Deliberative Voting: Consensus, Diversity and Decision in a Deliberative Mini-public

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Abstract
Deliberation is often distinguished from voting. Voting is associated with self-rule through equally distributed decision power. Deliberation, by contrast, involves the exercise of persuasive influence through communication. It is thus commonly assumed that for a deliberation to produce a decision it must either (i) reach consensus, (ii) simply stop without reaching any collective decision, recommendation or concluding statement, or (iii) hold a vote. Consensus has often been taken to mean normative unanimity - everybody agreeing to the same position for the same reasons. However, in this paper we specify one of the distinctive ways in which deliberating groups can arrive at collective decisions in a manner which involves neither normative unanimity nor the aggregation of fixed, prior preferences according to some pre-existing decision procedure. We describe a form of consensus that involves an agreement that arises in situ to let something stand as the position of the group, even if it is not fully shared by every member of the group. We draw in particular on Philippe Urfalino's notion of 'apparent consensus,' in which agreement to a consensus proposal is signalled not by voting, but by a manifest absence of dissent. We then explore both the dangers and the normative potentials that are involved in this use of silence in achieving consensus. The dangers involve conformity, suppression and power effects within deliberating groups. The normative potentials are realized to the extent that consensus is achieved in a context in which each participant has an effective veto. We illustrate this through an account of the production of group statements in a deliberative minipublic, emphasising in particular the surprising role of voting within the process of reaching a deliberative consensus.
**Introduction**

Deliberation is typically defined against aggregative methods of reaching collective decisions. Aggregative processes take preferences as given and seek to combine them under fair procedures to produce collective decisions, whereas deliberative processes involve persuasion through argument in which the agents’ preferences may change. Jon Elster (1997) thus contrasted the logic of the market and logic of the forum. Jürgen Habermas, similarly, contrasted ‘the reasonable consensus of publicly debating private persons’ with ‘the compromise between competing private interests’ (1989 [1962]: 132). In particular, ‘talk-centric’ deliberative theory has often styled itself against ‘vote-centric’ theories of democracy (Chambers 2003: 308). Deliberative democracy, for many advocates, represents an alternative to the ‘self-interested struggle’ of electoral politics (Sunstein 1998). While deliberative democratic theory has matured and diversified greatly in recent years, it remains committed to the idea that deliberation is to be distinguished primarily from aggregative methods of collective decision making, and, in particular, from voting.

Yet deliberation is clearly meant to be connected *in some way* to decision. Deliberative democrats, as Goodin observes, ‘want “talk” in order to reach a decision, and not merely as an end in itself or as a means to some other end’ (Goodin, 2008: 108). The distinctively deliberative way of reaching a decision is usually assumed to be consensus. Consensus, in turn, has often been assumed to involve everybody agreeing to the same thing for the same reasons. While consensus has been the subject of thorough debates among liberal, agonistic, and deliberative democrats, relatively little attention has been paid by deliberative theorists to the ways in which consensus is operationalized within actual deliberating groups, such as minipublics. Indeed, we think

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1 ‘Talk-centric democratic theory replaces voting-centric democratic theory. Voting-centric views see democracy as the arena in which fixed preferences and interests compete via fair mechanisms of aggregation. In contrast, deliberative democracy focuses on the communicative processes of opinion and will-formation that precede voting’ (Chambers 2003: 308).
that theorizing and operationalizing such agreements is increasingly important in linking deliberative theory and empirical research. This paper analyses consensus as a way of reaching group decisions. We aim to specify one of the distinctive ways in which deliberating groups can arrive at collective decisions in a manner which involves neither substantive unanimity nor the aggregation of fixed, prior preferences according to some pre-existing decision procedure. We illustrate this through an account of the production of group statements in a deliberative minipublic, emphasising in particular the surprising role of voting within the process of reaching a deliberative consensus.

We begin by briefly outlining the ways in which deliberation is typically thought to conclude: With a decision by consensus, no decision at all, or a decision by voting. We then discuss the notion of decision by consensus, separating the idea of normative unanimity - everybody agreeing to the same thing for the same reasons - from forms of consensus that involve an agreement to let something stand as the position of the group, even if it is not fully shared by every member of the group. We draw in particular on Philippe Urfalino's notion of 'apparent consensus,' in which agreement to a consensus proposal is signalled not by voting, but by a manifest absence of dissent. We then explore both the dangers and the normative potentials of this use of silence - the absence of dissent - in achieving consensus. The dangers involve conformity, suppression and power effects within deliberating groups. The normative potentials are realized to the extent that consensus is achieved in a context in which each participant has an effective veto. The latter part of the paper uses this account of apparent consensus to explain the production of group positions - or 'deliberative consensus' - in a minipublic. We suggest that the dangers associated with this form of agreement can be avoided by careful structuring and facilitation. We also point out a role for voting within this method of group decision, where the vote is used not to make the decision, but simply to signal positions.
Concluding Deliberation: Consensus, Diversity, and Voting

It is commonly assumed that for a group to conclude its deliberation it must (i) reach a consensus, (ii) simply stop deliberating without reaching any collective decision, recommendation or concluding statement, or (iii) hold a vote. The first option has often been taken to be the gold standard of deliberation. *Rationally motivated consensus* was held by ‘classic’ deliberative theory to be the archetypal endpoint of a successful deliberative process. This involves what we might call normative unanimity, where all parties to the deliberation converge on the same position for the same reasons. ‘[W]hereas parties can agree to a negotiated compromise for different reasons,’ as Habermas puts it in *Between Facts and Norms*, ‘the consensus brought about through argument must rest on identical reasons that are able to convince parties in the same way’ (Habermas 1996: 166). Similarly, in Cohen’s formulation, ideal deliberation ‘aims to arrive at a rationally motivated consensus - to find reasons that are persuasive to all who are committed to acting on the results of a free and reasoned assessment of alternatives by equals’ (1989: 5). Consensus here is identified with normative unanimity. 'While the modus vivendi formed by bargaining and negotiation could be based entirely on agent-relative reasons, arguments used in deliberation are supposed to aim at convergence on identical, agent-neutral reasons' (Bohman et al. 2009: 262). Consensus in this strong sense involves unanimity both on some substantive proposition and on the reasons for supporting it.

