to revise their own positions in light of new arguments. It also increases the legitimacy of the deliberative system because new claims to justice are more easily transferred from citizens, activists, through media to an empowered public sphere where they take part in decision-making processes.

Equal respect is a relation between a subject and an object in which the subject responds to the object from a certain perspective in an appropriate way.¹³ The subject of respect is always "a conscious rational being capable of recognising and acknowledging things, of self-consciously and intentionally responding to them, of having and expressing values with regard to them, and of being accountable for disrespecting or failing to respect them" (Dillon, 2016). The object to be respected should also possess certain qualities such as the ability to reason and to engage in reciprocal relationships, and the ability to be moved by moral consideration.

Paying respect has three elements: motivational, agential and behavioural. First, we respect someone not because we want to but because we have to. It is motivational because it is a recognition that someone demands our attention that limits our motivations. Second, it has an element of agency because respect demands that the subject judge that the object deserves some kind of response owing to some features of the object. Third, the behavioural element means that respect for someone demands some action such as restraint because of the recognition of the object's rightful claims.

¹³ This part of this chapter is largely based on Robin S. Dillon's entry in the *Stanford Encyclopedia of Philosophy*, "Respect" (Winter, 2016).

Four elements make respect subjective and objective at the same time. The response of the subject is constructed through her understanding of the object. However, respect is also object-generated and thus objective and universal. First, in trying to respond to the demand of the object we try to see the object in their own right. Second, it demands restraint of our attitudes and desires. Third, the reasons for respect must be the same as others have and thus they are objective. Fourth, respect is also universal, that is, if we respect somebody because of some feature then we have an obligation to respect other people who have the same feature.

The classic distinction concerning respect was introduced by Stephen L. Darwall (1977) who differentiated between recognition and appraisal respect. Appraisal respect refers to a person or her merits that can be seen in excellence of character. Recognition respect “consists in giving appropriate consideration or recognition to some features of its object in deliberating about what to do” (ibid., 38). This kind of respect includes respect for persons that all people are owed morally just because they are persons, regardless of social position, individual characteristics or achievements, or moral merit. This recognition respect features prominently in a political theory. In the literature on deliberative democracy theory, theorists use either the term “respect”, “recognition” or “equal consideration” to specify the relation between citizens in a political context. Respect for private autonomy is a precondition of this deliberation and hence any outcomes that do not respect it should be rejected. Private autonomy consists in a right to pursue one’s conception of the good freely in the private sphere; however, this right can be constrained by the law. This presupposes public autonomy since the legitimacy of the law demands that all the people affected by the law be present in deliberation. Only such a procedure guarantees that the outcomes will respect the private autonomy of the citizens.

Respect for public autonomy demands that we treat others as free and equal, that is, as reason-giving persons who have the right to justification since only norms that are justified for all affected are legitimate. In other words, respect for public autonomy means treating all citizens as authors of the laws they are subject to. Respect for public autonomy demands that reasons that ultimately justify a final decision are general and reciprocal, otherwise some persons will be excluded from deliberation and thus disrespected in their role as authors of the law. Since respect is a subjective and objective relation, respect for public autonomy demands role taking to avoid projecting one’s fears and desires onto others. This calls for

universality since collective deliberation must recognise and accommodate other perspectives. This demands careful attention and sometimes restraint for legitimate reasons in pursuing one's goals if they collide with others'.

The idea of equal respect is a challenge in a democratic setting. This is because equal respect should not only be limited to polite exchange of arguments but also should limit the acceptable democratic outcomes. Otherwise, whether citizens' interests or preferences are reflected in the outcomes is left only to chance. Stefan Rummens (2006) reconstructs the moral presuppositions of Habermas's discourse ethics indicating that Habermas is wrong in denying that his procedural model is devoid of any moral content (469). Habermas's discourse principle (D) specifies that just those action norms are valid with which all possibly affected persons could agree as participants in rational discourse. Rummens reconstructs this principle as a recognition of the moral autonomy of moral agents (*ibid.*, 470). Habermas specifies the moral principle (U) that valid norms should give equal consideration to everyone affected. Rummens reconstructs this principle as a recognition of everyone's individual autonomy. What is important is that Rummens claims that anything can come from a discourse since D shows us that we need to reach an agreement but does not tell us how (*ibid.*, 472). In other words, he claims that D presupposes U only if it holds morally significant presuppositions. In a modern context of deep pluralism, we must acknowledge the individual autonomy of the citizens. This respect for individual autonomy forms a substantive assumption of a moral deliberation. In a transformation from morality to a political context when we talk about private and public autonomy the same problem emerges, namely how to make sure in the face of deep pluralism that the discourse principle respects all citizens' private autonomy.¹⁴ Rummens answers by saying:

The discourse principle and the democratic principle refer to the recognition of the moral and public autonomy of individuals. Only the people involved have the authority to decide on the precise content of the norms with which they want to coordinate their actions. The criterion of "generalisability" or "equal consideration" refers to the fact that these action-guiding norms should give equal consideration to the values and interests of all concerned and, hence, maximally allow people to pursue the life of their own design. Thus, the impartiality of the moral perspective embodies the equal recognition of people's individual or private autonomy. 2007: 341

¹⁴ The difference between a moral and political context or individual or private autonomy boils down to the fact that private autonomy is constrained through law that is binding *de facto* (Rummens, 2006: 475).

In other words, in order for democratic deliberation to avoid the domination of minorities, a democratic procedure must include a substantive criterion of equal respect that forms a weak constraint on the outcomes of deliberation. The constraint means that the outcomes must embody equal respect for the private autonomy of all concerned in the deliberation. The intrinsic value of deliberation is not undermined since what such a substantive criterion requires and its meaning are produced during actual deliberation.

Respect for persons as being capable of moral reasoning and rationality means that we also need to respect their internal autonomy; that is to say, their beliefs, values and interests cannot be imposed but should be formed freely based on rational arguments. This opens the way for ideology critique but also guards against paternalism. Respect for internal autonomy demands that people form their opinions free from systemic distortion of preferences. However, the threat of paternalism is placated because any imposition would violate negative freedom and thus private autonomy. Moreover, it would violate public autonomy where everyone is respected as an equal participant in deliberation that must endorse its outcomes freely to be legitimate. Rostbøll drives our attention towards yet another object of respect, that is, respect for an equal discursive status (2008: 104). This is recognition of others as persons worth arguing with as reason givers and takers that can only be granted through participating in democratic deliberation. This respect for discursive status points to a systemic dimension of freedom that can be violated not because we are explicitly coerced not to do something, but because our contribution to democratic deliberation is rendered invalid, unacceptable and unintelligible for structural reasons. We are prevented from accessing a common discursive pool of reasons and thus rendered lacking credibility and invisible. This happens because some gain a systemic and institutionally accepted right to dominate others. An example of such domination is epistemic oppression when we are discriminated against in our capacity as knowers. Different dimensions of freedom presuppose and balance each other. Too much emphasis on internal freedom comes to the detriment of negative freedom (private autonomy) in the form of paternalism. Conversely, too much emphasis on negative freedom comes at the expense of internal freedom and public autonomy since the domain of what can be democratically decided becomes drastically limited.

The norm of equal respect features prominently within democratic theory. It is a moral norm that gives meaning to public reason and regulates relations between citizens.

Consequently, no political theory can dispense with some version of this norm. However, it is deliberative democracy theory that realises that in the face of deep pluralism it must be something more than polite exchange of arguments, which influences democratic outcomes only by chance. As I argue throughout this dissertation, the moral norm of equal respect must form a constraint on acceptable reasons put forward during deliberation. This makes sure that the private autonomy of all citizens is not compromised.

6. Free speech and public reason – why the marketplace of ideas is an inadequate model of a democratic public sphere

In this chapter, I am going to discuss Robert Post's theory of freedom and expression and how the foundations of his theory affect the normative thinking about public justification, political process and the wide public sphere. I argue that his model of free speech ultimately based on the marketplace of ideas is not an adequate response to the challenges of deep pluralism. Nevertheless, this critique is important because although deliberative democracy theory has offered its own justification of free speech, the critique of other competing views such as that proposed by Post has been scant. I will also argue that deliberative democracy can offer a richer account of free speech that can enhance participation, and provide a case for a context-transcending idea of equal respect and epistemic justification of a democratic deliberation. This makes it a better answer to the fact of deep pluralism.

Before I proceed, a preliminary clarification is in order. I have written two papers on Post's theory of free speech. Given that they concern the same theory, there is a certain overlap between these two. However, the first paper tries to take into account all the elements of Post's theory of free speech including the account of justification and how it contributes to the normative thinking behind the make-up of the public sphere. The second paper deals with how Post's normative thinking influences the make-up of the public sphere in detail. The main part of the first paper is devoted to the justificatory basis of his idea of free speech. This includes his account of political liberty, autonomy and public discourse as well as how it translates into his idea of a public sphere. The main part of the second paper starts with the justificatory basis of Post's theory of speech as well; however, it quickly proceeds to a more detailed account of how Post's justification of freedom of speech contributes to the normative thinking about the public sphere. The paper places an emphasis on what the public sphere sounds and looks like to make the point that the fact that there is an unconstrained domain for political speech carved out by the negative conception of freedom does not mean that this free speech can actually be exercised. This is because one can be prevented from speaking without actual interference from the state. The interference can come from other citizens that intimidate those who are not so powerful. This, coupled with the difficulty of politicisation of issues that do not lie in the domain of negative freedom, can question the efficacy of a political

process whose aim is to make all citizens feel that they are the authors of the laws they are subject to.

To begin with, I would like to explain the rationale behind my interest in an absolutist theory of free speech. Firstly, Post's account is very influential in terms of its justification of absolute freedom of political speech. Although European and American regimes of free speech are different and Post bases his account on the sociological legitimacy of popular support among Americans for the First Amendment as Post understands it, it is widely read in the European context (see, for example, Heinze, 2006). Furthermore, Post himself claims that American arrangements concerning freedom of speech are superior to those in Europe (2009: 136–137). Secondly, deliberative democracy has not been very actively engaged in debates about alternative understanding of freedom of speech. As a result, my critique from this standpoint is long overdue. Thirdly, the two papers I have written on Post's theory are not meant to be an intervention into the philosophy of law and its theory of freedom of speech as such. I am much more interested in what Post's theory of freedom of speech is founded on and how those normative foundations can tell us about public discourse, public justification, political process and a wide public sphere.

Free speech is of critical importance for deliberative democrats as it is a condition of possibility for free public deliberation. For theorists of the First Amendment such as Post it is most important to justify in what circumstances speech should and not should be regulated. Conversely, deliberative democracy is not only interested in constitutional guarantees of free speech but in the whole process of opinion formation that should be free beyond the guarantees of negative freedom. Consequently, deliberative democracy theory is concerned about social and economic conditions that are an obstacle to or conducive to free speech. It is concerned about whether deliberation actually shapes the policies and results in more rational democratic decisions. It is interested in whether it furthers the interests of minorities and transmits the difference across the deliberative system. It is important whether this difference is actually transferred onto the level of decision-making processes. While superficially Post attempts to make democracy more robust, which is also the aim of deliberative democrats, it is actually minimal in its scope. Where deliberative democracy's speech is holistic in its normative commitments, Post's theory displays a rupture between what he takes to be the case within political speech and in other domains in the name of the protection of free speech. It is most visible in the case of relational autonomy, which for Post

may be a more realistic way in which people are socialised than complete independence constrained only by negative freedom; however, for the purpose of protecting political speech this must be bracketed in order to get rid of symbolic harm that might be an obstacle to such protection (Williams, 2011: 614).

Since deliberative democracy theory is concerned about all the processes of opinion formation within a deliberative system, it looks at the wide public sphere, which is a pool of new perspectives that need to be represented and taken into account within democratic deliberation. To underline this emphasis on the wide public sphere and differentiate it from the mere focus on constitutional guarantees, Dryzek calls his approach to deliberative democracy a discursive democracy (Dryzek, 2000: 3).

Discursive democracy insists that democratic deliberation should be inclusive, authentic and consequential (Dryzek, 2000: 4–5). I will explain what this means, starting with the first feature of inclusivity. Inclusive deliberation specifies that all the interests and preferences of the people concerned should be included in deliberation. On reading the theory of deliberative democracy the norm of inclusivity cannot be exhausted by negative freedom that specifies the conditions in which the state can interfere with one's speech. This is because besides direct coercion there are other obstacles that prevent people from speaking or being heard. Bohman inspired by the writings of Amartya Sen has an idea of capability equality according to which in order to exercise one's own social freedom effectively citizens must have an actual opportunity to develop their own capabilities or skills that enable them to take part in deliberation (Bohman, 1997). He mentions such resources as education and socio-economic status. In the context of free speech, this raises the problem of effective speech of marginalised citizens vs empowered social groups that influence public discourse with their money. Drawing on Martha Nussbaum, Gelber proposes that some regulation of political speech can be justified by Nussbaum's capability approach where the capability to effectively use one's speech can be compromised by other people's hate speech (Gelber, 2010).

