



Mind the Gap: Three Models of Democracy, One Missing; Two Political Paradigms, One Dwindling

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The article revisits two basic questions of political theory posed by Jon Elster. First, should the political process be defined as private or public, and second, should its purpose be understood instrumentally or intrinsically? Having posed these questions, Elster arrives at three views of politics: social choice (private, instrumental), republican (public, intrinsic) and discourse theory (public, instrumental). I argue for a fourth view (private, intrinsic), and explain Elster's omission of this model by referring to his underlying paradigm of politics, that is, as will formation. The main thesis in Elster's article is about whether the process of will formation should be relegated to the market mechanism or dealt with via deliberative forums. I reject this paradigm and argue instead for politics as jurisdiction. This notion of politics is concerned with the question of how *both* market and forum processes of will formation should be institutionalized. Defining politics as jurisdiction strongly improves the plausibility of the missing fourth model of democratic will formation, as a depiction of democratic will formation as private in its process and intrinsic in its purpose illustrates the importance of distinguishing between two levels of democracy: namely, the civil level of will formation and the political level of jurisdiction.

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Introduction

The theory of deliberative democracy has been given considerable attention during the past decade.¹ Many see the 'deliberative turn' (Dryzek, 2000, v, cf. Ackerman and Fishkin, 2003) as a groundbreaking attempt to balance liberal and republican strands in political theory. It is thought that the deliberative model correctly integrates the priority of the right over the good, as defended by liberals, and the priority of citizenship over neoliberal consumerism, as advocated by republicans.



Deliberative democrats consider the current quality of deliberation to be poor, and argue that private and egotistical interests are dominating the political debate. In this respect, a fundamental difference exists between market decisions and democratic decisions: the former are private and individual, while the latter are public and collective. Political decisions should rise above aggregated self-interest, and therefore need to be determined by public deliberations (e.g. Bohman and Rehg, 1997, xiv). Hence, for democracy's sake we should not simply follow our private preferences, as if we were consumers, but must act like citizens, that is, to justify our preferences with public reasons. As Cass Sunstein (2001, 169) puts it: 'To work well, a deliberative democracy had better have many such people. It cannot function without them.' Indeed, the rise of deliberative democracy recalls some of John Stuart Mill's strongest pleas for political emancipation (e.g. Mill, 1987a, b, chapter 10).

Now, on the face of it, no one committed to the public cause can seriously disagree with this. We are all inclined to subscribe to this intuition. Who would oppose the notion that democratic politics should mean civic empowerment, that it should involve the emancipation of citizens? In a democracy, we expect the citizen to act like someone who puts the general interest before her own, to become a public reasoner so as to provide better explanations and justifications for her preferences. What could be wrong with that?

On further reflection, however, some serious doubts crop up. Is politics really a system of will formation in which deliberation and justification of preferences is the central activity, and does its legitimacy really rest squarely on the public discussion and validation of these preferences? And, what is more, does an opposition between private (i.e. strategic) and public (i.e. rational) preferences make sense for a political theory? I believe it is time we seriously started querying this cynicism about the quality and intention of our private preferences and the importance of changing them for the sake of political fairness and societal consensus. A greater optimism is called for, I would suggest. An emphasis on the intrinsic value of the care and practical knowledge that people acquire and display in their private surroundings (e.g. family, school, work, club life) seems to me to be a more promising way to start thinking about politics, rather than a conditional, or worse still, a pejorative portrayal of private preferences.

To explain this somewhat challenging position, I will revisit two basic questions of political theory as posed by Jon Elster. First, what is the purpose of politics, and, second, how is its process to be defined? To Elster, these two questions result in three views of political theory, which can be regarded as the dominant paradigms of democratic theory today. I will dedicate the first part of this paper to the exposition of these three models. I will then argue that in conceptualizing these models, Elster has failed to discern a fourth. In the second part of this paper, I will set out this fourth model of democracy, and try



to explain why Elster has not explicitly distinguished this model from the other three. I will argue that the reason for this omission is that the fourth model of democracy does not fit into Elster's paradigm of democratic politics, which I define as *will formation*. The prime issue, according to this paradigm, is whether politics should deal with people's preferences via a market mechanism, or via a forum mechanism. I strongly oppose such a characterization of politics, and prefer instead to distinguish between two *levels* of democracy: the civil level, which is the level of democratic will formation, and the political level, which is about the jurisdiction of these processes of will formation. Elster's discussion concerning the relation between private and public preferences therefore belongs at the civil level of democracy. Consequently, my overall contention is that within a framework of politics as jurisdiction, the fourth model of democratic will formation makes a great deal of sense.

Three Models of Democracy: One Missing

Jon Elster has given a famous exposition of three conceptions of politics in his article 'The market and the forum: three varieties of political theory' (1997, originally 1986). These three conceptions have come to dominate the political discussion ever since. Elster's aim has been to give a critique of social choice theory, or, in his words, the *market approach* to politics. The alternative he proposes is the *forum approach*. This approach is represented by two political theories: discourse and agonistic theory, or, in more common parlance, deliberative democracy and republicanism.

Social choice is a market approach to politics because it sees politics merely as a method for aggregating preferences in the interests of the common good. Private preferences are coordinated according to a supply and demand mechanism, the typical example of which is the (secret) ballot, on the strength of which a political representative is chosen. For this reason, Elster defines the object of social choice as 'instrumental.' Politics is a means to maximize the good; it is essentially concerned with the optimum expression, aggregation and distribution of private preferences. Moreover, social choice takes these preferences as a given, out of a respect for individual choice, which it claims is the central value of democracy. Elster therefore argues that social choice defines the political process as 'private.' Citizens' preferences should be respected and not simply accepted conditionally. Hence, politics should merely be a translation of private preferences and must refrain from trying to influence them, for this would amount to paternalism.