This strong sense of consensus is required if laws or policies are to be said to be legitimated by the consent (in some sense) of all affected by them. We need to keep in mind that Habermas (1996) and Cohen (1989), among others, were not immediately concerned with real deliberation in minipublics or other institutional contexts. They

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2 This paper is concerned in particular with the case of deliberation in a minipublic, but the main thread of the argument bears on other cases of group deliberation.

3 Mansbridge et al. (2010). Bächtiger et al (2011) use the term ‘Type I deliberation’ to mark out more or less the same group of ideas.
sought rather to give a deliberative democratic account of legitimate political authority. Such an account, they supposed, had to begin from the claim that political authority could only be justified if everybody under it had in some meaningful sense consented to be under it. In contrast to theories that emphasised an original moment of consent, or a tacit or hypothetical social contract, the deliberative theories of democracy attempted to root consent in ongoing processes of public deliberation. The major challenge faced by this sort of account was to explain how an obligation to obey would fall on all citizens. And the major solution was to say that certain principles would - or could - be the subject of a consensus. It is in this context that we must understand the emphasis in high deliberative theory on the possibility of rational consensus, or everybody agreeing to the same thing for the same reasons. Deliberation needs to produce ‘generalizable reasons’ or ‘reasons that all can accept’ in order to distinguish justifiable norms from norms that ‘merely stabilize relations of force’ (Habermas 1975: 111). It is a matter of some dispute whether a deliberative account of democratic legitimacy in fact needs this sort of consensus (Manin 1987). But the point here is that in the classic accounts of deliberative democracy, the difficulties associated with actually enacting something approximating deliberative ideals in minipublics were very far from their central concerns.

When critics question the ‘orientation to consensus’ in deliberative theory, it is often consensus as normative unanimity they have in mind. One prominent line of criticism has focused on the likelihood of achieving such unanimity among citizens of modern, pluralistic societies. Any issue that people are likely to care about will invoke a plurality of values, and many of those values are likely to be incommensurable. Conflicts between values such as liberty and justice, for instance, may in particular cases not be resolved without loss (Williams 2001). ‘[R]easonable disagreement’, Goodin observes, ‘is a fact of life in complex societies’ (2006: 254-5). Normative unanimity, or what Bohman and Richardson call ‘convergent reasons all could accept’, ‘simply [does] not provide an adequate model of actual democratic deliberation, counterfactual or
not' (2009: 264). People in fact hold different ideas about what counts as a good reason, and have different 'substantive moral and evaluative commitments' to things they care about (Bohman et al. 2009: 254). Even if we retain normative unanimity as the ideal end point of deliberation, it seems we must accept that in modern, pluralistic societies it is highly improbable. Agonistic critics of deliberative democracy, furthermore, have questioned the very orientation to consensus itself. If the ideal endpoint of public discussion is consensus, they worry, then speech that contests agreements and which does not conform to the rules of discourse of a given public may be discouraged or even suppressed. Mill’s fear that social pressure would subtly compel would-be dissenters to conform to the views of the majority finds a postmodern echo in Villa’s criticism of the ‘flattening, antiagonistic, antiinitiatory character of the consensus model’ (Villa 1992: 716). If the goal of dialogue is consensus, as Villa quotes Lyotard, then it implicitly threatens the plurality of human agents and the 'heterogeneity of language games’ (Lyotard 1984: 66). It is this broad fear that underlies Mouffe’s identification of consensus as a threat to democracy: ‘To negate the ineradicable character of antagonism and aim at a universal rational consensus — that is the real threat to democracy’ (Mouffe 1996: 248). For such a threat to be plausible, consensus needs to be interpreted as normative unanimity, and the orientation to consensus needs to function as a way to identify and exclude unacceptable speech acts. Although, as Markell convincingly shows, Habermas’s orientation to consensus was principally meant as a counterpoint to strategic orientations to communication, and is in fact consistent with agonistic and contestatory speech (Markell 1997), many of deliberation’s critics seem to interpret consensus as normative unanimity.

Contemporary deliberative theorists have largely absorbed and addressed the critics’ concerns about the likelihood of unanimity and the dangers of conformity. In what has been termed the ‘working theory’ stage of deliberative democracy (Chambers 2003) there has been a pronounced shift in emphasis from rational convergence to the cultivation of discursive diversity. Thus, prominent deliberative democrats argue that in
place of the strong notion of consensus we should focus on achieving a degree of ‘mutual justification’ (Mansbridge et al. 2010). This is to emphasise the giving of reasons without the demand that legitimacy depends on full normative unanimity on a given position. What is important for deliberative democratic legitimacy is that any decision results from the deliberation of all, not that it rests on unanimous agreement (Manin 1987: 359). This shift towards ‘mutual justification’ and the giving of reasons effectively abandons consensus in the strong sense. This gives deliberation the more achievable task of clarifying and specifying disagreement, and fostering a ‘diverse discursive landscape’ (Hendriks 2006: 502). The aims of deliberation are thus increasingly framed in terms of clarifying, preserving, and even increasing the diversity of considered opinions. This line of thought has reached its logical conclusion in the form of deliberative polling (Danielson 2010; Fishkin and Luskin 2005), which aims only to generate a representative distribution of considered opinions. Deliberative polls do not produce a collective decision at all, for the group as a group does not decide anything. Such deliberation still produces some of the goods sought by the early deliberative theorists. Most obviously, it can promote the revision of prior opinions and beliefs (see Fishkin and Luskin 2002). It can also promote recognition of the reasonableness of antagonists, even in the absence of agreement (Goodin 2006). But it does not aim to produce consensus.