Democratic deliberation should also be authentic, that is, it should induce reflection in an uncoerced way. According to both the feminist conception of relational autonomy (Mackenzie and Stoljar, 2000) and the deliberative account of how citizens come to hold their interests and preferences, citizens are not atomised individuals. They are socially embedded. This means that they gather resources to exercise their freedom from mutual recognition, and if denied that, they cannot enjoy their equal status effectively. It also means that they do not

come to the public sphere with ready-made unchangeable preferences and interests but they form them in conversation with others. Given deep pluralism they owe each other equal respect that extends beyond reconciliation and accommodation of interests; rather, difference can be mediated, transmitted, and take part in deliberation if it is recognised as a difference and not a threat. It also undergoes democratic deliberation where give and take in arguments uncovers its epistemic value. All interests and preferences are open to critical scrutiny since they can be distorted by ideology that leads to domination and internal lack of freedom. One of the aims of deliberation is therefore better informed and more reasonable citizens.

The final feature of democratic deliberation is its consequentiality. This means that citizens must have a direct or indirect impact on actual democratic decisions. This can be broken into two components. Firstly, the aim of democratic deliberation should be epistemically better decisions, which is made possible by the epistemic structure of democratic deliberation and equal respect for each one included. Secondly, the decisions must reflect citizens' preferences and interests. There is an internal connection between the rationality of the process and diversity of opinion that is made possible by actual equality of all those affected.

It could be argued that given deliberative democracy theory's holistic approach to freedom of speech, it is not very well suited to the task of justifying the legal protection of political speech from interference by the state. Deliberative democrats may be so concerned about all the indirect ways freedom of speech may be compromised that they end up with a very minimal protection of political speech. However, deliberative democracy theory can justify protection of political speech, for example by recourse to self-government or to the right to be informed given the desirable epistemic properties of democratic deliberation. It can also justify regulation of free speech, for example by recourse to the capability approach described above or to equal respect. What is most important is that deliberative democrats do not specify in advance the contours of the protection of free speech within a given polity; rather, they leave it to actual democratic deliberation with a strong presumption of free political speech.

The rest of this chapter is devoted to presenting Post's theory of speech and its critique. Let us start with the ultimate basis of Post's idea of a preferred regime of free speech. He tries to justify it by recourse to an idea of political liberty; nevertheless, he seems to treat it as a given derived from the supposed sociological fact of national commitment to freedom of speech

(2011: 447). In other words, his stand against regulation is ultimately justified by his sociological claim and not by his reliance on a certain conception of political liberty (see also Baker, 2011: 518–519). This causes his account of freedom of speech to run into problems. To give an example, his account is supposed to enhance political participation and create conditions for a robust public sphere, which is connected to his preferred idea of a democracy that is participatory. However, sometimes the lack of regulation can contribute to actual lower participation. Limited access to the media because of a lack of money can result in a lower participation of disenfranchised citizens.

Post's justification of an unconstrained freedom of speech is based on collective self-government. This is because democracy is truly legitimate only if all the citizens can feel that they are the authors of the laws they come to obey. They are the authors if they exercise their freedom of speech in the public sphere. This boils down to being negatively free and formally equal. In other words, no one can interfere with the content of his or her speech and the manner in which this right is exercised. The central issue for every theory of free expression is the question of when citizens are afforded protection of their speech.

In Post's account, they are afforded this freedom when they are autonomous, and the question of when they are autonomous is answered by his idea of political liberty, which is when they are negatively free and equal. Citizens are negatively free and formally equal when they exercise their right to unconstrained political speech. As a result, a person cannot claim not to be autonomous because of others' indirect interference in her speech since by definition in matters of political speech she is autonomous. This causes claims to justice that challenge the idea of political autonomy based on negative freedom and equality to lack legitimacy. As long as one can express oneself freely without the state's interference, one can exercise freedom regardless of actual opportunity or symbolic violence coming from other citizens.

Post considers a robust public sphere based on self-government and partition one of the aims of his theory (Post, 2011). He believes that freeing freedom of speech from any constraints other than formal equality and negative freedom will create conditions for the greatest extent of self-government possible where citizens' free expression is minimally interfered with by the government. However, he realises that people, widely differing in almost everything, need something common to talk to each other about. Consequently, a minimal level of communality is necessary to mitigate the competitive conditions of the

marketplace of ideas. In other words, there must be some kind of relationship between citizens that will enable cooperation among them, which will prevent the majoritarian domination over minorities.

What, then, is a desirable relationship between citizens that the public sphere should be based on? According to Post, a healthy public sphere is a place where different cultures take part in democratic self-government in matters of common interest (1990: 627–628). They should be guided by “commonly accepted standards of meaning and evaluation” (ibid.: 634–6). What comes as a surprise in this picture is not only the fact that “matters of common interest” are taken for granted here as if this was only a descriptive term, but also that Post assumes any common standards between citizens. First, common interests can be taken descriptively, i.e. citizens will talk to each other if they have a common interest. However, to arrive at common interests is a difficult and demanding process. In other words, citizens need to make an effort to recognise that some people’s problems cannot be taken care of in the private sphere and instead must find their way into democratic deliberation. Consider feminism: for a very long time women’s problems were not up for democratic deliberation simply because they were not seen as a matter of justice by the prevailing meta-consensus about deliberation.

Second, Post might respond by saying that this problem can be taken care of by his idea of commonly accepted standards of meaning and evaluation. It is surprising to find such seemingly substantive requirements for the public sphere in Post’s account since he rejects demanding procedural accounts based on equal respect. However, he defines this commonality as citizens’ ability to engage in a critical interaction; otherwise, no problems would ever be solved. The demand for critical interaction can be purely pragmatic and comes from the cognitive capacity of all humans. In other words, human beings are able to come up with counterarguments when their position is critically challenged. However, it seems that given the fact of deep pluralism it is not enough for citizens to come up with reasons from their own perspectives. Rather, they also need to take others’ perspectives into account. Obviously, the second ability comes from the same source, that is, people’s ability to come up with reasons when they are challenged. However, taking others’ perspectives into account is more demanding, as citizens need to constrain their democratic self-government so that equal respect can be meaningful.

What are the consequences of such a regime of free speech for public justification, democratic deliberation and the public sphere? First, based on formal equality and negative freedom only, democratic self-government requires pure procedure. This means that citizens are only required to listen and respond to others' claims; however, there is no constraint on the content of reasons. The demand for equal respect is exhausted in responding politely to challenges from other participants; however, one relies only on one's idea of what reasonability requires.¹⁵ This is made more plausible by the fact that citizens enter public deliberation with fully formed interests and preferences and democratic deliberation has no epistemic element. The aim of the political process is not to question one's preferences, interests and the idea of reasonability but their accommodation within the contours of negative freedom and formal equality. In particular, the aim of the political process is not to make citizens' comprehensive doctrines more reasonable and rational but to make the law responsive to them as much as is possible given other people's freedom. This is in accordance with the fact that in Post's account the aim of free speech is not better-informed decisions and outcomes but self-government.

Post's idea of justification renders reasons that appeal to other conceptions of freedom, such as positive or internal ones, invalid. As a result, the procedural criteria on which freedom of expression is built become substantivised. This means that any outcome that violates a regime based on negative freedom and formal equality is rendered illegitimate and, as a result, acts as a filter. For example, since political autonomy is ascribed to citizens speaking in the public sphere, any critique of how autonomy is actually experienced in the absence of any opportunities to exercise it does not become an issue (Williams, 2011: 614). This has grave consequences for the sound and look of the public sphere. It becomes a dangerous and threatening space, which makes it hard for disenfranchised citizens to exercise their free speech rights. This is because one can be prevented from speaking both directly by the state, which Post's theory recognises, and indirectly through symbolic violence, which Post's theory neglects. Issues such as harm inflicted by others because of how they exercise their right to free speech do not arise, since other people cannot interfere with anyone's speech: everyone is negatively free and formally equal.

¹⁵ Although Post rejects equal respect as an element of his free speech theory, we can safely say that he would not mind the idea of procedural respect, which at the minimum means only making and responding to others' reasons.

Although my main focus is not the regulation of freedom of speech, the driving force behind Post's theory is the justification of the current regime of freedom of speech, which boils down to a fully neutral state and unconstrained political speech. Post may argue, as he did, that although autonomy is relational for the purposes of the protection of political speech we must assume that everyone is fully autonomous, otherwise political speech could not be protected. As a counterargument I would like to offer Corey Brettschneider's theory (2010) whose aim is also the protection of political speech, however he advocates a less neutral state for the sake of maintaining democratic polity. Unlike Post's theory, this one is not based on sociological legitimacy but rather on a clearly defined normative account of the moral legitimacy of the state. Brettschneider (2010) makes an argument in favour of a middle position between those like Waldron (2012), who reject the protection of hate speech as a group label, and neutralists like Post, who oppose any regulation of hate speech on the grounds that it would interfere with citizens' political autonomy and democratic self-government. Brettschneider rejects views that call for hate speech regulation since that would interfere with citizens' moral powers to develop and defend their political views. As such, any regulation violates the state's viewpoint neutrality, which is the cornerstone of the First Amendment. However, he equally rejects neutrality views that see no role of the state in interfering with political speech. This is because such views "fail to answer the challenge that hateful views pose to the values of freedom and equality essential to the legitimacy of the state" (2010: 1006). This paradox of freedom of speech can be resolved by placing it in a larger context of freedom of speech theory by which he means that if the neutrality of the state is justified by non-neutral values of freedom of equality, then the legitimate state should explain those values and attempt to persuade citizens to adopt them. Furthermore, a silent state would imply that it actually endorses the hateful views that it protects, which actually undermines the very existence and legitimacy of the liberal state. As a result, Brettschneider's state has a double expressive function to perform: (i) it protects all citizens' expressive power including hate speech, (ii) it expresses the reasons for the liberal rights that make free speech possible in the first place. Frank L. Michelman thus characterises Brettschneider's most original contribution to freedom of speech theory:

The assaulted ideal (of free and equal citizenship) is a crucial component of a minimal conception of political decency, on the stalwart public affirmation of which the society's members depend for the possibility of the

realization in their lives of a highly valued state of full autonomy. That is, I believe, the deepest argument planted by Corey Brettschneider in the pages of *State Speaks*. (2013: 1004)

In other words, according to Michelman, Brettschneider's contribution is that he actually justified in liberal terms a link between unregulated hate speech in the name of self-government protection and the harm that it does to the self-professed rationale of absolutist theories of free speech, which is the same self-government. Some theorists (e.g. Song, 2013: 1053) have also indicated that Brettschneider's most innovative contribution was that he tries to justify discrimination against social actors not adhering to the values of freedom and equality (based on the Rawlsian minimal account of justice) through the state's spending and taxing powers. Brettschneider does not solve all the problems connected with the neutrality of the state that I perceive as pressing, such as the issues of opportunity for expression, or the problem of participation being limited by the lack of regulation of the state (see Sunstein, 1992). However, he does offer a promising account of free speech that does recognise the problem of hate speech in the public sphere. It is not about regulation but a different basis that can justify the political community. It would be tempting to say that Post's theory could also go in this direction; nevertheless, his account does not really allow that. Firstly, he grounds absolute protection of free speech in the sociological legitimacy of the state and Brettschneider is not able to show that the state without his proposed expressive powers actually endangers this sociological legitimacy (Michelman, 2013: 992–993). Second, Post would certainly consider state taxing and spending in the service of the state's expressive power unjustified coercion. Moreover, even expressive power limited to education could constitute unlawful coercion since the state speaks in everyone's name, which violates Post's account of sociological legitimacy.

Justifying the state's expressive power is an attempt to maintain a political community based on basic rights including freedom of speech. However, there is also a normative case to be made for the kind of public reason that enables basic rights to be exercised. Democratic deliberation needs norms of reciprocity and generality in public justification. If they are to have any meaning at all, they must carry a substantive content of equal respect that would allow citizens to appeal effectively to the right to justification. Moreover, the processes of justification call for a critical attitude towards one's own interests and preferences because we owe others reasons that should be acceptable on reflection and everyone's knowledge is

not only situated but can also be distorted by ideology. Such a process of justification has a tendency to lead to substantively just outcomes because it becomes responsive to citizens' enlightened preferences and interests. The substantive idea of equal respect helps us to avoid paradoxes such as that there is no difference between a community that uses racist speech and one that does not. This makes the paradox of free speech according to which only when norms of civility and rationality are suspended may free and critical speech occur lose some force. The public sphere should not be treated as a competition of different self-interests. If self-interests were open to scrutiny, the public sphere would be a safer place and new claims for justice will be more easily politicised.