In the tradition of 19th century liberal revisionists such as T.H. Green and L.T. Hobhouse (see e.g. Collini, 1976; Morrow, 1984), Elster firmly rejects the methodological individualism of social choice. To begin with, the assumption



of given preferences ‘may not be a good guide as to what [people] really prefer,’ and second, ‘what they really prefer may in any case offer a fragile foundation for social choice.’ So it is not entirely clear, says Elster, ‘that the outcome of the social choice mechanism represents the common good, since there is a chance that everybody might prefer some other outcome’ (Elster, 1997, 7–8, for all three quotes). *Expressed* preferences often differ from *real* preferences; for instance, if they are based on adaptive choices, that is, on the feasibility of their success rather than on their desirability, or if they are based on strategic choices.

Elster then concludes that the social choice model of politics lacks a conception of autonomous preferences; it needs a theory in which preferences are consciously formed, ‘not shaped by irrelevant processes.’ Social choice fails to take account of the normative dimension in democratic will formation, given that it does not take seriously the fundamental distinction between private preferences and public preferences, ‘between the kind of behaviour that is appropriate in the market place and that which is appropriate in the forum’ (Elster, 1997, 10; cf. Habermas, 1996, 23). In the market place, egotistical behaviour need not be problematic, but in the political forum it usually is. The forum is the proper metaphor for politics, as it shows that only norms that are the result of public deliberation can be called democratic. ‘The core of the theory, then, is that rather than aggregating or filtering preferences, the political system should be set up with a view to changing them by public debate and confrontation’ (Elster, 1997, 11).

The forum approach is taken seriously by the other two views of political theory: discursive and agonistic theory. According to Elster, these views ‘arise when one denies, first the *private character of political behaviour*, and then goes on also to deny the *instrumental nature of politics*’ (Elster, 1997, 3; emphasis JE, cf. Habermas, 2001, 269). Politics is not an institutionalized mediation of private preferences, but a publicly concerted effort to bring about morally justified preferences. Both the agonistic and discursive views of politics find ‘[c]itizenship a quality that can only be realized in public, that is, in a collective joined for a common purpose’ (Elster, 1997, 26; cf. Habermas, 2001, 269).

Elster’s analysis of the three models is now renowned and has been widely followed in contemporary political theory. Jürgen Habermas (1996, 21; 2001, 336ff.) and Seyla Benhabib (1996) speak respectively of ‘three normative models of democracy,’ and ‘three models of public space,’ while Will Kymlicka (2002, 284–285) employs a similar distinction between liberalism, communitarianism and citizenship theory. Like Elster, they take the market approach of politics as their main target, and the forum approach as the only serious alternative to it. They take notice of, and seek to renew, the *republican tradition* in which, as Habermas (2001, 269, cf. 336) puts it, ‘the political public sphere



acquires, along with its base in civil society, a strategic significance; it should secure the autonomy and integrating force of the citizens' communicative practices.' In this respect, the republican tradition diverges radically from social choice theory, which has more affinity with the *liberal tradition*. In the liberal tradition, the political public sphere is given less of a strategic or participatory, function, and more of a constitutional or juridical significance. The focus is on the rightful degree of liberty and protection that citizens ought to have and get from government. Yet this is precisely why the republican tradition is so critical of the liberal tradition: a mere juridical notion of politics ignores the political right to democratically decide and deliberate. As Benhabib (1996, 82–83, emphasis SB) puts it, 'it is the very *process of unconstrained public dialogue* that will help us define the nature of the issues we are debating.' Preferences need to be exposed to public scrutiny *before* we can accept them as legitimate 'because the struggle to make something public is a struggle for justice' (Benhabib, 1996, 82–83, emphasis SB). Or, in Carol Pateman's famous words (1986, 110): 'In the first place, it is only if the individual has the opportunity directly to participate in decision-making [...] that he can hope to have any real control over the course of his life or the development of the environment in which he lives.'

However, to Elster *cum suis* (Benhabib, 1996; Habermas, 1996: 24; 2001, 295–302; Kymlicka, 2002, 299–302) republicanism is not a fully satisfying answer to the liberal tradition. In its definition of the political purpose, republicanism has failed to make a proper distinction between the ethical and the moral dimension of democratic will formation, and therefore runs the risk of perfectionism. While it is true that politics must be based on publicly deliberated reasons, these reasons should not be seen as constituting a collective and substantive will. Public reasons can only bind subjects if they are the result of a higher level of intersubjectivity, embodied by a fair procedure that guides processes of democratic will formation. The binding force of deliberation is ultimately being exerted by the universal will to follow these procedures, and to give public reasons in line with their conditions. The republican political process, however, is fuelled by particularistic cultures, and consequently becomes caught up in a public exercise and exposition of different socio-political values. The unavoidable result is an *agonistic* clash of interests and world views, in which the only consensus possible will necessarily be undemocratic. So Elster (1997, 26) blames republicanism for defining '[t]he political process [as] an end in itself, a good or even the supreme good for those who participate in it.' This leads to a political process that is 'narcissistic.' (id.)