It seems that if deliberation does not produce such a consensus, and a collective decision must be made, then there is no option but to switch to an entirely different method of collective decision-making. So Habermas, for instance, says that if no strong consensus is reached, one might conclude the deliberation with a decision by majority rule. Cohen, too, concedes that ‘even under ideal conditions there is no promise that

\[\text{4}\] Christian Rostboll, for instance, argues that ‘deliberation should aim not at creating consensus but at breaking an initial consensus, at least as an initial step’ (2008: 23).

\[\text{5}\] ‘[P]ublic deliberation can help us to see others as “reasonable”, albeit, in our view, still wrong’ (Goodin 2006: 254-5).
consensual reasons will be forthcoming. If they are not, then deliberation concludes with voting, subject to some form of majority rule'. Indeed, while many theorists now place more value on the generation of discursive diversity, there remains a distinction between the deliberation itself and the process of coming to a collective decision. As Mansbridge et al. (2010) put it, once strong consensus is rejected as implausible in a world of manifold pluralism, 'deliberation ideally ends not in consensus but in a clarification of conflict and structuring of disagreement, which sets the stage for a decision by non-deliberative methods, such as aggregation or negotiation among cooperative antagonists.' (Mansbridge et al. 2010: 68). Such deliberation generates arguments, clarifies disagreements, and contributes to the process of the formation of wills. It does not, however, produce decisions. If you want a decision from a deliberative process and you can't reach consensus, it seems you must conclude the deliberation and then hold a vote, or have a bargaining process or a negotiation of some sort.

**Consensus without Unanimity**

We agree that normative unanimity is highly improbable - and even worrisome - for some of the reasons indicated above. However, normative unanimity is just one way of operationalizing consensus. Mansbridge and colleagues recently called for an exploration of other forms of 'non-coercive communicative agreement', which can both incorporate self-interest while remaining deliberative (non-coercive), and which end in a 'kind of consensus', that is, 'a genuine agreement among participants that the outcomes are right or fair' (Mansbridge et al. 2010: 70). In the rest of this paper we will describe and analyse a kind of consensus that involves an agreement to let something stand as the position of the group, even if it is not fully shared by every member of the group. This resembles in some ways Dryzek and Niemeyer’s (2006) conception of

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6 So Goodin argues that while deliberation is an excellent 'discovery procedure', it is a poor decision procedure. Talk should precede voting to ensure that a rich 'menu of options' is on the table, but the final decisions should be made through 'more purely aggregative procedures' (Goodin 2008: 124).
‘meta-consensus.’ They argue that pluralism at the level of normative values, epistemic beliefs and decision preferences should be both acknowledged and valued. Yet they suggest that disagreement on values, beliefs and decisions can be consistent with ‘meta-consensus’ on what values are legitimate, which beliefs are credible, and which decision options should be on the table. Their notion of meta-consensus resembles the position we develop in this paper in as much as agreement ‘receives [the participants’] reflective assent, partly in the knowledge that their concerns have been recognized and addressed, even if they are not shared by other participants.’ It ‘represents a course of action participants can live with’ (Dryzek et al. 2006: 643). However, while Dryzek and Niemeyer usefully differentiate the concept of consensus, they do not operationalize it. That is, they give little sense of how a meta-consensus would be achieved or recognized within the deliberating group itself. This is important because we come to the conclusion that it is the achievement and recognition of a consensus position by the group itself that generates its normative force. In order to get a better theoretical grasp of this process we turn to the work of the political sociologist Philippe Urfalino on decision-making by ‘apparent consensus’.8

The key feature of decision-making by ‘apparent consensus’ is that agreement to a consensus proposal is signalled not by voting, but by a manifest absence of dissent. After a group has discussed an issue for a while, one member or another will advance a proposal that sums up what the proposer takes to be the opinion of the group from the preceding discussion. If the proposal is not rejected, then that proposal becomes the collective decision. In decision-making by apparent consensus, ‘what follows on discussion is not a vote but the stating of a proposal or a series of proposals understood to correspond to what the consensus is. And consensus is attested to not by counting

7 This is similar to Sunstein’s notion of ‘incompletely theorized agreement’ (which will be discussed in more detail below).
preferences but by noting that there has been no opposition to the last proposal made' (Urfalino 2006: 7). Urfalino finds this decision process in deliberations in expert committees, and even in assemblies or committees that use other decision rules, such as a vote. In the latter case, even though a deliberating group might reach a decision by majority or some other voting rule, the 'second order' decision to put the matter to a vote must be reached by apparent consensus. The section president (from his example of a committee charged with evaluating scientific research) might declare after a long discussion: "Dear colleagues, it seems to me we've debated long enough. I propose to put the matter to a vote". If no one contested that invitation, it became the decision and we proceeded to vote' (Urfalino 2006: 10). And if the length and value of discussion itself became an issue, the president would call a vote on whether to keep going with deliberation. This third order decision to vote on whether to have a vote was made by apparent consensus, and it is clear that that 'to escape infinite regression and be able to decide collectively whether or not to move to a vote, the group needs a decision-making mode other than voting' (Urfalino 2006: 10-11). If Urfalino is right, then bringing a deliberation to a conclusion must involve apparent consensus, even if a group position is subsequently generated by some other method or not at all.\footnote{The absence of consideration of 'stopping rules' in deliberation is noted by Landemore and Page.}