Post would treat such a more demanding account of critical interaction and justification as a perfectionist idea based either on Kantian or John Stuart Mill's idea of autonomy (Rostbøll, 2008: 130). The Kantian idea of autonomy has already been rejected by both John Rawls (1985: 246) and Charles Larmore (2008: 146) as perfectionist and metaphysical, and as such not fit for the political conception of liberalism. A doctrine is comprehensive when it includes evaluative ideals as well as ideals belonging to personal virtue or character. It is understood that Mill's autonomy applies quite explicitly to character building and as such cannot be expected to be endorsed by people who do not share a similar appreciation of a thus conceived character (Rostbøll, 2008: 130).

However, as Christian Rostbøll argues, the Kantian idea of autonomy correctly understood actually "supplies the reason why we should treat each other with equal respect and why it is wrong for liberalism to be sectarian" (2011: 343). He proposes treating Kantian autonomy not as a comprehensive doctrine, but as belonging to the standpoint of practical reasons, and as such regulates how we should treat others. Furthermore, as far as the supposed metaphysical understanding of Kantian autonomy is concerned, Rostbøll claims that as a practical concept it should be agnostic about what the ultimate source of normativity is, and as such it should not equate self-legislation with self-origination. This avoids the criticism of Kantian autonomy that it is not fit for today's democratic society rife with deep pluralism. On the contrary, thus understood autonomy combines reasons for respect for others regardless of the sources of normativity and their moral powers of self-legislation. At the same time, it provides reasons for self-restraint as, since autonomy is neither perfectionist nor metaphysical, it demands for others at least an instrumental self-reflection that would be other-regarding during democratic deliberation. This ties in nicely with the Habermasian idea of co-originality whose

core is “the idea of autonomy according to which human beings act as free subjects only insofar as [1] they obey just those laws they give themselves [2] in accordance with insights they have acquired intersubjectively” (Habermas, 1996: 445–6). In other words, citizens must make laws not only on reasons but on the best available reasons. The above justification of self-restraint based on autonomy understood in practical terms along with the Habermasian idea of co-originality form a powerful and demanding standard for public justification. However, the challenge is not only for Habermas but also for other accounts to save both the normative core of public justification and reciprocity in the name of equal respect for others, and deep pluralism in the name of self-legislation.

7. Why epistemic models need a concept of respect

This chapter deals with the challenge of deep pluralism. In particular, it uses religious disagreements as the example of such pluralism. There are two reasons for that. Firstly, religious arguments in the public sphere pose a challenge for a democratic theory. Secondly, those kinds of arguments are the paradigmatic example of deep pluralism. I am going to discuss two proposals for tackling this problem: one presented by Christopher Eberle and the other by James Bohman and Fabienne Peter. Eberle advocates conscientious engagement as a civility norm that will ensure that everyone's reasons are treated with respect. Bohman and Peter propose pure epistemic proceduralism based on the epistemic merits of ideal procedure. This will ensure that the diversity of perspectives taking part in deliberation will be respected and reflected in the democratic outcomes.

However, Eberle's attempt encounters normative problems because his idea of respect represented by conscientious engagement does not make much of a difference. This is because whether participants' interests and preferences are reflected in the outcomes is not secured by a strong enough moral motivation. Bohman and Peter's suggestion is only partly successful. It does emphasise the participants' perspectives as valuable epistemic input into deliberation. However, they base the epistemic dimension of real-life procedures on ideal procedure that does not contain any extra procedural element. This makes it normatively too weak to make an epistemic difference in the democratic outcomes.

I propose a democratic procedure that will help to solve the problem of deep pluralism. It consists of equal respect as a substantive element of the procedure. It forms a moral constraint on the democratic process. However, its exact meaning is determined in the course of the actual procedure. Equal respect calls for a version of public reason that sets a limit on what kinds of reasons can be used in the final justification of decisions if everyone's private autonomy is to be respected. It also demands that participants learn from others and revise their interests and preferences on reflection. This way the procedure is meaningfully epistemic. All those conditions form a democratic procedure that I call "epistemic proceduralism". Drawing on the example of religious disagreements I will show how this proposal can be used for solving or managing such disagreements. This is the reason that I start with Habermas's contribution to the discussion on religious reason in the public sphere.

Religion comes into the focus of Habermas's philosophy for a variety of reasons (2006: 1–4). Firstly, Habermas sees the relationship between religion and the liberal state as increasingly tense. Here he mentions not only religious fundamentalisms across the world, but also clashes between religious and secular citizens over such controversial issues as abortion, gay rights and family laws. However, it must be stressed that for him the problem lies on two sides: on the one hand, religious citizens have problems adjusting to liberal ethical plurality; on the other hand, religious terrorism or fundamentalism is the result of a rapid Western-style modernisation. Secondly, Habermas is worried about naturalism, which increasingly monopolises thinking about the human condition, and thus supersedes communicative freedom. This process creates a reductive understanding of human beings where the second-person perspective and the idea of purpose are lost and replaced by the objectifying gaze of a scientist as an observer.

Naturalism also slips into the minds of non-believers, which transforms secularism into a secularist position, or into “prescriptive secularism” to use Jeremy Waldron's phrase (2010: 14–15). According to Habermas:

In contrast to secular persons or non-believers, who remain agnostic towards religious claims to validity, those who are secularist strike like a polemical pose towards the public influence of religious doctrines. In their eyes religious doctrines are discredited because they are scientifically unfounded (Habermas: 2009).

Habermas instead proposes “open minds” towards religious doctrines because they have a lot to offer both in terms of moral insights and motivational power. For Habermas, banning religious arguments from the public sphere creates too great a cognitive burden on religious citizens who must split their identity between private religious and public secular. Since they are not able to provide secular reasons for the lack of “knowledge or imagination” (2006: 8) they are also excluded politically from the public sphere, which sometimes illegitimately forces them to endorse immoral choices: they are forced to come up with disingenuous reasons and endorse immoral decisions. In short, the concern is legitimacy, solidarity and premature reduction of the polyphony of voices by the state. Habermas comes up with the “institutional translation proviso”, which states that religious reasons must be “translated” in informal public sphere into secular reasons that have general accessibility or language shared by all, before they are used beyond the institutional threshold in the parliament, ministries,

administration and courts (2006: 9). This solution is supposed to ease the cognitive burden on the part of religious citizens.

What, then, is the valuable contribution of religion in the public sphere according to Habermas? Habermas sees institutional translation as a joint process of all citizens regardless of their comprehensive doctrine where learning processes occur and universal religious contributions are truly universalised in translation and deliberation. What Habermas observes in our colonised world is the loss of meaning and motivation, which, he argues, can be supplied by religion. He observes that we are greatly indebted to religion: he mentions the religious concepts of emancipation, autonomy, human rights and solidarity that were incorporated into secular philosophy (2006: 17). He claims that we cannot know if this process is definitely over. In moral discussions such as human cloning, religion can supply moral insights anew and in a more forceful way, which is now impossible to achieve through secular or philosophical means.

Habermas wants to appreciate religious contributions in the public sphere, however under the condition that they should be couched in sharable terms.

If they (religious citizens) want to convince the members of a largely secular society, they would in any case be well advised to present arguments that invoke not just their own moral intuitions, but also the moral intuitions of non-believers and the moral intuitions of those of other religious creeds (2009).

Religious citizens have the right to express their convictions provided that they understand themselves to be part of a civic community and accept the pluralism of faith, the authority of science and a secular constitution that is based on profane morality (2010). This, however, amounts to a kind of civic religion that has little to do with actual religions. We may accept that these are just normative conditions that religion needs to fulfil. However, given Habermas's lack of engagement with actual religious reasons that are presented in the public sphere, we may wonder whether Habermas, in striving to give an account of "good" religion, does a disservice both to religion and political liberalism. He seems to reduce religion to a universal value provider, which reduces the risk posed by religion to political liberalism given religion's specificity. The result is that Habermas pre-empted the conflict between religion and liberalism, which allows him to deal with valuable religious interventions, which only adds to the universality of political liberalism.

In the discussion that followed Habermas's contribution on religion, the focus was placed on the idea of translation, the cognitive burden of religious citizens and the rhetorical power of religion. James W. Boettcher (Boettcher, 2009: 228) and Maeve Cooke (2011: 481) complain that Habermas does not present us with any account of adequacy tests that would guarantee that the translation is successful and accurate. It is all the more important because it is ultimately on an individual subject that translation depends. Cristina Lafont is not satisfied with the translation proviso for yet another reason, namely, contrary to what Habermas thinks it does not make such a big difference. The translation proviso is taken just one level up onto the institutional one so religious citizens experience cognitive burden all the more severely because 1) they cannot make their political representative accountable and 2) they have to translate their religious convictions where they matter most (Lafont, 2007: 244–246). Lafont comes up with the idea of accountability that states that religious citizens do not have to make their arguments good; instead, what they must do is just engage secular reasons. This is very much like Cooke's solution where she stresses anti-authoritarian thinking on the part of religious citizens (2007: 232). In effect they both call for a redefinition of secularism since to them Habermas's proposal is not sensitive enough to the fact of pluralism.

It is interesting that not only do theorists fail to challenge Habermas's idea of religious citizens as passive and undifferentiated, but they even strengthen it. Lafont (2007), Boettcher (2009) and Andrea Baumeister (2011) understand religious citizens as living behind a wall that separates them from the public secular world. It is only sometimes that they enter it. All they are worried about is their cognitive burden. Contrary to their position, Habermas understands that religious minorities live in a secular world and that secular and religious reasons intermingle. If religious and secular reasons do intermingle, as I believe they do, in drawing the line between religion and the public sphere we must take into account the context in which those reasons are given. If we are considering the context where religion pervades background culture as in some predominantly Catholic countries, it has consequences for the status of religious reasons. As in the cases against gay marriages, translation of religious arguments into the language of harm does not have to be disingenuous; on the contrary, it can add motivation to secular arguments from social Darwinism,¹⁶ while being more palatable

¹⁶ The idea is that one can apply biological concepts to the design and understanding of society. In this case the supposed harms done to the society by homosexuals (homosexuals destroy family values and expose children to unnecessary suffering) combine with the idea that biologically there are two sexes who by nature must be heterosexual otherwise the human race will become extinct. These together can be developed into arguments

to secular citizens at the same time. In addition, such a translation represents an example of the ethics of citizenship because religious citizens are aware that arguments straight from scripture would not be equally convincing. Arguments defending religious groups against symbolic harm are convincing precisely because the background culture containing religious elements common to both secular and less secular citizens is homophobic.

My point here is not so much challenging Habermas or his critics. I would rather focus on the moral basis for the claims of translation accomplished by joint deliberation between not only religious and secular citizens, but also between any comprehensive doctrines and mainstream liberal thinking. Although the debate on religious reasons is very important for the idea of public justification, I do not think it solves the problem of deep pluralism. It does not pay enough attention to the fact of the different ideas of reasonability citizens hold. Citizens are not plainly authoritarian or discriminatory, which would make it easy for liberalism to declare their ideas uncivil and inadmissible in the public sphere. The problem is that citizens can actually possess some interpretation of what it means to treat others as free and equal; however, their particular interpretation does not endorse a liberal idea of self-restraint in the public sphere. In other words, deep pluralism makes for very different conceptions of reasonability, some of which rely on a crude understanding of liberal values reduced to formal equality and negative freedom. This in effect makes for a democratic process where the powerful and bigger (also in terms of demographics) win the competition. Think about Christopher Eberle's idea of political liberalism that holds others as free and equal; however, it rejects the justificatory liberalism idea of self-restraint as a perfectionist idea.¹⁷

Eberle's Agapic Pacifist has three main features:

First, she is led by what I shall call "the Agapic Argument" to affirm the proposition that waging war is always morally prohibited. Second, the Agapic Pacifist is not just "privately" against waging war and so unwilling to fight herself. Her convictions about the moral permissibility of waging war are no more and no less private than those of her ideological competitors in the just war and realist camps. Third, the Agapic Pacifist violates the DRR

against gay families and their rights (concerning reproduction and/or welfare). Those arguments can also be combined with neo-liberal arguments against the welfare system with their focus on the market and laissez-faire. As it turns out, the case against gay partnerships is a constellation of various reasons, only some of which are religious or quasi-religious and not even the most important ones at that.