We have come across similar criticisms by John Rawls (e.g. 1996: xlv–xlv). According to Rawls, classical liberals such as Mill and Kant also relied on ethical, 'comprehensive' doctrines as the moral basis for their political theories. Rawls agrees with Elster in stressing that a political conception of justice



cannot function as a substantive ethical theory due to pluralism. Only the ideal of the political conception itself is substantial. So deliberative democracy avoids republicanism's essentialism yet sustains its ideal of critical and public discussion. Public norms are wanted yet need to be valid, and, hence, collectively binding and rationalized (Habermas, 2001, 307, 339). Indeed, with regard to the political purpose, deliberative democracy *upholds* the very instrumentality of social choice theory. Despite a different conception of the political process, deliberative democracy has the same conception of the political purpose. Although it principally disagrees with rational choice theory about *how* to handle private preferences, it only conflicts in relative terms with *what* the process of politics should achieve. Regardless of whether politics is compromising (social choice) or consensual (deliberative democracy), it should ultimately be instrumental to democratic justice and serve the general good. Elster (1997, 19) recaps: 'Politics is concerned with substantive decision-making, and is to that extent instrumental. True, the idea of instrumental politics might also be taken in a more narrow sense, as implying that the political process is one in which individuals pursue their selfish interests, but more broadly understood it implies only that political action is primarily a means to a non-political end, and only secondarily, if at all, an end in itself.' Thus, deliberative democracy upholds a broad rather than a narrow instrumentality; it rejects a narrow instrumentalist conception of politics as a means of mere private preference satisfaction, but supports a conception of politics as broadly instrumental because politics is subservient to its purpose. The main contrast between the deliberative and the social choice model concerns their political *modus operandi*, not their political *telos*. Although Elster (1997, 7) observes that there are many 'technical and conceptual' problems with social choice theory, its main problem lies in the assumption and acceptance of people's given preferences.

Provided we distinguish between broad and narrow instrumentality, we can summarize the three varieties of political theory as follows:

- (i) The social choice view, according to which the political process is private and the political purpose is instrumental;
- (ii) the discursive view, according to which the political process is public and the political purpose is instrumental;
- (iii) the agonistic model, according to which the political process is public and the political purpose is intrinsic.

Republicanism *overexposes* politics. Its intrinsic view results in an inappropriate glorification of politics. We do not act politically for intrinsic but for instrumental reasons. On the other hand, social choice *underexposes* politics. Its market view of politics results in a neutralization of politics. It makes political will formation immune to moral claims. Deliberative theory



Process Purpose	Private (Market)	Public (Forum)
Instrumental	i. Social choice	ii. Discursive
Intrinsic	iv. ?	iii. Agonistic

Figure 1 Jon Elster's (1986) three varieties of political theory, and one missing one.

has steered the right course — that of public instrumentalism. It publicly scrutinizes private preferences, yet upholds instrumentality through fair procedural will formation and decision-making. As Habermas (2001, 298) puts it: 'Discourse theory invests the democratic process with normative connotations which are stronger than those found in the liberal model but weaker than those found in the republican model.'

However, if we follow Elster's analysis consistently, and put his three models in a diagram, we are confronted with a fourth view of political theory. As we can see in the figure, like discourse theory, this model also merges aspects of social choice theory and agonistic theory, but picks out exactly the opposite characteristics: a private political process and an intrinsic political purpose. The question is, first, what we would make of this model, and second, why Elster has neglected it (Figure 1).

Politics as Will Formation

To start with the second of the two questions, Elster has most probably neglected the fourth model of politics due to his unconditional allegiance to the forum model of politics. The main object of his article has been to find a workable alternative to the *civic privatism* of social choice. After having convincingly argued that the political process of will formation should be defined as public, he then characterizes the political purpose, which amounts to the encounter of discursive *vs* agonistic theory. So although the fourth model was clearly a theoretical possibility, we may conclude that in Elster's mind there was no need to scrutinize it since 'the market or forum issue' had been settled. A political theory that portrays the political process as private is



counterintuitive, even slightly absurd. The real issue is the definition of the purpose of the *public process of democratic will formation*, which leads to a debate on the difference and relationship between ideas of good and the principle of right.

Yet I believe this is barking up the wrong tree. The fourth model of political theory should have been discussed by Elster, not so much for the sake of analytical consistency but because of its normative significance. Indeed, I think it makes a great deal of sense to portray processes of will formation as ‘private,’ because, as many classical liberalists have argued in the past, the most democratic aspect of these processes of will formation lies in their independent, and hence private, status in relation to public authority. However, the very object of these processes is *not* instrumental, as social choice theory would have it, but intrinsic; they are not simply means to the idea of human progress and welfare, but their very embodiment.

Nevertheless, despite supporting an intrinsic conception of democratic will formation, the fourth model differs from the republican conception, because instead of constituting a political society it constitutes a civil society. So in addition to the argument in favour of a fourth model of democratic will formation, it appears that there is a more far-reaching implication to consider. For if the fourth model of democracy puts the idea of civic privatism at the centre of democracy, it will be asked what the *public* aspect of democratic will formation is. I would like to show, however, that this is the wrong question, since it assumes that politics *is* concerned with democratic will formation in the first place. Yet I believe that an argument for depicting democratic will formation as private exactly calls for a reconsideration of that very idea being the central activity of politics. Obviously, questioning the paradigm of politics as will formation precedes Elster’s two questions of political theory, since it implies a different interpretation of the private/public distinction in terms of the opposition between the market and the forum.