We suggest that something like this method is used routinely - if unwittingly - in deliberative minipublics. However, while it is clearly a way of making a decision that is neither by normative unanimity nor by holding a vote, it's consistency with deliberative ideals is less clear. There are at least three points to keep in mind. First, in contrast to voting, the decision is made without knowing the distribution of preferences. 'In unanimity, the decision is made when all opinions formally converge... In direct contrast, consensus decision-making does not require unanimity or quasi-unanimity... but rather the absence of expressed disagreement. That absence suspends the question of whether those who keep silent approve or disapprove' (Urfalino 2006: 15; his italic). Because what members of the group actually observe is simply an 'absence of manifest
dissensus’ (Urfalino 2006: 15) in response to the uttering of a consensus proposal, those members know nothing about the reasons for withholding dissent.

A second important feature of apparent consensus is that ‘[s]ilence means consent’ (Urfalino 2006: 20). Although members of the group do not know the distribution of preferences, they do know that ‘opponents are ultimately willing to stop contesting it’. This in itself, Urfalino argues, is a normatively significant kind of agreement: ‘making decisions by apparent consensus implies that those who disapprove the proposal or do not approve it completely consent to keep their judgments to themselves’ (Urfalino 2006: 22). This is similar to the kind of consent involved in majority voting, whereby the minority consents to the majority rule principle and thus accepts the group decision even if they don’t agree with it. However, that in the latter case, participants are automatically exposed to having to consent in this way (their only other options are civil disobedience or exit from the association). Consent within apparent consensus decision-making, by contrast, ‘is more active and personalized in that it directly concerns participants’ utterances, for each member holds the power to veto the consensus’ (Urfalino 2006: 20). The fact that any member of the group can veto an apparent consensus simply by expressing disagreement both lends weight to the agreement when no dissent is expressed, and puts pressure on minorities: ‘any hold-outs against it have to ask themselves if they’re going to continue expressing disagreement or give up and keep silent’ (Urfalino 2006: 20). We will discuss this at greater length below.

A third feature of Urfalino’s apparent consensus that is relevant to our discussion is that it combines equal rights to participate with ‘legitimately unequal degrees of influence’ (Urfalino 2006: 22). The members of the deliberating body have formal equality at the same time as they have inequality of influence. Thus, on the drug licensing board (one of Urfalino’s examples), the cardiologist's opinion may carry more weight on the matter of a certain heart drug, for ‘differences in members’ degrees of
competence... should be reflected in the degree of influence each has on the final decision’ (Urfalino 2006: 23). In a deliberative minipublic such as ours, the opinion of an aboriginal person may count for more in a part of discussion that bears on aboriginal experience. Voting mechanisms tend to distribute power equally, one to each member. Apparent consensus, in the name of decision quality, allows that different participants and different arguments have different weights, to be determined in the course of debate.

Apparent consensus is associated with greater decision quality through reason giving, principally because better arguments are not equally distributed among participants. This reinforces the difference between deliberation and democracy, for while democracy implies equal distributions of powers such as votes and rights, deliberation does not imply equal weight to all arguments or opinions. What goes on in the sort of deliberation we describe is more than just the voicing of different views; there is supposed to be some sorting of those views according to how much sense they make to others in the group, and this is a process we want to encourage and not interfere with. If we simply want diversity, we might be better off with sophisticated polling. If we want deliberation, then we might have to accept some diversity being lost when it is not acceptable to the group. Yet this obviously carries the risk that a lone dissenter may have to drop a valid argument simply because the majority don’t buy it. The value of a vote in this context (as we will see below) is that it enables us to record and preserve dissent, while encouraging the process of deliberatively weighing arguments.

Silence, Conformity and Consent
A key feature of ‘apparent consensus’ is that silence is treated as consent. Yet the absence of dissent tells us nothing about why participants do not object to a consensus proposal. The danger is that silence could be a product of conformity. There is reason to suspect this is a common problem in deliberating groups. Solomon Asch’s experiments on conformity in the 1950s indicate that when all the other people in a group say the
same thing, the one person who thinks differently may disregard her own judgment and go along with the group (see Asch 1955). Most worryingly, this was not always simply a concession to their majority status; many of Asch’s subjects actually stated that they changed their judgment in response to the views of their peers (more on this below) - they literally did not believe their own eyes. Noelle-Neumann (1974) elaborates a related but distinct mechanism of self-censorship in the process of forming group opinions, which is driven by individuals’ ‘fear of separation’ or isolation within the group, and ‘doubt about [their] own capacity for judgment’ (1974: 43). She identifies a ‘spiral of silence’ that can occur as a result of members monitoring and scanning the rest of the group to see how opinion is distributed, and estimating the chances of certain viewpoints winning out, and positioning themselves in view of this assessment. When individuals adapt their positions to what they judge the dominant faction, they thereby strengthen that dominance. This ‘starts off a spiraling process which increasingly establishes one opinion as the prevailing one’ (Noelle-Neumann 1974: 44). Participants in a deliberation may see which way the wind is blowing, so to speak, and decide to hold their tongues, leading to a spiral that concludes with an apparent consensus on the matter under discussion.