¹⁷ Justificatory liberalism is based on public justification that states that "the exercise of political power must be justifiable to all those over whom it is exercised, where 'justifiable to . . .' X, Y, and Z means acceptable to each of X, Y, and Z assuming only some basic form of reasonableness, without X, Y, or Z having to give up the conflicting but reasonable religious or philosophical doctrines they espouse" (Lister, 2013: 316).

(Doctrine of Religious Restraint). Since the Agapic Argument is a crucial basis for her conviction that waging war is never morally permissible, as well as for any vote she might cast in support of Amendment 28, and since the Agapic Pacifist is unaware of any plausible secular rationale for that measure, she reasonably believes that her secular compatriots have what they regard as no reason at all to support Amendment 28 (2009: 153–154).

We might say that she violates the ideal of respect by relying ultimately on non-public reasons to coerce her fellow citizens into obedience, but Eberle rejects this interpretation. First of all, he rejects the idea that the Agapic Pacifist may disrespect her compatriots because she is opposed to war on account of respect for other people's lives. But it also seems that the content of the Agapic Pacifist's moral doctrine is supposed to do a greater job than Eberle is willing to admit. He claims, "Of all people, how could the Agapic Pacifist plausibly be regarded as disrespecting her compatriots? She might be rash, or foolhardy, or naïve, or cowardly, or fanatical. She is certainly misguided. But disrespectful of the worth of her compatriots? Incredible" (ibid.: 160). He suggests that it is enough to evaluate the content of a moral doctrine of a given citizen to ascertain whether he or she will respect his or her compatriots in the public sphere. It is the only way to understand that respect and authoritarianism can go hand in hand. Further, it also seems that although Eberle himself rejects this doctrine as unreasonable, part of the respect that this doctrine bestows on the Agapic Pacifist also comes from the apparent accessibility of this doctrine. Obviously, non-religious citizens cannot relate to the religious justification given by the Agapic Pacifist, but they do understand what it means to be unconditionally against war and so it could seem to them a good idea. This shows that sometimes citizens can give up on probing some ideas during deliberation because a given doctrine looks good and the fact that original justification is inaccessible does not really make any difference.

Eberle argues that respect requires an ideal of conscientious engagement that means responding to counterarguments and learning processes and providing reasons that fellow citizens can accept (2009: 167). However, the fact that the Agapic Pacifist is allowed to ultimately support the law only with non-public reasons hardly testifies to the learning process, the more so that even Eberle admits that her agenda is dangerous and misguided (ibid.: 157). I submit that the universal values of equality and freedom are fairly uncontroversial and so everything comes down to how one interprets those values in a

political process, which is the real problem in the Agapic Pacifist's attitude towards other fellow citizens. Eberle does entertain the possibility that:

She excludes her non-Christian compatriots from the common project of devising laws that all must obey. By virtue of what does the Agapic Pacifist's rationale exclude those outside her sect? To provide only the Agapic Argument is effectively for the Agapic Pacifist to provide many of her compatriots with no argument at all. Whether or not the Agapic Pacifist realises that, and however innocently she relies on her religious convictions, she supports a policy that many of her fellow citizens will find both deeply objectionable and utterly devoid of a plausible rationale. That is an exclusionary and therefore objectively disrespectful practice (ibid.: 173).

Eberle rejects this interpretation for two reasons: first, because every rational disagreement will create exclusions, including the fact that those who like the Agapic Pacifist have no prospect of achieving success, and second, inevitably some citizens will always feel excluded but this feeling is very subjective. It seems that Eberle thinks that the problem here is the fact of reasonable pluralism, which creates exclusions. For one, the Agapic Pacifist in her maximalist attitude seems to think that she can get everything she wants but the real issue here is the fact that reasonable pluralism does not have to create exclusions. Certainly, there is always someone who is in the minority; nevertheless, voting should be preceded by deliberation where if it is not possible to argue only with public reasons, then non-public reasons should be admitted to be judged according to how they affect other citizens and their ways of lives. Eberle thinks that religious reasons can, but do not have to, exclude non-religious citizens if we fulfil the ideal of conscientious engagement. However, I have shown that this kind of ideal allows the Agapic Pacifist to pursue a kind of moralised politics that is blind to the costs that her proposals would impose on other fellow citizens.

Eberle's case is not an easy one to tackle for justificatory liberals. Obviously, they may always say that to subject people to laws based on comprehensive doctrine means unjustified coercion and as such is disrespectful. Furthermore, also for pragmatic reasons, citizens like the Agapic Pacifist would prefer to live according to publicly justified laws so they would not have to live according to laws crafted, for example, by Satanists if they happen to be in the majority (Talissee's own example, 2012: 6–7). However, in my opinion, this rebuttal is only partly successful. For moral and epistemic reasons non-mainstream perspectives must be part of public deliberation. Even if the Agapic Pacifist cannot realise her aim in the public sphere, at least she needs to be given some kind of exemption from serving in the military to recognise

her pacifist attitude. However, in order to do that we need to seriously consider the weight of her religious justifications and make it part of the collective deliberation. In other words, we need an epistemic account of democracy to admit new perspectives into deliberation and monitor whether they are reflected in democratic outcomes through collective deliberation. The democratic process is not only about fairness but also about reaching decisions for right reasons where the right reasons should be a product of inclusive deliberation.

Within the deliberative democracy theory of a Habermasian strain, the consensus seems to be that democratic procedure has an epistemic value only if it follows as closely as possible the ideal procedure with its principles of generality and reciprocity. It is customary in the literature to distinguish between intrinsic and instrumental justifications of deliberative democracy. Intrinsic justification grounds deliberation in the fairness of a procedure, autonomy and political equality, whereas the instrumental justification of deliberation grounds deliberative democracy in terms of better epistemic outcomes. Explicit defenders of an epistemic conception of deliberative democracy offer a mixture of intrinsic and instrumental justification of democracy, and as such are open about their epistemic commitments. The epistemic conception of democracy is perfectly compatible with its instrumental justification (for example Bohman, 2006; Nino, 1996). In other words, one can justify deliberation in terms of both epistemic reliability and the intrinsic features of democratic procedure.

The epistemic conception based on an ideal procedure claims to propose a perfect marriage between epistemic and intrinsic values. For example, Bohman (2006), Peter (2007) and Nino (1996) propose some versions of such an approach. The common feature of those accounts is that the epistemic value of real-life deliberation is taken to stem from the epistemic features of ideal procedure whose intrinsic elements such as equal respect and political autonomy directly translate into its epistemic reliability. Ideal procedure allows the pooling of information, the detection of factual mistakes and biases, guarding against manipulation, and filtering unreasonable demands (Martí, 2006: 42–3). Furthermore, the procedural elements are supposed to form substantive constraints on what kinds of reasons citizens should offer in public justification. As a result, epistemic features of ideal procedure filter impartiality and substantive justice. What follows is that the more real-life procedure resembles its ideal counterpart, the more it is epistemically reliable.

The critique of epistemic accounts of deliberative democracy theory based on ideal procedure comes from at least two sources. Firstly, as I have already indicated (see footnote 7), Forst himself admits that an account based on ideal procedure would require a veto right for minorities if the majority wanted to impose some discriminatory laws simply on a minority. However, in real life, political minorities in fact do not possess any veto rights and therefore procedurally conceived respect becomes too weak. Secondly, a similar criticism has been voiced by David Estlund (2008: 173), who launches an attack not only on ideal procedure as an epistemic standard but also on all contractarian theories of justice. According to him, citizens in a counterfactual situation cannot address anonymous rejectability. They can only appeal to their own ideas of reasonability. As a result, an ideal procedure cannot prevent the majority from dominating minorities. The fact of deep pluralism calls for a strong moral basis of equal respect. This will obligate citizens to speak with each other, and reflect on their preferences and interests despite their differences. Furthermore, this norm of equal respect means that everyone is respected not only in the course of democratic procedure but also in democratic outcomes because it forms a weak constraint on the reasons used to constrain citizens' private autonomy. This is why an epistemic version of deliberative procedure is necessary.

In my third paper, I am trying to answer the question of what kind of democratic procedure is best suited to cope with the fact of deep pluralism. I stage the conflict between Estlund's epistemic proceduralism based on the qualified acceptability requirement (QAR) and Bohman's and Peter's pure epistemic proceduralism based ultimately on ideal procedure. The term "qualified" in the QAR means something like reasonable; however, Estlund does not want to use this word since it would involve him in too many debates on what constitutes reasonability. For his purpose, qualified means treating other people as free and equal, which includes an idea of restraint on the content of possible justifications. In other words, the QAR is a moral requirement that forms a moral constraint on a democratic procedure. Although Bohman (2006) and Peter (2007) claim that their account should be classified as a case of pure epistemic proceduralism, they actually advocate a form of epistemic proceduralism. This is because it is ultimately based on ideal procedure as a standard. As a result, pure epistemic proceduralism collapses into epistemic proceduralism and the discussion between Estlund on the one hand, and Bohman and Peter on the other, becomes about which of the two proposed standards is the best interpretation of what it means to treat people as free and equal.

Although Bohman and Peter appreciate citizens' perspectives as a source of epistemically valuable input, their account seems to suffer for reasons that I indicated in the case of Eberle's Agapic Pacifist. In other words, their account based on pure procedure cannot handle the fact of deep pluralism sufficiently. Obviously, they can claim that the Agapic Pacifist does not abide by liberal rules since she advocates her case based on reasons that are ultimately not non-sharable. However, two things are problematic for this interpretation. First, if we are to appreciate Bohman's and Peter's perspective, then we must always be prepared that sooner or later there will emerge perspectives that not only define reasonability in a non-liberal way, but the case may be that their untranslatable reasons will carry more weight than those that can be translated. As a result, we must have a normative basis for our claims of restraint, stronger than just an idea of ideal procedure that ultimately offers too weak an idea of respect.

For this reason, I am trying to make a case for a substantive procedural idea of equal respect that would hopefully produce better epistemic results. Thus, conceived respect in its substantive sense forms a weak moral constraint on a democratic process that makes all citizens consider other perspectives on their merits. The procedural, collective part is responsible for a back and forth of reason giving, where particular perspectives are either universalised or at least accommodated. This is a Habermasian idea of a co-originality of private and public autonomy epistemically understood (see also Rummens, 2007). Furthermore, Bohman and Peter need this kind of moral constraint to deliver on their epistemic promises.

Bohman's description of democratic deliberation is a very ambitious one. To illustrate Bohman's need for a more ambitious account of respect than he admits, let me give you his own example, which refers to a case in which the "Canadian Supreme Court expanded standards of justification to include aboriginal claims by extending legal recognition to the stories of the Gitksan people as legitimate evidence in land disputes" (2006: 184). Bohman claims that in the Canadian case the Gitksan people's perspectives were not only translated into the prevailing modes of justification and reasonability but, more strikingly, the case redefined what a liberal nation is and what its interests are. My question is: was this profound change possible only because the Gitksan people were allowed an equal political voice?

This is doubtful if we take into account how demanding the whole democratic process must have been given the fact of deep pluralism. Both parties coming to the negotiation table had not only different interests, but also different ideas of reasonability, justification and social

perspectives that grounded their claims. We should also bear in mind that the acceptability of reasons in the public sphere depends on a background culture of a given polity, so obviously the Gitksan people's arguments were not automatically translated into the "enlightened" Canadian liberalism. Rather, liberalism itself had to go through a painful process of universalisation, and, consequently, its redefinition. Given this, Bohman must have and implicitly does have an additional moral constraint of taking everyone's perspectives into consideration to make his epistemic claims plausible.

I also reject Estlund's moral constraint of the QAR. Estlund's epistemic proceduralism is a fair procedure that is supposed to have a modest tendency to track justice, as it must be acceptable to all qualified views that hold an account of the person as free and equal as true. As it turns out in Estlund's conversation (2009) with Christiano, the qualified criterion is a strictly moral device that in effect acts as a moral constraint on democratic decisions. This makes a lack of coercion a default and privileges coercion over omission and neglect. However, this has very important consequences for Estlund's framework since it makes certain issues very hard to politicise and thus filters out claims to justice, which points to discrimination arising from a lack of legislation and not from too much state interference.

Consider the following discussion between Christiano and Estlund about democratic impasse. Christiano (2009: 219) describes a disagreement between citizens who claim that jobs should only be given based on the actual qualifications of prospective employees and those who think that employers should be given complete freedom as to whom they should choose as their workers. If desert-based arguments should win, employers would be coerced by the state to hire those they do not wish to. If the employers win, desert-based proponents will be required to live on terms they reject: "Let us call this situation the deliberative impasse. Either one must impose on one person terms that she does not accept or one must require another to live under terms that he regards as fundamentally inadequate" (2008, 219–220). Christiano rejects the idea that the impasse can be resolved by appealing to some kind of baseline that would automatically choose one proposition over another in a non-arbitrary way since they are bound to be controversial. For example, choosing a principle of a minimal state that uses minimal coercion would not help, since either it advocates a controversial idea of justice or its being minimal with the use of coercion is dependent on the circumstances in which we live.