As mentioned earlier, the main political issue for Elster is *how people’s preferences should be dealt with democratically*, or how the forum approach relates to the market approach in this respect. Elster states: ‘Politics, it is usually agreed, is concerned with the common good, and notably with the cases in which it cannot be realized as the aggregate outcome of individuals pursuing their private interests’ (1997, 4). This conception of politics as will formation is essentially why Elster dismisses potential alternatives to social choice in which politics is also defined as private. If politics is defined in terms of will formation processes, then surely it *is* difficult to conceive of it as a collection of private wills — that would be a *contradictio in terminis*. The very rationale of (democratic) politics is its dependency on the public deliberation of citizens. We can therefore understand Elster’s decision to reject the fourth model, but only if we accept his paradigm of politics as will formation. But whether



politics should be understood in this way is a question that needs to be examined.

To recap, there are two issues at stake here. First, what does a model of democratic will formation that is defined as private and intrinsic look like? Second, what precisely is the central subject matter of political theory? I will begin with the second of these issues, and then conclude by outlining a fourth model of democratic will formation. I will call this fourth model ‘civil democracy’, as it is a result of applying the private/public distinction to two levels of democracy — the civil level of will formation and the political level of jurisdiction.

Politics as Jurisdiction

Instead of defining politics as a will formation process I define it as jurisdiction. Politics is concerned with structuring, explaining and justifying public authority, for its ultimate aim is to achieve the right balance between the demarcation of an autonomous realm of civil practices, and the interventional authority of the state. Politics is the art of defining the nature, foundation and limits of the state’s authority to govern and legislate.

Political jurisdiction depends therefore on a civic commitment to understand the correlation between the inevitability of public authority and intervention, on the one hand, and the significance of institutional autonomy for civil processes of will formation, on the other. This commitment devolves on a very different political imperative than a search for maximum democratic legitimacy in terms of civic involvement in political decision-making processes. Politics is not the moral end station of democratic will formation, but is instead about finding a well-structured and -balanced mandate for public authority to protect *and* intervene into practices of will formation. Democratic legitimacy is embedded both in the autonomy of civil practices and in the justification and explanation of the public powers of the political body.

Jurisdiction is the underpinning of politics, and I believe its relevance has grown rapidly. Debates concerning the viability of the European Union, religion and integration, and the ‘war on terror’ are essentially ways of constructing and circumscribing public authority in relation to societal processes of will formation, rather than processes of democratic deliberation with a view to arriving at a publicly justified conception of the common good. The problem in these cases is not so much a fragmentation of public justice but a fragmentation of public authority. The question that binds these debates is the jurisdiction of the political body, that is, the question of its legitimate power to intervene. With regard to the European Union, for instance, many people find it difficult to understand what the Union *represents*, and what



mandate they have actually given their political leaders. Even pro-Europeans these days express great scepticism about the legitimacy of the whole project. They accuse public authorities of an incompetence and unwillingness to justify and explain their actions. The irony is that politicians themselves respond to these criticisms with a call for further democratization to regain the trust of the voter. However, instead of wanting a greater say in things and more political participation, the voter seems to prefer to have a greater insight into the jurisdiction of the Union. The ‘war on terror’ is another example. Although many may agree about the great menace of international terrorism, there is concern and uncertainty about the potential ‘Big Brother’ effects of countervailing measures by the state. People do not argue about the threat posed by terrorism, but they do disagree about the breadth and depth of the state’s interventions in the interests of public safety. Indeed, the great democratic problem facing us today is that public authorities *do* have a flawed sense of jurisdiction. They reflect an inability to explain the responsibility they must have in order to be invested *with* public authority, and what this means in relation to the sovereignty of people’s civil practices. This could lead to a situation in which individuals no longer know *why* they would give the state their mandate, since they will have come to perceive laws more as obstructions to their life practices, rather than an accommodation of it. This implies that the very *raison d’être* of politics may be disappearing, that is, the willingness to be subjected to public authority at all for the sake of civil sovereignty.

The difference between the civil and political aspects of democracy is neatly explained by Rousseau’s distinction between public and civil law. Rousseau understands this distinction as two principally different ‘reciprocal *commitments* between society and the individual [...]’ At the civil level, the individual associates ‘as a member of the sovereign in relation to individuals.’ It is the cradle of popular sovereignty, which is characterized by the freedom to set up autonomous practices of will formation. At the political level, however, the individual is ‘a member of the state in relation to the sovereign.’ As, in this case, he is the institutor of public law, he must be subjected to it as well. He has entered the political association by renouncing ‘that part of his power, his goods and his liberty which is the concern of the community [...]’ (Rousseau, 1968, respectively 62, 74, emphasis GD). So, although in both cases the individual has made a pact with himself, only in the latter case is the pact indissoluble. Hence, the public pact is not the result of a democratic will formation process but an act in itself. Or, in analytical terms, the general will is the only plausible legitimation of public law, for precisely because popular sovereignty implies the equality of each person, no representational exception can be made at the political level. Public law can only rest on the full support of all. ‘Sovereignty cannot be represented for the same reason that it cannot be alienated; its essence is the general will, and cannot be represented — either it is



the general will or it is something else; there is no intermediate possibility' (Rousseau, 1968, 141).

However, although the general will cannot be represented principally, from a practical point of view, of course, it must be. The practical representation of the general will implies the need for public authority, and in its wake, the justification and delineation of its representational powers in public law. This is the question of political jurisdiction. Crucially, and following on naturally from this, is the existence of an institutional framework of civil processes and practices of will formation. Indeed, the counterpoint of politics as jurisdiction is the civil aspect of democracy, or what I have called 'civil democracy.' It counterbalances the practical representation of the general will through a social web of institutions and practices of will formation. Civil democracy is thus the place for potential public support and consensus, but equally of public protest and dissent. Nevertheless, this is part and parcel of democracy, as civil society's countervailing power is ultimately the very basis for limiting and influencing public authorities' practical representation of the general will. Politics as jurisdiction must therefore be complemented by a substantial theory of democratic will formation, as I explain below more thoroughly. Assessing the balance between these two levels of democracy is the most demanding task for political theory.