The ‘spiral of silence’ that Noelle-Neumann describes has worrying similarities to a process that is integral to the idea of good deliberation. Part of what is supposed to be valuable about deliberation is that people change their views in response to the arguments of their interlocuters. In deliberation, opinions may be revised by discussion. This, indeed, is crucial if such opinions are not to be ‘simply a fixed outcome of their existing private or nonpolitical interests’ (Rawls 1997: 772). How does this differ from the pressure to conformity described above? On one account, it’s not very different at all. Goodin, for instance, describes deliberation as a serial process of ‘dynamic updating,’¹⁰ whereby participants are supposed to not only listen to each other’s

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¹⁰ See Karpowitz and Mansbridge 2005. They use the term ‘dynamic updating’ to mean ‘an open-minded, ongoing discovery of one another’s possibly changing values and interests’ (238).
arguments, but to ‘revise their beliefs (broadly construed) as the conversation proceeds, speech-by-speech’ (Goodin 2008: 111). Such a process of deliberation involves participants signaling their preferences and other participants sequentially incorporating those signals into their own positions. He assumes that the participants grant a priori equal weight to each others views. Thus, in one of his hypothetical examples, when the first three speakers say ‘false’, the fourth speaker, who thinks ‘true’, discounts her own view because it seems so unlikely that she is right and they are wrong. This requires her to both assume that each person’s view has the same weight, and (though Goodin doesn’t make this explicit) that she ought to defer to whatever is the majority view at any point in sequence. This is precisely the setup for Asch’s conformity experiments. Goodin shows that in such a situation (to repeat, under an assumption of the equal weight of views and a requirement to defer to transient majorities) dynamic updating is vulnerable to dangerous path dependency effects. The eventual consensus is highly sensitive to contingent features such as the order or speakers or the implicit shared background beliefs of the particular group. Thus, when a member of a deliberative group makes their statements or their silence conditional on their assessment of the statements of others at some point in the deliberative sequence, they would seem to introduce the possibility of group dynamics that make the resulting consensus arbitrary.

However, while Goodin clearly models a potential pathology of group discussion, it is not clear he has shown us a pathology of deliberation. The central assumption in his argument is that ‘good deliberative democrats’ would ‘accord each other person’s views the same weight as our own’ (113). Yet this is precisely what a good deliberative democrat would not grant. Participants in a deliberation are required to be willing to change their views, but they are not required to make their views conditional on the views of others. As Bächtiger et al. point out, Habermasian deliberation presumes that

11 ‘Generally speaking’, Chambers observes, ‘we can say that deliberation is debate and discussion aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants’ (2003: 309; my italic).
what ‘constitutes a good reason or a bad argument can only be judged from the point of view of the participants themselves. On the deliberative model, no justification can claim force a priori’ (Bachtiger et al. 2010: 40). And to allow for such a process of weighing arguments within the deliberative process itself, we cannot make a priori assumptions about the relative weight of arguments. Thus, when Goodin describes the pathology that results from dynamic updating under the rule that views have equal weight and are to be incorporated in the form of deference to shifting majorities, he is modelling not deliberation, but another discursively pathological kind of conformity based on excessive epistemic humility.

Thus, while deliberation cannot consist in people bringing antecedent fixed preferences to the table and not changing them, it is also undermined when participants make their views systematically conditional on the views of other deliberators. If an absence of dissent stems from a fear of isolation or from an unthinking deference to the views of a majority, we should be worried. But if an absence of dissent follows a free and full discussion in which the participants themselves agree that their views were given a fair hearing, then we might be encouraged. At this point it is worth returning to Urfalino, because, while he recognizes the bad motivations for silence indicated above, he also identifies normative potentials within the social pressure to conformity. '[A]t a given point’, he observes, ‘dissent becomes illegitimate and provokes disapproval' (Urfalino 2006: 21; my italic). Because anybody can veto an apparent consensus decision, it becomes implicated in dynamics of social power that at the same time have moral potentials. Urfalino describes a situation in which objections that were legitimate earlier in the debate might become unwelcome:

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\[12\] He later recognizes that deliberation does not mean ‘one position, one vote’ (117), but his model in this paper is constructed on the assumption that the weight to be accorded to views is distributed equally among the participants in a deliberation.

\[13\] In a similar vein, Schwartzberg argues that unanimity voting rules themselves generate moral pressures because the possibility of a veto demands its responsible and accountable use. And she argues - the quote is taken from a discussion of Pufendorf, but I think it is a central thread in her argument - that ‘there is a positive virtue in acquiescing to the majority’ (Schwartzberg 2008: 410).
Imagine an AMM\textsuperscript{14} commission expert who has been free to object to a proposal or proposal component made by the president on whether or not to approve market sale of a given drug. His objections have already been discussed collectively; some of them have been integrated into the consensus proposal in the making, while others have been opposed on the basis of arguments that seem to have convinced the other participants. If this same expert continues to express opposition to the proposal as reformulated by the president, using arguments similar to those that have already been refuted, he will provoke surprise and disapproval' (Urfalino 2006: 21).

The participant's 'stubbornness is considered inappropriate precisely because he is behaving as if his opinion were worth something as such, whereas its value is... indexed on the strength of his arguments' (Urfalino 2006: 21). And the strength of his argument is not given \textit{a priori} equal value to everyone else's; its strength is determined by its success in the deliberative context. To go on pressing an argument in such a situation is to express a kind of epistemic arrogance. Urfalino notes that 'what compels consent is exhaustion of \textit{acceptable} [my italic] objections: I may have some reason or motive for not being satisfied with the latest consensus proposal, formulated after long debate and several objections, but I can no longer oppose it as I no longer have arguments that would be judged valid with respect to the normative context and the rhetoric constraints operative in the assembly' (Urfalino 2006: 21). The force of the better argument, on this view, amounts to the 'exhaustion of acceptable objections' (Urfalino 2006: 21). The relative weight of different opinions and arguments is to be determined within the deliberative process itself. Thus, it seems, silence or absence of dissent may be an appropriate result of the process of sorting and weighing arguments.