Estlund rejects the interpretation that there is any impasse in this example:

There is really no impasse of the kind Christiano describes in this case, since the supposedly twin impositions are crucially different: one is coercive imposition of a law on employers by the state, the other is not the coercive imposition of anything on Julie (Christiano's example) at all. Christiano anticipates this type of objection. He argues that it relies on privileging some non-coercive status quo. I don't accept that it does. The objection simply says that imposing is coercive and requiring is not. This doesn't depend on any claims about some minimally coercive condition (2009: 248).

It seems to me that this reply shows that Estlund has a very state-centred idea about coercion, which is basically a state that coerces by way of legislation. Consequently, this position filters out certain claims to justice that cannot be boiled down to a lack of interference. It is blind to the fact that some people can be discriminated against or coerced by a lack of legislation. In my opinion, my proposal balances the coercive and enabling power of the state.

8. Deliberative activism – why we need to think about deliberative limits to activism

This chapter presents the systemic turn within deliberative democracy and how to accommodate the emancipatory potential of activism within a normative commitment to collective generation of perspectives. In other words, activism should reconcile its highly rhetorical politics with deliberation whose aim is reflection on preferences and interests as well as their possible revisions in view of the common good. The recent systemic turn within deliberative democracy theory originated by Mansbridge (2012) and Dryzek (2009) appreciates the positive role of activism within the deliberative system. Activism can contribute its epistemic value and legitimacy and enhance equal respect. This should be coupled with certain systemic tests to ascertain whether given activist politics should be judged as a positive contribution to a deliberative system. Another recent development that appreciates activism's epistemic value is the epistemic injustice approach originated by Fricker (2007) that looks at the mechanisms of exclusions of citizens as knowledge providers.

The problem with the systemic turn is that it does not appreciate activism enough for its critical role in democratic politics. Furthermore, the systemic tests proposed by Dryzek, Mansbridge and Owen et al. (2015) are too unspecific to take into account the whole epistemic context that activism operates in. It seems that this kind of context can be provided by an epistemic injustice approach that is capable of analysing the mechanisms of injustice. However, it fails to see that all mechanisms of injustice are systemic and that we need systemic tools for redressing them.

I will argue that we should place more emphasis on the systemic mechanism of knowledge transmission that is rhetoric. That rhetoric needs to be used given the defective mechanisms of knowledge production. Tools developed by the epistemic injustice approach can analyse those mechanisms. This provides instrumental justification for the use of rhetoric in the public sphere. However, if activism is to redress those mechanisms it needs to gain discursive status, which is possible only through deliberation. This gives instrumental and intrinsic reasons for deliberative capacity. Intrinsic reason is provided by an idea of a discursive status, whereas the instrumental reason is provided by deliberative procedure that can reflect all the citizens' preferences and interests in democratic outcomes.

Systemic thinking about deliberative democracy has been around since Habermas published his book *Facts and Norms* (1996) in which he proposed his two-track model

consisting in the centre and the periphery, each having its own unique tasks. Later systemic ideas were proposed by John Parkinson (2006) and Carolyn M. Hendriks (2006). However, it is Mansbridge (1999; 2012) and Dryzek (2009) who have developed the most influential accounts of deliberative systems to date. Both accounts of a system appreciate the division of labour within modern democracies and emphasise the value of mass democracy. Their main difference lies in how they view the importance of liberal institutions within democracies. It seems that Mansbridge's account is best suited for liberal democracies since she takes liberal democratic institutions for granted and emphasises their indispensability. However, this is exactly where Dryzek sees the weakness of this account.

For Dryzek,

deliberative systems sketched by Mansbridge, Hendriks, and Parkinson are too tied to the institutional details of developed liberal democracies to be applicable in the comparative study of democratisation. We can imagine deliberative systems without, say, a legislature, or internally deliberative political parties, or designed forums, or elections. (2009, 1385).

In other words, his aim is to develop a conception of the deliberative system that would be suitable for transitional states or for states like China, which, while they may be authoritarian, allow for some level of deliberation. For Dryzek, different sites can contribute to the deliberative capacity of the system; consequently, there is no reason to "fixate" on any particular institution as a key to a healthy deliberative system. Dryzek's system (2009: 1385–6) should be composed of the public space, empowered space, transmission, accountability and decisiveness. The public space should feature a variety of viewpoints, whereas the empowered space, including legislature, a cabinet, constitutional court etc., should produce collective decisions. There must be a mechanism of transmission between the public space and the empowered space such as political campaigns as well as accountability of this space to the public space. Finally, decisiveness is "some means whereby these first four elements are consequential in influencing the content of collective decisions" (2009: 1386).

According to Mansbridge et al. (2012: 4), the deliberative system includes many differentiated but integrated sites such as formal institutions, informal networks, the media, organised advocacy groups, schools, foundations, private non-profit institutions, legislatures, executive agencies and the courts. The parts of the system should be integrated but to some

degree independently perform different functions. This way of looking at democratic deliberation has several advantages. First, it allows us to look at the system as a division of labour where sites with low or even negative deliberative value can nevertheless enhance inclusion and epistemic functions of the deliberative system. The non-deliberative attitude of some of the sites can be compensated for by other parts of the system that are deliberative. In this way, a systemic approach becomes an attempt to rehabilitate the value of activism and mass democracy in the public sphere. This is because mass democracy understood as mass participation in the formation of public opinion (Chambers, 2012), including activism and everyday talk (Mansbridge, 1999), can be released from excessive demands of ideal deliberation (for example exchange of only rational arguments, direct influence on decision-making processes) and become part of a deliberative system that participates in the division of labour. Secondly, a systemic approach enables us to spot structural deficiencies in the system such as a persistent lack of transmission of valuable input from one site of the system to the other. For example, minority voices can be disregarded by other sites because of what Mansbridge (2012: 23) calls “decoupling of the system’s elements”. In other words, we can judge some parts of the system such as parliamentary bodies as deliberative; however, the system as a whole can be found to have a low deliberative value because of its low level of integration.

I propose reading the recent systemic turn in deliberative democracy theory as an attempt to include activism within its normative scope. This reading of deliberative system theory does not exhaust its rationale, but for our purposes it is useful to see it as a development that wants to both appreciate activism and find ways to contain its dangers. The systemic turn recognises the possible exclusionary potential of deliberation and the supposed lack of legitimising force of mini publics and other structured forums. This means that there is a need to think about democracy in systemic terms where different sites including activism have their proper place. In other words, although there are sites that do not meet the standards of deliberation or even violate them, they still perform a very important function that can contribute inclusion, legitimacy and epistemic value to the system, so that other more deliberative sites can use their input, for example for policymaking. This idea is based on a division of labour in a deliberative system. Some sites are in principle more deliberative whereas other sites are more contestatory.

However, there has always been a tension between activism and deliberative democracy. Iris Marion Young's 2001 paper *Activist Challenges to Deliberative Democracy* was the first to offer two ideal and mutually exclusive types: the activist and the deliberative democrat. They both try to put an end to the existing injustice; however, they have different conceptions of a social change. To put it crudely, the deliberative democrat believes in the rational exchange of reasons, which should have a context-transcending power, whereas the activist treats deliberation as collaborating with the system and instead opts for direct actions such as demonstrations, subversive language and civil disobedience. However, Young herself already complicates the mutually exclusive relationship between activism and deliberation. She admits that 1) activism is not by nature hostile to deliberation and that 2) there is an exception to a rationalistic bias of deliberative democracy in the theory of James Bohman (2000), who notes the pernicious effects of ideology on the rationality of deliberation.

The possible valuable input of activism for deliberation on the one hand, and the lack of inclusiveness that can skew deliberation on the other, spurred a number of contributions in the 2000s. To mention but a few, John Dryzek (2000: 74) argues that in order to admit the full range of perspectives into the system, there is a need to expand what counts as an acceptable contribution to deliberation to include, for example, testimony, storytelling and greeting. Moreover, the fact of deep pluralism calls for recognition of the role of rhetoric in deliberation, which has the power to reach across different frames of reference. Archon Fung claims (2005) that deliberative democrats need to have an account of what to do when deliberation cannot be improved solely by deliberative means. As a result, he comes up with a political ethics that offers the guiding norms for deliberative democrats who must resort to non-deliberative means to open up the deliberative process. William Smith (2004) attempts to justify the activist politics of civil disobedience by appealing to deliberative norms: such politics provides access to information, exposes manipulation and enhances inclusion. Those examples are meant to illustrate a possible cooperation between deliberative democrats and activism as well as mutual overlap: deliberative democracy recognises the possible exclusionary effects of deliberation that nevertheless can be overcome; activism recognises the proper place of deliberation but also opposes deliberative blackmail that states that if there is an exchange of rational arguments, the process must be just.

Both Dryzek and Mansbridge realise that there is a need for systemic tests of how to judge activism's contributions to the system to avoid the charge of functionalism according to which

anything that happens can in principle contribute something valuable to the system. Otherwise, there are no criteria according to which deliberative, weakly deliberative and non-deliberative contributions actually enhance deliberative systems. The formative paper for the systemic turn by Mansbridge (2012: 11–12) proposes that activism and partisanship should be judged according to how they contribute to the deliberative system's capacity to perform its three functions, which are enhancing mutual respect, legitimacy and epistemic value. Dryzek differentiates between categorical and systemic tests that can be used to evaluate activism's contribution to the deliberative system. The categorical test looks at the quality of the contribution in isolation and assesses the extent to which it meets the conditions of "communications that are non-coercive and capable of inducing reflection on the part of the audience" (2010: 9). To this he adds a condition of universalisation: "When claims are made on behalf of some specific interests, they (should) be linked to some more general principles" (ibid., 9). The categorical test is, however, only partly useful since any act of communication takes place in a context, and as a result, it should also be assessed from the systemic point of view. The systemic test releases activism from categorical requirements to a certain extent since, as Dryzek claims, not only are there situations in which activism's non-deliberative actions can be justified by, for example, an unresponsive context, but also the systemic test should actually take precedence over the categorical one.

The first major critiques of the systemic turn within deliberative democracy have come from David Owen and Graham Smith. Their critique of activism (2015) centres around the normative weakness of the systemic tests that Mansbridge and Dryzek propose. Mansbridge's three functions of deliberative systems are not only very vague to employ as good principles, but also she does not provide any guidelines about how to judge the possible trade-offs between them. Dryzek's account actually encourages unequal distribution of deliberative capacity, for example when he judges the far right's contribution to the deliberative system in Australia favourably, not only as a symptom of underlying problems but also because it mobilises the deliberative forces on a systemic level (2010: 16). This invites the charge of treating disenfranchised citizens as ends for a greater deliberative good, since the far right reiterates the epistemic and hermeneutic injustice.

The final charge is that if activism's role as a provider of perspectives is so appreciated without normatively strong systemic tests, which diminishes the role of deliberation, then taken to its logical limit, non-deliberative activism could actually functionally replace

deliberation altogether. This would result in a system where no deliberation is necessary; perspectives would be generated non-deliberatively and there would be no need for deliberation between competing camps. As a result, the role of politics would be limited to being responsive to non-deliberatively generated perspectives in decision-making processes. This conclusion is however unpalatable for normative commitments of deliberative democracy theory with its emphasis on collectively and deliberatively generated perspectives and the transformative potential of this process.

Owen and Smith's solution to the problem of systemic tests does not succeed, either. According to them, the public sphere should be divided into democratic deliberation and the broader discursive system, where the latter might be seen as the "scaffolding or support for deliberation" (2015: 229), in order to avoid the threat of functionalism that is present in Mansbridge and Dryzek's accounts. In their review paper, they define democratic deliberation as "political talk" that involves taking what we term a "deliberative stance": "a relation to others as equals engaged in the mutual exchange of reasons oriented as if to reaching a shared practical judgement" (2015: 229). The broader discursive system is comprised of non-deliberative acts that are judged according to whether they enhance or diminish the deliberative stance of citizens. However, they do not take into account the difficulty of reaching a shared practical judgement within a deliberative system that abounds in deep pluralism and structural inequalities. In other words, they do not ask the question of how to reconcile the normative requirements of deliberation, on the one hand, and the need for feeding new perspectives into deliberation in difficult conditions of mass democracy, on the other. Instead, they externalise everything that does not fit their idea of deliberation as a discursive context. My point is that if deliberative democracy is about inclusion, and inclusion is always a fragile matter, then we need sources of new perspectives that are deliberative, yet contestatory enough to make a difference. This calls for appreciation of the critical function of activism as well as the need to come up with normative conditions for activism, which would be conducive to deliberative generation of perspectives. However, Owen and Smith's tool of deliberative stance turns into an instrument for locating the instances that meet their ideal requirements instead of giving some guidance about how to balance deliberation and contestation.