Politics as Will Formation vs Politics as Jurisdiction

The major difference between politics as will formation, as deliberative democracy understands it, and politics as jurisdiction is that the former determines the legitimacy of public authority by establishing a continuous and communicative process of preference formation. It sees no *principal* difference between the civil and the political levels of democracy; politics is the intersubjective continuation of civil processes of will formation, namely, based on fair procedural conditions. By contrast, politics as jurisdiction stresses the irreducibility of the two levels, for both represent very different democratic processes. At the political level, the legitimacy of public authority is established through a controlling and preservative juridical structure. This task is much more complex than merely integrating deliberative rationality within the representational function of public authority. Jurisdiction implies the democratic legitimation of the power of the state, not an optimal incorporation of public will formation in political structures.

The paradox is that a deliberative interpretation of public law will bring about the opposite of its initial goal, namely, the weakening rather than the strengthening of popular sovereignty. As civil pluralism is conceptualized antagonistically, that is, characterized by private preferences that are



fundamentally opposed and incommensurable, political will formation unavoidably acquires a strong transformative and integrative function. Its object is to reach consensus by exchanging and sharing public reasons for private preferences, with the result of an unfortunate mix up of the civil and the political commitment.

More specifically, the deliberative interpretation of the practical representation of public law undermines both the *jurisdictional function* of the state, and the *institutional autonomy* of civil processes of will formation. To start with the latter, according to politics as jurisdiction, it is a civil commitment that invigorates democratic processes of will formation, and accordingly, the possibility of consensus. As I will set out below, these processes are intrinsically triggered by a drive for happiness and a desire to lead a good life. Moreover, they can be characterized by what I call a *plurality of pluriform practices*, that is, relatively self-sufficient communities that are determined by particular customs and rules. Now, instead of respecting civil pluralism through a rationalization of deliberative structures — the discursive response to republicanism — civil practices should not be involved in such political decision-making procedures in the first place. In this sense, they need to remain private — or apolitical. Their very particularity can only survive in a situation of institutional autonomy, which is clearly demarcated by and from public authority. If not, that is, if processes of will formation are seen as conditional to political justice, civil commitments between individuals will be explained as political demands, and the result will be the public alienation of individuals. Alienation, however, should take place only at the political level, where the citizen gives a part of himself to the community, where he mandates public authority to curtail will formation in order to protect it. Will formation itself should not be politicized as if a continuing social contract between citizens and the state is at stake, and private wills are to be subjected to public transformation.

Next, the jurisdictional function of the state will be undermined if based on moral assumptions of intersubjective rationality. Deliberative democrats, of course, oppose this; they see intersubjectivity as the core of political rationality, as necessary to abstract from social complexity to encourage *further* social integration (Habermas, 2001, 324–325). Although they emphasize a principled distinction between discursive and other forms of rationality, they unmistakably see will formation processes *in the light* of the growth of discursive rationality. According to Habermas (2001, 367), the core of civil society is composed of associations that ‘institutionalize problem-solving discourses on questions of general interest within the framework of public spheres.’ These civil practices are arranging the conditions for communicative politics in which ‘social integration [is] accomplished by democratic means [...] through a discursive filter’ (Habermas, 2001, 318). In other words, political will



formation steps in where private will formation fails to be functionally integrative. Deliberative politics is a ‘reflexively organized learning process that *removes the burden* on latent processes or societal integration while *continuing* these processes within an action specialized for relief work’ (Habermas, 2001, 321, emphasis JH).

The goal of politics as jurisdiction, on the other hand, is non-integrative. It locates the integrative component of democracy only in civil processes of will formation. In this respect, it is important to distinguish between discussions *within* associations that concern their specific interest, and discussions *between* associations within public spheres that concern the general interest. The former involve reflections about the idea of a good practice, such as running a hospital, whereas public sphere discussions are much more abstract. They can be seen as *derivative* of the idea of the general will, and deal with the question of how the many different processes, practices and institutions of will formation relate to each other, very similar to the Platonic idea of dialectics (Plato, 2001, 531ff.) It is important to note, however, that these discussions do not automatically imply the inclusion of a political aspect. There is no straight line from public spheres to politics. It only becomes a political discussion the moment when conceptions from public spheres are being related to the task of jurisdiction. After the many deliberations and discussions that were focused on agreement and correspondence, the fact of pluralism is then, necessarily, *politically revived*. Jurisdiction is concerned with the matter of how public authority ought to structure the dynamics within private and public spheres of civil society, while keeping the initial pluralism intact as much as possible.

Crucially, the political rationality, which is appropriate here, cannot be intersubjective, as if jurisdiction entailed the agreement on a deliberative procedure. On the contrary, it should in fact deal with the justified intervention of the political body. While our civil commitment may be aimed at consensus, political commitment is necessarily directed towards compromise. After all, as citizens, we consider how governments may ensure that civil institutions and practices of will formation can coexist peacefully. And as such, the ‘problem-solving capacity’ of civil associations or citizens should not be regarded as ultimately preparatory for reaching political intersubjectivity. Civil harmony is *fundamentally* different from political harmony, and can only be indirectly effective for political peace and stability. Politics is not a continuous communicative forum in which private preferences are being laundered and picked out after deliberation, after which they qualify for legislation and the legitimation of public authority. Such a depiction of political rationality completely passes over what it takes to constitute the necessary legal institutional framework of a political community, and to preserve its stability and endurance.