This is importantly different from the constructive use of silence identified by Cass Sunstein in his account of ‘incompletely theorized agreement’. Incompletely theorized

\textsuperscript{14} Autorisation de Mise sur le Marché - similar to to the US Food and Drug Administration's New Drug Approval commission.
agreement means that the relevant participants can ‘accept an outcome... without understanding or converging on an ultimate ground for that acceptance’ (Sunstein 1999: 125). While he does not discuss how exactly a decision or agreement is reached or ratified,\(^{15}\) he emphasises the use of ‘silence, on certain basic questions, as a device for producing convergence despite disagreement, uncertainty, limits of time and capacity, and heterogeneity’ (Sunstein 1999: 124). Incompletely theorized agreement, in common with apparent consensus and ‘deliberative acceptance’, enables people to ‘decide what to do when they disagree on exactly how to think’ (Sunstein 1999: 127). However, for Sunstein silence seems to involve skirting or bracketing out irreconcilable disagreements in order to achieve more limited agreements. It almost sound like a form of politeness.\(^{16}\) It involves not talking about deep commitments in order to find common ground at a lower (or is it higher?) level.

That is to say, ‘incompletely theorized agreement’ seems to involve participants *discovering* a common ground that is implicit in their existing positions (a sort of overlapping consensus), rather than *creating* common ground - a distinction made by Bruce Jennings, who argues for an understanding of consensus as an *activity* in which we develop ‘a common sense of what our problems are and a sense of what we have in common’ (1991: 461). The creation of common ground, we suggest, can be consistent with limited agreements in a context of deep moral disagreement. However, as Burgess (2004) argues, this requires not bracketing out disagreements, but making positions as explicit and as fully developed as possible. It is crucial to this approach that 'understanding and respecting diverse perspectives' requires 'greater explicitness and transparency of reasoning' (Burgess 2004: 12). The deliberative process requires not only the representation of diverse perspectives, but the *recognition by participants* that their views were fully considered. The kind of agreement we are interested in here (in

\(^{15}\) Given his use of examples from the US Supreme Court, we can assume he has voting in mind.

this paper) is one which involves acknowledgement by all that their perspectives were heard and understood - that the role of their perspectives in the analysis was explicit. This is why it is important to get behind the silence - the point is not merely to skirt a thorny issue, the way you might avoid talking about politics with your wife's family in order to avoid awkwardness. The point is to secure a kind of agreement that does not require normative unanimity but involves an agreement from the participants that their perspectives were represented and respectfully understood or treated (as we will show below).

**Apparent Consensus in a Deliberative Minipublic**

We think apparent consensus describes a form of decision-making that is common - and perhaps, at some level, unavoidable - in deliberative minipublics. This is worrying, because apparent consensus brings certain dangers. First, the formal or informal discussion leaders exercise an important power when they make consensus proposals. This suggests that social power differentials might easily be reproduced in the deliberating group.17 Second, apparent consensus tells us nothing about the reasons for withholding dissent. Is it because there is a form of rational agreement or exhaustion of acceptable objections to a proposition, or because you want to break for lunch, or because of conformity, or because you feel that the group may be impatient with further dissent, and so on? This points to a further danger that exhaustion of acceptable objections can shade into a pressure not to be obstructive. Third, equal rights to participation meet with factually unequal degrees of influence, and this carries the danger that unequal influence will be inappropriately exercised. In this section of the paper we will focus on the danger that apparent consensus tells us nothing about the participants’ reasons for going along with the group. We will argue that this particular danger can be mitigated by the mechanism of the vote.

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17 One such power differential is between the facilitator and the other participants in the deliberation (see Moore 2011).
In this section we will illustrate the role that voting can play within deliberation by considering a recent deliberative minipublic. Further, we will show the importance of voting in the generation of an agreement that does not require normative unanimity but that does involve an explicit recognition by participants of the legitimacy of the process. This sounds wrong, given the sharp distinction between voting and deliberation within deliberative theory. However, the function of the vote here is not to make a decision after the deliberation has been concluded. Rather, voting functions (among other things) as a way of analysing the motives behind a decision already reached by apparent consensus.

The deliberation was focused on the issue of RDX pollution and microbial genomics as a possible avenue for bioremediation. The deliberation Explosives, Genomics, and the Environment: A Public Deliberation (or ‘RDX Talk’), was conducted to develop an initial understanding of public responses to these issues and to provide a mechanism to collate public input for potential policy recommendations. It was held over two weekends in Vancouver, Canada, in April 2010. RDX Talk sought to identify as wide a range of relevant perspectives as possible, to provide these as input for the deliberation, to have participants listen to each others’ views and meaningfully engage with the issues, and finally to attempt to come up with collective statements or recommendations on key issues to be recorded and made available to policy makers (in contrast to the distribution of considered opinions produced by deliberative polling).

Overall, the event can be divided roughly into three phases: 1) Information Provision; 2) Agenda Setting; 3) Formulation of Policy Recommendations. Information provision took the form of a website and an information booklet distributed to participants before the event.

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18 RDX is a commonly used explosive for military and industrial applications.