In the paper, I am using mainly Mansbridge's account of the deliberative system for a number of reasons. First, I am writing about activism in a liberal society, whereas Dryzek's

account is better suited to transitional or non-liberal states. Second, the charges against functionalism, unequal distribution of respect and vague tests apply to them both. Since they both value collective generation of perspectives and remain within the same paradigm of deliberative democracy theory, my solution applies to both. Finally, I do not think Mansbridge would have anything against Dryzek's account; rather, his proposal can be viewed as one more realisation of the logic of the deliberative capacity of the system.

The fundamental problem with the systemic turn as it stands right now is that its proponents do not propose any mechanism of knowledge transmission from mass democracy including activism to other sites of the system. We do not know how it is possible for new information to be taken up and enter deliberation within institutions, the media and among citizens. If there is no mechanism proposed and everything can in principle become a contribution to the system, then it seems that new information is simply picked up by other parts of the system. This, however, is misleading. Firstly, activism's politics is very often met with outrage or complete indifference, or simply rejected. Sometimes it is because activism uses too harsh a rhetoric, sometimes the audience of activism fails to show its deliberative capacity because they are not able to think outside their own world view. However, given that we do not analyse the obstacles to successful transmission of new knowledge, we do not really know why rhetoric is needed in a deliberative system, let alone how much rhetoric. Secondly, without the analysis of the context in which activism operates, we tend to see activism as the only culprit if new information is not transmitted and the deliberative failings of the media, institutions and citizens are easily ignored.

Activism contributes new perspectives to the system and as such has a very important critical role in democracy. This positive role of activism can be best appreciated within democracy that is systemically conceived. Due to the fact that activism produces new knowledge in the system, we should also look at democracy as a system of knowledge production where the question of how it is possible for this knowledge to be successfully transmitted needs to be tackled. The mechanism that enables knowledge produced by activism to be transmitted is rhetoric. The aim is to shake up the epistemic system from one state that is unresponsive to new perspectives to a different state that is more open to them. Given the resilience of the system, by which I mean how much disturbance an epistemic system can take before it changes, sometimes very violent rhetoric is called for for epistemic reasons.

In order to assess the epistemic context in which activism operates, there is a need to use some of the analytical tools developed by the epistemic oppression approach. This is a non-ideal theory originated by Miranda Fricker (2007) that looks at all the ways in which a person can be wronged in their capacity as a knower. It analyses all the pernicious mechanisms in which citizens' or activism's perspectives may be ignored, dismissed or rejected for seemingly rational and/or reasonable reasons only because some claims to justice are outside the purview of the majority's ways of constructing knowledge as well as what is knowledge and what is not. In other words, this is a look at the processes of knowledge production imbued in power relations. Fricker differentiates between testimonial and hermeneutic injustice (2007: 4). The former points to epistemic injustice that occurs because a person is ascribed a credibility deficit unjustifiably because of the prejudice of the hearer. Credibility can be defined as the quality of trustworthiness of a person as an informant. This can happen, for example, when medical staff dismiss patients' problems only because they do not fit the preconceived notions of how a "good patient" should behave. Hermeneutic injustice points to instances where epistemic oppression occurs because a person does not have the language to express the suffering that she is subject to. However, as I also show in my paper on activism, hermeneutic injustice can occur even if there is a language that can be used to express epistemic injustice. The language can be so marginalised that the majority fail to understand it and respond to it on their own terms. A version of this scenario can occur if there is a language to be used to bring attention to one's suffering; however, it is not picked up because those that could use it speak the language of the oppressors. This is the case of pro-choice groups in Poland, which is a predominantly Catholic country. The language of women's rights is marginalised. Significantly, some women who do have an abortion do not think that this is something to be regulated by the state. On the contrary, they uphold the taboo surrounding it.

One of the criticism against the epistemic injustice approach as it was originated by Fricker is that it relies too much on virtue ethics and accordingly comes up with very individual based responses to systemic problems. (see for example Bohman, 2012; Anderson, 2012; Langton, 2010) However, for example Jose Medina (2011) tries to give the idea of credibility deficit and credibility excess (unjustified ascription of too much credibility) a more systemic reading. What he claims is that the idea of credibility is a comparative phenomenon, meaning that the credibility of one social position is assessed against the other. In other words, the credibility

access occurs at the expense of credibility deficits and creates the systemic effects for both. They both contribute to a kind of social imaginary that excludes certain persons from participating in credibility construction on an equal footing. This is a very important move because it shows that the epistemic approach itself has resources to give at all instances of epistemic oppression, including epistemic and hermeneutic ones, a systemic reading and possibly systemic remedies. Many theorists have indicated that the epistemic approach relies too much on virtue ethics and accordingly comes up with very individual-based responses to systemic problems (see, for example, Bohman, 2012; Anderson, 2012; Langton, 2010).

The tools developed by the epistemic oppression approach give us a richer account of what epistemic context activism operates in. This in turn allows us to appreciate the use of rhetoric in cases where deliberation is not yet possible because activism's contribution is met with hostility. The systemic dimension of epistemic oppression shows us that activism does not have to be prevented from speaking for new information to be transmitted to other parts of the system. Rather, because of social imaginary and the effects of credibility ascription its message fails to have any influence. It is the task of rhetoric to broaden and change the social imaginary by appealing to emotions. This enhances empathy, which hopefully prepares the ground for a more rational and reasonable discussion in the longer perspective. The point of the epistemic oppression approach is not only that it helps to justify using rhetoric, but also that it draws our attention to the perpetrators of epistemic oppression. Citizens, the media and the institutions should be held responsible for their own ignorance. This is something that is absent in Owen and Smith's solution to the problem of activism, where it is judged according to how much it enhances or diminishes the deliberative capacity of the system. However, the extent of deliberative capacity on the part of citizens is missing. Gloria Origgi writes that credibility excess and credibility deficits depend on the epistemic trust that one has for other people's inputs in deliberation. Citizens have many different ways at their disposal to ascertain whether their trust is warranted. Those mechanisms include internalised social norms, reputational cues, moral commitments, emotional reactions, inferences about others' reliability and others. Most importantly, we take responsibility for our allocations of credibility if we assume a vigilant position, that is, a critical stance towards our own ways of checking credibility and towards what other people say. Failing that, we are responsible for active ignorance, that is, "recalcitrant, self-protecting ignorance that builds around itself an entire system of resistances" (2012: 228). This seems to be the case for mechanisms that uphold

abortion as a taboo both in formal and informal spaces of public opinion formation within the public sphere. Furthermore, given the analysis of all the defective ways knowledge is produced in the deliberative system, activism's politics does not seem just a power grab but a claim for equal respect that can be gained only systemically.

What does deliberative democracy theory gain from an epistemic oppression approach? Firstly, it gains new knowledge about different ways that justice can be compromised. This is also a normative insight since, given that the epistemic system is hostile to any reinterpretation of what reasonability requires, rhetoric can be a powerful tool for redressing injustice. Secondly, it allows activism's politics to be seen not as a grab for power but a plea for equal respect that deserves attention. Thirdly, we can see activism as an attempt to systemically correct the failing of the deliberative system that cannot be addressed simply by more deliberation.

I propose that an activism that performs its role best within a deliberative system is the one that combines the jarring rhetoric and deliberative capacity both adjusted to a state of a given epistemic system. Looking at activism from the standpoint of deliberative democracy, activism that wants to transmit its message across to other sites of the system must also be open to challenges to its own position. This is because one cannot force anybody to agree and because knowledge production is a common practice where errors should be found and corrected. If we look at activism and epistemic oppression from the standpoint of deliberative democracy, we can pinpoint what is actually disrespected when people are epistemically oppressed. What is disrespected is the discursive status of citizens who are not treated as worthy of exchanging reasons with on an equal footing. This dimension of freedom points to its systemic dimension that goes beyond the agency of single individuals. In other words, deliberative democracy theory allows us to look at all instances of epistemic oppression as a systemic phenomenon because what makes it possible is a normative power granted and backed by the society of some to oppress others in the name of rationality and reasonability. Deliberative democracy gives activism intrinsic and instrumental reasons to display deliberative capacity, that is, willingness to deliberate. Firstly, discursive status can be gained only through deliberation because there is no other way to construct one's interests and references with the view to the common good. If activism enters deliberation, the assessment of credibility becomes more just and discursive status is gained. Secondly, because of the epistemic properties of deliberation, that is, the very force of the argument should win and not the social power

behind it, deliberation corrects for activism's group thinking and the situated, i.e. fragmented, knowledge that they produce. Moreover, the degree of the deliberative capacity is relative to the state of the epistemic system. In other words, activism must assess how strong rhetoric is necessary and how much deliberative capacity is possible given the epistemic system it operates in. The tools provided by epistemic oppression approach coupled with ideal account of deliberative democracy theory allow us to give more substance to highly abstract ways Mansbridge writes about the tradeoffs between epistemic value and equal respect or Dryzek's account of rhetoric.

9. Overview of the papers

Article 1. Robert Post's Theory of Freedom of Speech: A Critique of the Reductive Conception of Political Liberty

The aim of the paper is to examine Robert Post's absolutist theory of free speech from the standpoint of deliberative democracy theory to see whether it is able to create a robust public sphere. A robust public sphere allows all citizens to feel that they are the authors of the laws they are subject to. Additionally, this paper not only clarifies the normative conditions for public deliberation but also fills the gap by evaluating critically a competing account of freedom of speech, which has been disregarded in deliberative democracy theory.

I start with a critique of Post's methodology by pointing out that instead of having a clear normative programme, he relies on sociological legitimacy to explicate national commitment to absolute freedom of speech. Moreover, by supposedly speaking for the nation, Post obliterates the need for any critique of the existing regime of free speech. Post rejects justifications of free speech based on personal autonomy and the marketplace of ideas. He does this to establish a case for the absolutist justification of free speech, one that does not involve any civility norms nor any conflicts of rights. In his opinion, personal autonomy is not a good justification of free speech since it does not really help when different claims collide. However, it could be pointed out that the boundary between the private and public speech that his theory depends on can be as messy as adjudicating between different claims of personal autonomy. Even though Post does admit that this boundary is normative, I argue that dispensing with personal autonomy altogether means that certain issues become hard to politicise so that they could be protected by the First Amendment. For example, the film *Brokeback Mountain* could be banned from public cinemas but allowed to be watched only in the privacy of one's home. Post also rejects the marketplace of ideas as the justification of freedom of speech, since according to him this metaphor calls for a certain degree of regulation. However, this is odd given the national understanding of this metaphor in the American jurisprudence.

Post's theory of free speech is based on self-governance that is instrumental for citizens to experience their authorship of the laws they are subject to. This self-governance can be exercised effectively via free speech that is unconstrained in the name of citizens' autonomy and understood in political terms. In other words, citizens can use their freedom of speech if

they are negatively free and formally equal in the public sphere. I call this kind of understanding of political autonomy “political liberty” after Rainer Forst (2005). Post claims that citizens’ speech is afforded protection when they are speaking from within the public sphere, i.e. when they are fully free and equal. However, it can be argued that since when one is autonomous is indicated by the relevant conception of autonomy, the justification of protection becomes circular. As a result, the relevant conception of autonomy filters out claims to free speech, which would normally enhance participation, the self-professed aim of Post’s theory.

Post denies (1990: 641–642) that free speech has any purpose besides self-government, since otherwise that would impose some constraints on free expression. In other words, the problems of opportunity or how autonomy is really experienced in the public sphere do not arise. Although Post does admit that autonomy can be compromised in the public sphere, he claims that citizenship requires the assumption of political autonomy; as a result, we should take it for granted. Dismissing the ideas of relational autonomy and accepting its static account means that citizens are automatically ascribed political liberty, and as a result the level of autonomy is immune from criticism. However, such an account has its merits. No balancing is necessary and making autonomy an off and on value means that there is no question of civility norms or harm.

This one-dimensional account of political liberty has its limitations. It creates problems of politicisation, and filters out claims to justice that fall outside the limits of interference by the state. Furthermore, Post does not have any resources to constitute a political community, where citizens not only have the right to speak but also reasonable expectations to be heard. However, for Post, democratic justification is possible because of critical interaction between citizens; nevertheless, the normative grounds for this critical interaction are not clear. His account of moral autonomy is reduced only to negative freedom and formal equality, which are not enough to make critical interaction a guiding principle for public justification. Furthermore, his procedural idea of democratic deliberation does not have any resources to judge the outcomes according to whether all citizens’ perspectives are given equal consideration.