To illustrate this difference, let me touch upon the question of how politics as jurisdiction forms a political bond between an atheist and a believer, and how it stands out against deliberative democracy in this regard. First, at the civil level of democracy, the atheist expresses, explains, and defends her idea of goodness and truth, as does the believer. Coming from their own private (and personal) worlds, they try to convince each other of the other's deviation, and aim to convert the other to their own view of the world. If necessary or required, they will explain their beliefs and hence compare them in public spheres; or they may harangue each other and argue fiercely. While they live in very different private worlds, they will not forego arguments in favour of their beliefs in places where their worlds coincide or clash. At the political level, however, ideological conversion must be halted and pacified, for here it is necessary to *construct* a world where the two can coexist. Clearly, at this moment the deliberative impulse is to base this political constitution on an ongoing process of discursive discussions in which the believer and the atheist can come up with public reasons for their beliefs that each can understand and share. Under this commitment lies the *new* assumption that the believer and the atheist are willing to politically question possible dogmatic aspects of their world views (see e.g. Habermas, 2001, 324–325). This is an inevitable result of understanding politics as consensual will formation. However, the political realm is not suited for such great expectations. A *further* deliberative depiction of it will not bring about the stable institutional context that the believer and the atheist need after having pursued, deliberated, and argued for their ideas of a good life at the civil level in private and public spheres. If they are expected to engage once again in processes of will formation, only this time at the political level, the result will be an unwanted politicization of their preferences.

Politics as jurisdiction puts public consensus to one side, and concentrates on the juridical structure necessary for a peaceful *modus vivendi*. It explicitly reserves the ideal of consensus for the civil level, yet is at the same time conscious of the very fragility of doing so, so that at the political level the aim is to preserve and, if necessary, coercively safeguard the plurality of civil society. This cannot happen without the moderation of power relations embedded in civil processes and practices of will formation, which, as I have explained, places a justification of the intervention of public authority at the centre of politics.

Civil Democracy: The Process of Democratic Will Formation as Private

As long as politics is understood as jurisdiction, I define democratic will formation as private in its process and intrinsic in its purpose. I call this *civil democracy*. The adjective 'civil' encompasses first of all the idea that



democratic will formation is principally autonomous (private) in relation to public authority, and second, that will formation deals first and foremost with intrinsic conceptions of the good. Therefore, social choice theory does indeed have a strong argument to make in respecting processes of will formation, but it does so for the wrong reasons. These processes are private *not* because it makes most sense to conceptualize them in terms of a market lingo in which the political is seen as a technical facilitator for economic processes. Instead, it is preferable to explain the privateness of these processes in terms of their *ethical self-sufficiency*. The essential democratic value of processes of will formation consists in their ability to cultivate virtue, and they should therefore be judged primarily as genuine endeavours to lead a good life. A private depiction of these processes reveals that politics is not the ultimate sanctifier of these processes; it does not fabricate good preferences and actions, but rather makes *laws* that secure and protect these processes.

A private depiction of democratic will formation has a strong affinity with the classical interpretation of politics, and with Aristotle's in particular. I want to illustrate this first by discussing Elster's criticism of Hannah Arendt's political theory, the latter which is greatly influenced by classical politics. Ironically, Elster's dispute with Arendt shows how *both* misunderstand classical politics in terms of the ancient status of democratic will formation.

Elster criticizes Arendt for being the typical representative of republicanism (see also Benhabib, 1996). He accuses her of inflating democratic will formation into a grand political display of emotional argumentation and ethical performance, thereby failing to limit democracy to a discursive rationalization of preferences. In support of this thesis, Elster turns to the classicist M.I. Finley, who claims that the Greeks in fact had a lot *in common* with the modern conception of politics. They accepted an instrumental or procedural conception of politics and favoured the possibility of exercising a political right over its actual execution (Elster, 1997, 24). To Finley, the Greeks were modernists *avant la lettre*, which strengthens Elster in his rejection of Arendt's interpretation of Greek political theory as a potential intrinsic alternative to an instrumental conception of the political purpose. Greek political theory has more in common with deliberative democracy than republicans would like to admit, he concludes.

However, according to Arlene Saxonhouse, Finley has a somewhat 'magical' understanding of Greek democracy. He exaggerates its participatory element. Finley believes that the Greeks 'located the source of authority in the *polis*, in the community itself, and [that] they decided on policy in open discussion, eventually by voting, by counting heads' (cited in Saxonhouse, 1996, 26–27). But this romanticized classicism is strongly opposed by Saxonhouse, for it portrays the ancient *polis* as the role model for our modern democracies. She stresses that the Greeks were in fact not very interested in legislation at all. Not



so much because they defined politics as essentially instrumental, as Finley and Elster would have it, but because they saw politics as far more complex than merely an instrument of public deliberation and participation (Saxonhouse, 1996, 28). In ancient eyes, politics was not essentially a public decision-making tool for civic preference transformation, since at its heart was not an assembly of men, but the rule of law. Jurisdiction was ultimately the controlling element in the *polis* (Saxonhouse, 1996, 132; cf. Swanson, 1992, 95ff.). For this reason, Aristotle (1984, 1292a9–10) distinguishes between a conception of democracy ‘where all have a part in the offices, provided only they are citizens, but law rules’ and a conception in which ‘the multitude has authority and not the law.’ He doubtless preferred the first of these conceptions, for ‘where the laws are without authority, there popular leaders arise.’