19 RDX Talk was staged over two weekends in April 2010 (10th/11th and 24th/25th). The forum involved a sample of 25 individuals from the greater Vancouver area. Participants were selected randomly to fill demographic stratification on age, gender, and ethnicity, with minimum recruitment filters for individuals who had toxic materials training and individuals with military experience.
event, and a series of expert presentations on the first day, where participants had an opportunity to question the expert speakers. In Phase 2 (agenda setting), each small group suggested up to three items to be added to the final agenda for the second weekend. These items were agreed upon through deliberation in each small group. Each small group then presented their items to the large group, followed by a deliberation aimed at identifying overlapping scope between issues and delineating distinct issues to be placed on the agenda for discussion in Phase 3. An opportunity was also given to everyone to add to the agenda if they felt that an important issue had been sidelined or missed in the forgoing discussion.

In Phase 3 (formulation of recommendations), each agenda item was discussed in small group sessions before being deliberated in the larger group. The large group sessions were aimed at developing collective statements or recommendations on each agenda item. It is important to note that the small and large groups were facilitated in distinct ways. The aim of the small group discussions was for all participants to be able to express their opinions and explore the issue being considered in depth and to provide a foundation from which the large group discussion could proceed; the small groups were not expected to make collective decisions during this phase of the process. In contrast, the aim of the large group was specifically to work towards a collective statement endorsed by the group. While the nominal goal of the large group discussion was thus to reach agreement on an issue, it is important to emphasise that facilitators did not push for consensus when persistent disagreements emerged. Rather, the aim was to explore these disagreements to a greater depth and, when they could not be resolved through deliberation, articulate and document clearly the nature of the disagreement. Deliberation of each issue was concluded with a vote that was recorded together with the collective group statement on the issue. The purpose of the vote was to avoid the possibility of the facilitator assuming consensus owing to the absence of voices raised against a particular proposition, to provide an explicit transition point from one issue on the agenda to the next, and to enable the facilitator to draw out detailed reasoning on
both the proposition being considered and any alternate views still held by participants at this point in time.

After the event, the research team produced a short report of the deliberative conclusions (including documentation of disagreements among the group), representing the official conclusions of this public deliberation. This report was sent out to participants who were asked to either ratify them or point out inaccuracies. In the event that an individual participant requested an amendment based on personal opinion (rather than to point out an inaccuracy in the report as it pertained to the outcome of group deliberation) this would have been noted for further analysis, but no amendments would have been made to the group report (this eventuality did not occur for this deliberation).

In short, the process of deliberative voting used in RDX Talk involved the discussion of an issue and deliberation working towards a collective statement in the form of a policy recommendation. If no persistent disagreement was evident, a statement was collectively crafted by the group, led by the facilitator. If persistent disagreement was evident, the collective crafting of statements sought to reflect the divergent opinions. At a point when no new amendments to the collective statement(s) seemed to be forthcoming, the facilitator would call for show of hands of participants supporting the collective statement(s), followed by those not supporting it, and those abstaining. Individuals who disagreed or abstained were given the opportunity to explain their position. If these qualifications led to a revision of the statement, another vote might be called. Eventually, all qualifications raised were recorded together with the collective statements.

**Voting within Deliberation**

Several observations of this process of voting can be made in the context of the foregoing discussion. First, this process of voting is not an aggregation of pre-existing
opinions. As argued elsewhere (MacKenzie & O'Doherty, forthcoming), on certain complex and unfamiliar issues most members of the lay public have no knowledge or opinions. In the case of RDX Talk (and similar deliberations) it is through the process of deliberation that opinions are formed and the vote in this case acts as a record of these newly formed opinions.

Second, although each individual participant votes, each vote cannot be understood as associated simply with an independent individual opinion. Not only did participants come to develop opinions collectively through the process of deliberation, the vote is cast in the context of a collectively formulated statement. They are voting on a proposition to which they have already, in a sense, agreed. A show of hands was only called when no new amendments to the collective statement(s) seemed to be forthcoming - that is, when the facilitator already judged the ‘sense of the room.’ The show of hands came after what looked like an agreement by apparent consensus.

Third, the vote acts as a deliberative tool to make explicit certain positions or reasoning so that non-dominant voices are heard and recorded in the final formulation of collective statements. One of the reasons why voting process was incorporated in RDX Talk was based on the observation that in previous deliberation events (Burgess, O'Doherty, & Secko, 2008; O'Doherty, Burgess, & Secko, 2010) there was a risk for facilitators to formulate apparent consensus statements or positions without there being clarity that all participants did indeed agree. For example, there was a perceived risk that when a facilitator made a statement such as, “ok, it seems that we now all agree on ..,” no one would object and the facilitator’s statement would stand even if not fully supported. If conversation had gone on for a while on an issue, frustration with difficulty to get to a

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20 We should note that Urfalino’s central point is to distinguish decision by apparent consensus from decision by voting. It thus seems odd that we talk of voting within deliberation. But here we mean voting as a way of signalling preferences (consistent with Goodin, and with Urfalino’s use of the term elsewhere), as distinct from voting as a means of making a decision.

21 In Michael MacKenzie’s phrase.
collective conclusions was high, or the facilitator simply did not offer enough of an opportunity to comment on the apparent consensus statement, none of the participants might have objected and the statement as formulated by the facilitator recorded as a consensus reached by the group. There seemed to be a number of possible reasons for participants to silently acquiesce in the group decision.