I argue that Rainer Forst’s idea of public justification is able to constitute a political community that will enable everyone to be the authors of the laws they are subject to. We need procedural rules of generality and reciprocity that will enable a critical attitude towards

one's convictions. Post does value critical interaction; however, his minimal normative requirements are too weak to allow it. Post perceives a paradox between unconstrained freedom of speech that transcends the community norms and the norms of critical interaction that constrain this very same speech. However, for the sake of self-government he opts for a radical appreciation of unconstrained speech. But this has the consequence of an inability to differentiate between, say, a racist speech and a universalising speech. I argue that we could distinguish between the progressive speech and discriminatory speech based on generality and reciprocity. In this way, we could distinguish universal norms from those that are undemocratic and immoral, which would make Post's paradox lose its strength to some extent.

Article 2. Free Speech and the Public Sphere in Robert Post's Theory of Freedom of Expression

The aim of this paper is to clearly evaluate the normative consequences of Robert Post's theory for the public sphere. My claim is that his theory has consequences both for the structure of public deliberation and the make-up of the public sphere.

I start with an overview of his idea of political autonomy and democratic justification. He rejects both justifications based on the marketplace of ideas and personal autonomy. This is because personal autonomy does not protect political speech enough and the marketplace of ideas calls for some kind of regulation to effect rational discourse. Ultimately, he bases his account on self-government that is exercised freely if all the citizens speaking from within the public sphere are ascribed negative freedom and formal equality.

I do believe that such an account of political liberty has its merits since it offers absolute protection of political speech where no balancing is necessary since the harm and interests of others disappear. As a result, Post's idea of public justification amounts to a case of pure proceduralism; however, negative freedom and formal equality, which are prerequisites for exercising free expression, become substantivised. Consequently, he offers a detached idea of political liberty where political equality is severed very sharply from substantive equality. This in turn makes substantive claims to justice invisible. Post reduces the role of democratic deliberation, which makes politicisation difficult. In other words, it is hard to forge a viable public community since personal autonomy is ignored.

Post downplays the inequalities that have a bearing on how some citizens experience their political liberty, not only because of his normative convictions but also because of his pragmatism. Due to a lack of any mechanism for restricting or balancing speech, he must ultimately rely on the marketplace of ideas for the best ideas to prevail. Normatively speaking, his description of public discourse and legitimacy is strikingly similar to that of deliberative democrats since he talks about reconciliation between personal and collective autonomy and procedural legitimacy. However, the difference lies in the fact that deliberative theory places great emphasis on the transformation of preferences; however, Post does not have any recourse to argue for this since he does not have any ideal presuppositions such as reciprocity and generality, or equal respect, to effect these transformations. I claim he is incoherent here since he wants to only have politics to decide without any extra democratic constraints,

however he himself in effect substantivises procedural elements, which are negative freedom and formal equality.

I argue that Post has an ambiguous relationship with the Habermasian account of public discourse. On the one hand, he uses his earlier procedural definition of discourse, but is not interested in his key later ideas of co-originality embodied in democratic discourse probably because that would be too thick a conception for his theory. As a result, I reject Katharine Gelber's patchwork methodology (2010) of linking Post and Habermas with Nussbaum's capability theory to make a case for regulation of hate speech. This is because Post's theory cannot be combined with any regulation in a coherent way.

The last question that I tackle is the nature of the political process that enables Post's regime of free speech. This lack of regulation of speech is not a result of joint deliberation but some kind of natural right exempt from any political process. Sunstein claims (1992: 269) that it is a very political process that has given rise to the existing regime of freedom of speech. However, this kind of construction means that more speech is always good and more regulation is always bad, which is not the case. An example of this approach is his argument of a slippery slope. According to this argument, if we start regulating freedom of speech, we will end up limiting too much. However, again it abstracts from the political process that makes the law. After all, it is the citizens who make the laws, and the threat of spillover of regulation should make legislation create laws that will prevent this.

Article 3. On Democratic Deliberation: Epistemically Better Outcomes and Equal Respect

The paper deals with the problem of deep pluralism and a democratic procedure that would best answer its challenge. I argue that faced with the choice between pure proceduralism and correctness theory we should go beyond, towards a version of democratic procedure constrained by a substantive procedural idea of equal respect. Such a standard will make sure that all the perspectives are given equal consideration in the process of collective deliberation, which will hopefully increase the rationality of democratic outcomes. In the paper, I focus on James Bohman's (2006) and Fabienne Peter's (2007) pure epistemic proceduralism and Estlund's epistemic proceduralism (2008), which claim to have an epistemic answer to the problem of deep pluralism. My goal is to argue that neither of those two approaches are satisfactory, and as a result, I propose my own version of epistemic proceduralism based on an epistemic reading of the Habermasian idea of co-originality.

I start by clearing up the debate between Bohman's and Peter's pure epistemic proceduralism and Estlund's epistemic proceduralism. I argue that contrary to what Bohman and Peter claim, they do not offer a pure epistemic account of democratic procedure. This is because they do have a standard of ideal procedure, which makes their account collapse into a case of epistemic proceduralism. This changes the debate between the two accounts from the one about whether we need any substantive standard imposed on democratic procedure to the one about what kind of standard serves the purpose of ensuring that all the perspectives are better given equal consideration.

Later in the paper, I try to counter a possible criticism from Bohman and Peter that although their theory is based on epistemic proceduralism and ideal procedure, this may be enough to ensure that all the perspectives are taken into consideration. Arguing that ideal procedure is not enough to ensure that, I use Eberle's example of the Agapic Pacifist, who is allowed to advocate and vote, based on her religious arguments, provided that she has exhausted the demands of conscientious engagement. In other words, if she responded to all the criticism but failed to be convinced by secular arguments, she could go ahead and advocate her position based on her comprehensive doctrine. I argue that the real problem is not that she uses religious justification, which does not square with justificatory liberalism. In my opinion, there may always be an untranslatable element in people's comprehensive views, and given that, although citizens can understand public arguments, very often it is the comprehensive arguments that are more convincing to them. As a result, we need a stronger basis for restraint

than ideal procedure. Moreover, ideal procedure is not demanding enough to answer the problem of deep pluralism since it demands a veto right to prevent some citizens from being dominated by mainstream ideas of reasonability. However, a veto right is not viable in real democracies.

I propose a moral standard of equal respect as a substantive procedural constraint that enables the procedure to be judged according to how it tracks perspectives being reflected in democratic outcomes. The procedural part makes this standard non-dogmatic since other people's perspectives must go through a process of collective deliberation to ascertain what respect demands in a particular situation. I also argue that this is a kind of respect that Bohman and Peter must use to deliver on their epistemic promises.

I reject Estlund's idea of a qualified acceptability requirement as a moral constraint since it is so abstract that it treats all qualified (reasonable) and unqualified (unreasonable) rejections as absolute defeaters. This makes it not democratic enough and a privileged version of justice where coercion means legislation only. However, the lack of legislation can equally be considered coercion given that we always live in an institutionalised world. However, understanding coercion in this way makes for a substantivised idea of justice. I also reject a criticism that my moral constraint is too demanding or that it does not tell us much about how to make democratic decisions more rational. My claim is that my idea of equal respect is more demanding than pure procedure; nevertheless, it is not too demanding since it does have a procedural component and can generate many different outcomes such as agreement, agreement for different reasons, accommodation or conflict management. My account does not invalidate instrumental justifications of democracy (e.g. Landemore, 2013), which seem to be more ambitious in their epistemic claims. Rather, it forms a condition of possibility for other people's perspectives to find their way into the outcomes.

Article 4. Activism in Deliberative Systems – An Insight from the Epistemic Injustice Approach

In the paper, I argue that the role of activism is best understood in a deliberative system with the focus on its epistemic properties. Activism can contribute legitimacy and epistemic value to the system by employing rhetoric. This mechanism allows its message to be communicated if communication based on rational argumentation is not possible. As a result, the use of rhetoric can be justified instrumentally by looking at the system of knowledge production that prevents activism from transmitting its claims to other parts of the system and thus participating freely in the processes of opinion formation. However, activism also has intrinsic and instrumental reasons to curb the use of rhetoric and combine it with deliberative capacity. This is because the only way for activism to redress the epistemic injustice is to gain discursive status, which can occur only through deliberation. Furthermore, the structure of deliberation increases the epistemic value of the process and leads to citizens' preferences and interests being reflected in the outcomes of deliberation. The analysis of the epistemic system from the standpoint of the epistemic oppression approach combined with deliberative democracy theory suggests that activism performs its role best if it combines jarring rhetoric with deliberative capacity.

I start the paper with a presentation of the systemic turn within deliberative democracy theory and the critique of the place of activism in the system as it is conceived in this theoretical development. I argue that what this development neglects is the epistemic context in which activism operates, the difficulty that activism has transmitting its knowledge across and the possible mechanisms that make this transmission possible.

I introduce the epistemic oppression approach because it can give us the necessary tools to analyse this epistemic context in which activism operates. I use those tools in the analysis of a case of activism taken from the Polish context of fierce activism against an abortion ban. The analysis testifies to the fact that rhetoric is the major force that can feed certain issues into public opinion formation processes, but at the price of respect. This makes a case for an instrumental justification of the use of rhetoric in the deliberative system. It also shows that activism needs a certain level of deliberative capacity to be able to take part in the processes of opinion formation.

In the last part of the paper, I argue that both deliberative democracy theory and the epistemic oppression approach have something valuable to contribute when it comes to the place of activism within the deliberative system. The epistemic approach provides activism

with an instrumental justification for the use of rhetoric. This is because the analysis of the epistemic system and its mechanisms of epistemic injustice show that the only way to make claims when deliberation is not possible is rhetoric, which thus becomes an intervention from outside the system. Deliberative democracy shows that activism has intrinsic and instrumental reasons to take part in deliberation. The only way to redress epistemic injustice is to gain discursive status, which can be won only through deliberation. Furthermore, deliberation has a structure that enhances the epistemic value of the process as well as making it possible for the claims to be reflected in the democratic outcomes. However, the level of deliberative capacity as well as the intensity of rhetoric should be adjusted to the epistemic system activism is struggling with.

10. References

- Anderson, Elizabeth (2006) 'The Epistemology of Democracy', *Episteme* 3(1–2): 8–22.
- Anderson, Elizabeth (2012) 'Epistemic Justice as a Virtue of Social Institutions', *Social Epistemology* 26(2): 163–173.
- Baker, Edwin (2011) 'Is Democracy a Sound Basis for a Free Speech Principle?', *Virginia Law Review* 97(3): 515–29.
- Baumeister, Andrea (2011) 'The Use of "Public Reason" by Religious and Secular Citizens: Limitations of Habermas' Conception of the Role of Religion in the Public Realm', *Constellations* 18 (2): 222–243.
- Benhabib, Seyla (1985) 'The Utopian Dimension in Communicative Ethics', *New German Critique* (35): 83–96.
- Benhabib, Seyla (1996) 'Toward a Deliberative Model of Democratic Legitimacy', in Benhabib, Seyla (ed.) *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press. pp. 67–94.
- Boettcher, James W. (2009) 'Habermas, Religion, and the Ethics of Citizenship', *Philosophy Social Criticism* 35 (1–2): 215–238.
- Bohman, James (1995) 'Public Reason and Cultural Pluralism: Political Liberalism and the Problem of Moral Conflict', *Political Theory* 23(2): 252–279
- Bohman, James (1997) 'Deliberative Democracy and Effective Social Freedom', in Bohman J., Rehg W. (ed.) *Deliberative Democracy: Essays on Reason and Politics*. Cambridge, Mass: MIT Press. pp. 321–348.
- Bohman, James (1998) 'Survey Article: The Coming of Age of Deliberative Democracy', *Journal of Political Philosophy* 6(4): 400–425.
- Bohman, James (2000) 'When Water Chokes: Ideology, Communication, and Practical Rationality', *Constellations*, 7(3): 382–392.
- Bohman, James (2003) 'Deliberative Toleration', *Political Theory* 31(6): 757–779.
- Bohman, James (2005) 'Rights, cosmopolitanism and public reason Interactive universalism in The Claims of Culture.', *Philosophy & social criticism*, 31(7), 715-726.
- Bohman, James (2006) 'Deliberative Democracy and the Epistemic Benefits of Diversity', *Episteme* 3(03): 175–191.