Hence, the proper public debate in politics is about jurisdiction. Politics should concern the rightful intervention of public authorities in civil affairs, precisely because the underlying principle is to respect and organize the privateness and intrinsic nature of democratic will formation. Judith Swanson’s thesis on the central place of the private in Aristotle’s political philosophy therefore makes a great deal of sense. She (1992, 2) argues that Aristotle sees the private as ‘constituted of activities that cultivate virtue and discount common opinion.’ Like Saxonhouse’s, her analysis of Aristotle — and of Greek political theory in general — is opposed to both Elster’s and Arendt’s. While the latter two stress the republican element, albeit differently in terms of the political purpose, Swanson and Saxonhouse interpret Greek politics more liberally, due to its emphasis on the *inherent* political relevancy of civil relations (see also Huppés-Cluysenaer, 1995, 19–22; 2004). The attachment of political importance to private education and civil virtues implies a less antagonistic attitude towards so-called private and public preferences. Saxonhouse (1996, 364) states that ‘[in the polis] there was no opposition between the self and the political entity of which one was a part.’ In this respect, the pejoratively interpreted classical conception of the ‘private’ as the sphere of necessity, and of the ‘public’ as the sphere of freedom, seems more to serve as a way of praising modern liberals as true defenders of individual liberty than in doing justice to the Greek understanding of the private and the public.² This modernistic interpretation of the classical distinction between private and public is far too simplistic, if not altogether wrong, given that individual freedom was central to Greek political thought. Indeed, it was seen as a more unconditional prerequisite for practical wisdom than it is to the moderns (cf. Huppés-Cluysenaer, 2004). Socrates states in the *Apology*, not without reason: ‘[H]e who will really fight for the right, if he would live even for a little while, must have a private station and not a public one’ (Plato, 2003, 29e). To the moderns, by contrast, the public, justificatory, aspect of truth and right has become much more essential.



Civil Democracy: The Goal of Democratic Will Formation as Intrinsic

The Greek notion of politics as jurisdiction rests on an intrinsic understanding of the private, being the place where people deliberate about the good life. Politics works precisely because great interest is attached to civil practices of will formation. After all, arriving at good practice happens in the civil realm, and ultimately without practical virtue there is no political virtue.

The corresponding virtue of politics as jurisdiction is dubbed ‘political wisdom’ by Aristotle. The *genus* of political wisdom is practical wisdom, for it is essentially concerned with human action. Behold the primary significance of the private in this respect, for it is the cradle of practical wisdom and therefore of civil will formation. Indeed, civil will formation and political jurisdiction have the same epistemological grounding — practical wisdom — but are exercised from a very different perspective (Aristotle, 1980, 1141b24–25). To have practical wisdom in *general* means to be perceptive of ‘what sorts of thing conduce to the good life in general’ (Aristotle, 1980, 1140a28–29). In the civil realm of democracy, however, this general aspect of practical wisdom is formative of individual wills while in the political realm of laws (Aristotle, 1980, 1141b23–32).

The disposition of practical wisdom tells us that the political truth of human association and happiness lies in the knowledge of its pluriform and plural aspects. This knowledge — together with habituation — is the seed of virtue. In this respect, practical wisdom entails intrinsic knowledge, that is, an insight into the specific nature of reality, which is embedded within the contextual contingency of human action. The political values of *plurality* and *pluriformity* emerge from the need to preserve the ideal state of will formation that is understood as self-sufficiency and happiness, or in Aristotle’s words, as *autarkeia* and *eudamonia*. Civil relations especially flourish when they are self-supportive and independent from interventions by the public authorities. This should be the primary object of jurisdiction. Again, this is the great divide between republicans and liberals: the decisive question is whether civil practices are seen as *favoured and permitted* by public authorities, or whether they are *acknowledged and respected* as such.

To Aristotle, the decisive reason for understanding democratic will formation as private is the result of the political insight as to what a good life *requires*. Firstly, political wisdom respects plurality, for ‘it is clear that if the process of unification advances beyond a certain point, the city will not be a city at all; for a state essentially consists of a multitude of persons’ (Aristotle, 1984, 1261a19–25). There are many forms of cooperation (families, villages, cities, regions, corporations) that function, in many respects, perfectly well on their own, so that too much striving for unity would destroy the plurality of such forms of cooperation, and with it, society as a whole. However, as



Aristotle (1984, 1261a25–30) continues, ‘not only does a city consist of a multitude of human beings, it consists of human beings differing in kind.’ So, given that ‘a thing’s particular good acts as its preservative,’ Aristotle (1984, 1261b10–17) concludes that ‘the more self-sufficing a community is, the more desirable is its condition, then a less degree of unity is more desirable than a greater.’ Political legislators need to keep in mind the fact that the more public they go the more difficult it will be to share knowledge and beliefs, and hence the more important it becomes to understand, preserve, and respect the *pluriformity* of human relations as well. The private exercise of virtue to attain practical wisdom stands at the very foundations of political wisdom. Practical virtue brings insight into the value of plurality and pluriformity.

Aristotle’s political theory keeps the liberal idea of moral pluralism intact more successfully than liberalism itself (Swanson, 1992, 8). It highlights the liberal importance of the private status of will formation, but supplements it with an intrinsic notion of excellence and wisdom. Aristotle opposes a minimal liberal state, for ‘the city is not a partnership in a location and for the sake of not committing injustice against each other and of transacting business’ (Aristotle, 1980, 1280b30–31, cf. 1280a32). Instead, an association exists for the sake of living well, which implies that social entities should be helped to have a complete and self-sufficient existence. However, having knowledge of how civil associations operate and work does not imply a promotion of paternalistic politics. Contrary to many misapprehensions, then, Aristotle does not believe that law should, in the words of Swanson (1992, 96), ‘command the performance of substantive actions but [should instead] stipulate subscription to the qualitative conditions of civil association.’ The qualitative conditions of plurality and pluriformity should provide for the appropriate moral standard of civil will formation, which is characterized by a healthy clash of ideas and plans for practicing excellence. Indeed, the whole idea of practical wisdom is to improve the deliberation of preferences on a civil scale.