Fourth, the vote acts as a tool to bring closure to particular discussions on issues within a larger topic. Again, particularly in examples of deliberation involving such complex topics like RDX and microbial genomics, an important initial task for deliberants can be to parse out the larger topic into several distinct problems or questions to deliberate. In these instances, the deliberative vote can act as a clear signifier for a topic change, facilitating movement between distinct aspects of the issues being considered. Importantly, this characteristic of voting provides the moderator with a tool to move the deliberation along without silencing dissenting or alternative voices. This aspect of deliberative voting is particularly important in cases where no consensus seems to be emerging at all, and deliberants are split or polarized on a given issue. In RDX Talk this occurred on the point of whether the deliberative group wanted to support a mandated reduction or ban of RDX. The group was split between two positions: 9 of 25 participants supported the statement that “There is currently not sufficient evidence that the harms of RDX justify a mandated reduction or ban.” 14 of 25 supported the statement that “Based on current information, we should aim for a phased reduction of RDX.” In this instance the vote provided a mechanism to move the overall deliberation forward in spite of persistent disagreement on a critical issue, and without suppressing minority opinion. Note also that each of the two positions voted on do not constitute individual or even aggregated opinion. Rather, each of the polarized positions in its own right represents a consensus statement arrived at collectively by those deliberants supporting it. Finally, this aspect of deliberative voting is also important in the context of the very real time constraints under which most deliberations occur. In many instances,
budget and other constraints prohibit indefinite extension of the deliberative process, in contrast to Urfalino’s examples of tribal decision processes.

Fifth, deliberative voting allows for the shifting and dynamic perspectives of the deliberating group to be fixed and documented for the purpose of producing an official record and recognizing that record as being connected to a particular place and time. One of the points of deliberation is to allow for changes in opinion of individuals with the larger purpose of producing collective decisions. The point at which a consensus (or other closure of discussion whether by voting or otherwise) is recognized is thus not necessarily also the point at which individual participants stop having changes of opinion. Indeed, it seems rather unlikely that all participating deliberants would hold onto that particular opinion without change forever after. While it is vital for practical reasons that there is closure of discussion and that the results of deliberation can be recorded for policy input, particular deliberative conclusions may be revisited at some point in the future, either because of new developments, new knowledge, or simply to update input from the public. The deliberative vote thus provides an explicit record of not only a collective position, but also the strength with which it was supported, the reasoning underlying it, and possible alternative positions. It also makes explicit the temporal and spatial location of the collective statement, providing an important context to understand its relevance into the future.

Finally, deliberative voting as used here is not simply the casting of a ballot. It is the culmination of a deliberative process in which both individual and collective opinions are negotiated and produced. Importantly, the calling of a vote includes an opportunity to express reasoning and positioning relative to the particular statement being proposed by the facilitator as a potential collective statement for the group. It is thus not the case of aggregating yes and no responses, but rather making explicit the nuances and alternative formulations the facilitator may not have captured in the proposed collective statement. Depending on the type of arguments offered by dissenters to the proposed
statement offered by the facilitator, several things could occur. If the dissent constitutes a more nuanced expression of the statement, the facilitator may incorporate this into an amended version of the collective statement and call for another vote of support for the new statement. If the dissent takes the form of a qualification that cannot easily be incorporated into the statement, but also does not constitute actual disagreement with the proposed collective statement, then the qualification can be recorded as an addendum to the collective statement, noting the strength of the call for the qualification (i.e., number of deliberants supporting it). Finally, if the dissenting voice constitutes actual disagreement with the proposed collective statement, and the disagreement seems to be based on a fundamental difference in values that persisted in spite of deliberants’ attempts to find common ground, then the vote provides a mechanism for the minority position to be explained, justified, and recorded.

Conclusion

In conclusion, we can now see that one of the main objections to 'vote-centric' democratic theory is not to voting simply as a way of signalling a preference, but to voting as part of a decision procedure, the outcome of which participants have already agreed to respect. The objection is to the idea that consent has already been granted to the outcome of the procedure, in the way that consent is assumed to attach to the outcome of an election.22 By contrast, the central feature of the consensus decision process described in this paper is that consent to both outcome and process is generated in situ. What emerges from the deliberative minipublic are group statements that represent agreements that are partly procedural and partly substantive, and which have normative force due to the conditions of their production. In particular, normative

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22 In elections, you vote on the outcome, not the process itself - the process is already taken as settled - though ballot-spoiling gives an informal outlet for dissatisfaction with the process. Incidentally, this is why it's important to retain 'not voting' as an option.
force arises to the extent that all allowed the statement to stand as the position of the group in a context in which any of them could have dissented.

Voting as a means of signalling preferences, we have suggested, can be an important part of this distinctively deliberative decision procedure, in which opinions shift and arguments are weighed and evaluated in a context free of coercion. The vote has several functions, including a pragmatic value, in ‘keeping things moving.’ Most importantly, however, it serves to identify and record dissenting views, while still achieving a collective position in which the relative weight of the contributing arguments was decided deliberatively. The decision is made deliberatively, and the vote is part of a ratification of the deliberative quality of the decision process. It thus helps to identify and preserve discursive diversity, even within a deliberative process that itself involves the creation of common ground and the reduction of discursive diversity to a single proposition that can be endorsed by the group. The vote is subordinate to deliberation; it serves rather as a check, within the process, that the ‘apparent consensus’ is one that is deliberatively justified. This has the additional value of enabling us to evaluate deliberation from within the forum, making visible that the participants have accepted both the substantive outcome and the process of deliberation that produced it. Rather than see voting as a decision process to come after deliberation has concluded without a decision, we hope to have suggested the potential for voting in the service of generating a deliberative decision.

References


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23 Think of the iteration of straw polls and deliberation in jury deliberations.