- Bohman, James (2012) 'Domination, Epistemic Injustice and Republican Epistemology', *Social Epistemology*, 26(2): 175–187.
- Bohman, James, (1994) 'Complexity, Pluralism, and the Constitutional State: On Habermas's Faktizität und Geltung', *Law and Society Review* 28(4): 897–930.
- .Bohman, James; Richardson, Henry S. (2009) 'Liberalism, Deliberative Democracy, and 'Reasons that all can Accept'', *Journal of Political Philosophy* 17(3): 253–274.
- Brettschneider, Corey (2010) 'When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion', *Perspectives on Politics* 8(04): 1005–1019.
- Catala, Amandine (2015) 'Democracy, Trust, and Epistemic Justice' *The Monist* 98(4): 424–440.
- Chambers, Simone (2003) 'Deliberative Democratic Theory', *Annual Review of Political Science* 6(1): 307–326.
- Chambers, S. (2009) 'Rhetoric and The Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?', *Political Theory* 20(10): 1–28.
- Chambers, S. (2012) 'Deliberation and Mass Democracy,' in Mansbridge, J., Parkinson, J. (eds.) *Deliberative Systems*. Cambridge: Cambridge University Press, pp. 52–71.
- Chambers, S. (2013) 'The Many Faces of Good Citizenship', *Critical Review*, 25(2): 199–209.
- Christiano, Thomas. (2009) 'Debate: Estlund on Democratic Authority', *Journal of Political Philosophy* 17(2): 228–240.
- Cooke, Maeve (2007) 'A Secular State for a Postsecular Society? Postmetaphysical Political Theory and the Place of Religion', *Constellations* 14(2): 224–238.
- Cooke, Maeve (2011) 'Translating Truth', *Philosophy and Social Criticism* 37(4): 479–491.
- Dillon, Robin S., "Respect", The Stanford Encyclopedia of Philosophy (Winter 2016 Edition), Edward N. Zalta (ed.), forthcoming.
 URL:<<http://plato.stanford.edu/archives/win2016/entries/respect/>>.
- Darwall, Stephen L. (1977) 'Two Kinds of Respect', *Ethics* 88(1): 36–49.
- Daukas, Nancy (2006) 'Epistemic Trust and Social Location', *Episteme* 3(1–2): 109–124.
- Dotson, Kristie (2014) 'Conceptualizing Epistemic Oppression', *Social Epistemology* 28(2): 115–138.

- Dryzek, John S. (2000) *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford: Oxford University Press.
- Dryzek, John S. (2009) 'Democratization as Deliberative Capacity Building', *Comparative Political Studies* 42(11): 1379–1402.
- Dryzek, John S. (2010) 'Rhetoric in Democracy: A Systemic Appreciation', *Political Theory* 20(10): 1–21
- Eberle, Christopher J. (2009) 'Basic Human Worth and Religious Restraint', *Philosophy & Social Criticism* 35(1–2): 151–181.
- Estlund, David M. (2008) *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press.
- Estlund, David M. (2009) 'Debate: On Christiano's *The Constitution of Equality*', *Journal of Political Philosophy* 17(2): 241–252.
- Forst, Rainer (2001) 'The rule of reasons. Three models of deliberative democracy,' *Ratio Juris*, 14(4), 345-378.
- Forst, Rainer (2005) 'Political Liberty: Integrating Five Conceptions of Autonomy', in Anderson J., Christman J. (eds.) *Autonomy and the Challenges to Liberalism: New Essays*. New York: Cambridge University Press, pp. 226–42.
- Forst, Rainer (2012) 'The Justification of Human Rights and the Basic Right to Justification. A Reflexive Approach', in Corradetti C. (ed.) *Philosophical Dimensions of Human Rights*, Amsterdam: Springer Netherlands: pp. 81–106.
- Fraser, Nancy (1985) 'What's critical about critical theory? The case of Habermas and gender,' *New German Critique*, (35), 97-131.
- Fraser, Nancy (1990) 'Rethinking the public sphere: A contribution to the critique of actually existing democracy,' *Social text*, (25/26), 56-80.
- Fricke, Miranda (2007) *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press.
- Fricke, Miranda (2013) 'Epistemic Justice as a Condition for Political Freedom', *Synthese* 190(7): 1317–1332.
- Fung, A. (2005) 'Deliberation Before the Revolution Toward an Ethics of Deliberative Democracy in an Unjust World', *Political Theory* 33(3): 397–419.

- Gelber, Katharine (2010) 'Freedom of Speech, Hate Speech and the Argument from Democracy: The Transformative Contribution of Capabilities Theories', *Contemporary Political Theory* 9(3): 304–324.
- Gilbert, Pablo, Lawford-Smith, Holly (2012) 'Political Feasibility: A Conceptual Exploration', *Political Studies* 60(4): 809–825.
- Habermas, Juergen (1991) *The Structural Transformation of the Public Sphere An Inquiry into a Category of Bourgeois Society*. Thomas Burger (Trans.), Cambridge Mass.: The MIT Press.
- Habermas, Juergen (1994) 'Three Normative Models of Democracy', *Constellations* 1(1): 1–10.
- Habermas, Juergen (1996) *Between Facts and Norms*. William Rehg (Trans.), Oxford: Polity.
- Habermas, Juergen (2006) 'Religion in the Public Sphere', *European Journal of Philosophy* 14(1): 1–25.
- Habermas, Juergen (2009) 'Religion and the Public Sphere: A Response to Paolo Floresd'Arcais', Yascha Mounk (trans.) Accessed on January, 10 2015 at <http://www.theutopian.org/Habermas/>
- Habermas, Juergen, Rehg, William (2001) 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?', *Political Theory* 29(6): 766–781.
- Harper, Lee (1988) *To Kill a Mocking Bird*, New York: Grand Central Publishing.
- Hayman, Steven J. (2009) 'Hate Speech, Public Discourse, and the First Amendment', in Ivan Hare I., Weinstein J. (eds.) *Extreme Speech and Democracy*. Oxford: Oxford University Press. pp. 158–181.
- Heinze, Eric (2006) 'Viewpoint Absolutism and Hate Speech', *The Modern Law Review* 69(4): 534–82.
- Hendriks, Carolyn M. (2006) 'Integrated Deliberation: Reconciling Civil Society's Dual Role in Deliberative Democracy', *Political Studies* 54(3): 486–508.
- Ingber, Stanley (1984) 'The Marketplace of Ideas: A Legitimizing Myth', *Duke Law Journal* 1(2–3): 1–91.

- Lafont, Cristina (2007) 'Religion in the Public Sphere: Remarks on Habermas's Conception of Public Deliberation in Postsecular Societies', *Constellations* 14 (2): 239–259.
- Langton, Rae (2010) 'Epistemic Injustice: Power and the Ethics of Knowing. By Miranda Fricker', *Hypatia* 25(2): 459–464.
- Larmore, Charles (2008) *The Autonomy of Morality*. New York: Cambridge University Press.
- List, Cristian; Valentini Laura (2016) 'The Methodology of Political Theory', in Herman Cappelen H., Szabo Gendler T., Hawthorne J. (eds.) *Oxford Handbook of Philosophical Methodology*. Oxford: Oxford University Press, pp. 525–553
- Lister, Andrew (2013) 'The Classical Tilt of Justificatory Liberalism', *European Journal of Political Theory* 12(3): 316–326.
- Mansbridge, Jane (1999) 'Everyday Talk in the Deliberative System' in Macedo S. (ed.) *Deliberative Politics*. Oxford: Oxford University Press, pp. 211–239.
- Jane Mansbridge, James Bohman, Simone Chambers, Thomas Christiano, Archon Fung, John Parkinson, Mark Warren (2012) 'A Systemic Approach to Deliberative Democracy' in Jane Mansbridge, John Parkinson (ed.) *Deliberative Systems*. Cambridge: Cambridge University Press, pp. 1-26.
- Martí, Jose Luis (2006) 'The Epistemic Conception of Deliberative Democracy Defended Reasons, Rightness and Equal Political', in Besson, Samantha, & Martí Jose Luis (eds.) *Deliberative Democracy and its Discontents*. Farnham, UK: Ashgate Publishing, Ltd, pp. 27–56.
- Medina, J. (2011) 'The Relevance of Credibility Excess in a Proportional View of Epistemic Injustice: Differential Epistemic Authority and the Social Imaginary', *Social Epistemology* 25(1): 15–35.
- Michelman, Frank L. (2013) 'Legitimacy and Autonomy: Values of the Speaking States', *Brooklaw Law Review* 79: 985.
- Nino, Carlos (1996) *The Constitution of Deliberative Democracy*. New Haven, Conn.: Yale University Press.
- Origg, Gloria (2012) 'Epistemic Injustice and Epistemic Trust', *Social Epistemology* 26(2): 221–235.

- Owen, David; Smith, Graham (2015) 'Survey Article: Deliberation, Democracy, and the Systemic Turn', *Journal of Political Philosophy* 23(2): 213–234.
- Parkinson, John (2006) *Deliberating in The Real World: Problems of Legitimacy in Deliberative Democracy*. Oxford: Oxford University Press.
- Peter, Fabienne (2007) 'Democratic Legitimacy and Proceduralist Social Epistemology', *Politics, Philosophy & Economics* 6(3): 329–353.
- Post, Robert (1990) 'The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and *Hustler Magazine v. Falwell*', *Harvard Law Review* 103(3): 601–686.
- Post, Robert (2005) 'Democracy and Equality', *Law, Culture and Humanities* 1: 142–53.
- Post, Robert (2009) 'Hate Speech', in Hare I., Weinstein J. (eds.) *Extreme Speech and Democracy*, Oxford: Oxford University Press, pp. 123–38.
- Post, Robert (2011) 'Participatory Democracy and Free Speech', *Virginia Law Review* 97(3): 477–89.
- Rawls, John. (1985) 'Justice as Fairness: Political Not Metaphysical', *Philosophy & Public Affairs* 14: 223–52.
- Redish, Martin H., Mollen, Abby Marie (2009) 'Understanding Post's and Meiklejohn's Mistakes: The Central Role of Adversary Democracy in the Theory of Free Expression', *Northwestern University Law Review* 103: 1303.
- Rummens, Stefan, (2006) 'Debate: The Co-originality of Private and Public Autonomy in Deliberative Democracy', *Journal of Political Philosophy* 14(4): 469–481.
- Rummens, Stefan, 2007 'Democratic Deliberation as the Open-Ended Construction of Justice', *Ratio Juris* 20(3): 335–354.
- Rostbøll, Christian F. (2008) *Deliberative Freedom Deliberative Democracy as Critical Theory*. New York: State University of New York.

- Rostbøll, Christian F. (2009) 'Dissent, Criticism, and Transformative Political Action in Deliberative Democracy', *Critical Review of International Social and Political Philosophy* 12(1): 19–36.
- Rostbøll, Christian F. (2011) 'Kantian Autonomy and Political Liberalism', *Social Theory and Practice* 37(3): 341–364.
- Smith, William (2004) 'Democracy, deliberation and disobedience,' *Res Publica*, 10(4), 353–377.
- Song, Sarah (2013) 'Liberal Tightrope: Brettschneider on Free Speech', *The Brooklyn Law Review* 79: 1047.
- Mackenzie, Catriona and Stoljar, Natalie, eds (2000) *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*. New York: Oxford University Press.
- Sunstein, Cass R. (1992) 'Free Speech Now', *The University of Chicago Law Review* 59(1): 255–316.
- Talisse, Robert B. (2012). 'Religion, Respect and Eberle's Agapic Pacifist', *Philosophy & Social Criticism* 38(3): 313–325.
- Waldron, Jeremy (2000) 'Legislation by Assembly', *Loyola University Law Review* 46: 507.
- Waldron, Jeremy (2010) 'Secularism and the Limits of Community', *NYU School of Law, Public Law Research Paper*: 10–88.
- Waldron, Jeremy (2012) *The Harm in Hate Speech*. Cambridge: Harvard University Press.
- Warren, Mark E. (2007) 'Institutionalizing Deliberative Democracy', in Rosenberg S. (ed.) *Deliberation, Participation and Democracy: Can the People Govern?* London: Palgrave-Macmillan, pp. 272–288.
- Weinstein, John (2011) 'Participatory Democracy as the Basis of American Free Speech Doctrine: A Reply', *Virginia Law Review* 97: 633.
- Wendell Holmes Jr., Oliver (1919) 'Dissent: Abrams v. United States', 250 U.S. 616–624.

Williams, Susan H. (2011) 'Democracy, Freedom of Speech, and Feminist Theory: a Response to

Post and Weinstein', *Virginia Law Review* 97(3): 603–15.

Young, I. M. (2001). 'Activist Challenges to Deliberative Democracy', *Political Theory* 29(59): 670–690.