Elster, as we know, rejects social choice theory for this reason. He claims that a description of democratic will formation as private does not take seriously the fact that there are many processes that limit, change or manipulate preference formation, thereby preventing people from expressing their ‘real’ wishes. Like utilitarianism, social choice lacks a substantive criterion for accepting or selecting preferences, so ‘it essentially lacks openness’ (Elster, 1997, 21, citing Bernard Williams). But this is to assume that will formation comes about without social criticism or any other reflection. Elster’s scepticism towards private morality seems to be quite unfamiliar to a commentator like Aristotle, but is equally unfamiliar to classical liberals such as Rousseau or Kant. Although they acknowledge the phenomena of individual infirmity and weakness, their solution was less political than practical. For Elster, however, will formation interpreted as public deliberation



should tackle the problem of distorted preferences. The question, however, is how this will provide for substantive criteria in preference expression and will formation, as Elster claims that disputes cannot be settled by way of an *intrinsic* consensus. Instead, Elster refers to public proceduralism, in which substantive criteria should be embedded. Yet it is highly doubtful whether public proceduralism can provide for this. After all, following Aristotle's point about preserving plurality and pluriformity, the problem Elster has to solve is how the public use of procedural (or instrumental) reason will help citizens to handle their social practices.

Gerald Gaus explains this problem well. Although he fiercely defends the public use of reason, he admits that ultimately only a few principles can be, what he calls, conclusively and publicly justified as 'most of our specific moral disputes result in epistemological standoffs' (Gaus, 1996, 179). And while the principles that are conclusively publicly justified (e.g. of toleration, free speech and privacy) have 'exclusionary force — [that is] they exclude some possible norms as permissible — it must be acknowledged that they often provide little in the way of positive guidance' (id). According to Gaus (1996, 183), then, the result of taking public deliberation for ultimate substantive guidance would be *another* state of nature, in which '[i]nconsistent interpretations of each other's rights and responsibilities would lead to conflict and thwart the development of settled expectations.'

Now, Gaus argues for this deadlock to be resolved by a mode of *political justification*, which is directed towards the adjudication of inconclusively publicly justified disputes. At its heart lies the concept of the rule of law, which he sees as 'the definitive voice of public reason' (1996: 195). So in a response to the vagueness of the procedural principles of deliberation, Gaus radically narrows down the purpose of politics to the adjudication of conflict through the rule of law. This makes his conception of politics very different to the deliberative one. Instead of transforming and deliberating preferences, politics is here adjudicative.

Gaus's analysis again shows the importance of distinguishing between the civil and the political levels of democracy. It moreover substantiates the need for a strong theory of democratic will formation *in addition* to the idea of politics as jurisdiction. After all, Gaus's conception of political justification as adjudication is clearly only one aspect of politics as jurisdiction. We may agree that the rule of law is *ultimately* adjudicative, but it is certainly not *primarily* adjudicative. If an insoluble conflict between two individuals is a fact, then adjudication seems to be the only solution, yet most of the time things will not go that far. It is precisely for this reason that the rule of law provides particularly for *civil law*, not *public right*. Politics as jurisdiction organizes and facilitates civil practices and institutions between subjects to encourage them to mind their own businesses and cooperate virtuously. Indeed, in this sense, it is



supplemented by the virtues of civil democracy, as providing law, which is the main task of legislation, is certainly an intrinsic task. Indeed, the bulk of law (still) consists of civil law, which is not imperative but regulative. Private law is intrinsic because it deals with the institutionalization and organization of pluriformity and plurality. This is where politics and democratic will formation, or, in Aristotle's words, where legislative wisdom and practical wisdom, meet.

Conclusion

Many contemporary commentators depict 'publicness' as the epitome of politics. Politics should be democratic, which means that it should be centred on the deliberation of people's preferences. The political end is also said to be instrumental, for public will formation should focus on social justice. The theory of deliberative democracy is seen as the ideal account of this view of politics. My aim in this article has been to stress the importance of a different model of democracy, which I have called civil democracy. In its characteristics, civil democracy stands diametrically opposed to deliberative democracy. This is because civil democracy assumes a different paradigm of politics, namely as jurisdiction. Deliberative democracy does not encompass this, since it fails to principally distinguish between the civil and the political level of democracy, and therefore unfortunately understands politics as a combination of both: politics as public will formation.

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Notes

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2 Cf. Berlin (1988, 172), who remarks that modern pluralism is '[a]n ideal which remote ages and primitive societies have not recognized' (see in agreement Rawls, 1996, xxiii, 134; Rawls, 2001, 583, nt. 29, 343, nt. 4). See also Mouffe, 1996, 246, emphasis CM: 'The crucial difference [between ancient and modern democracy] resides in the acceptance of *pluralism*, which is constitutive of modern liberal democracy.' Kymlicka (2002, 297–298), even rather complacently states: 'We no longer seek gratification in politics because our personal and social life is so much richer than that of the ancient Greeks.' See for an excellent critique on this falsely understood dichotomy between the classics and moderns: Saxonhouse (1982, 1996, esp. 1–31).

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