

On Gutmann and Thompson's Arguments that Deliberative Democrats Shouldn't be Pure Proceduralists

This paper concerns a debate in deliberative democratic theory. Amy Gutmann and Dennis Thompson have argued that deliberative democrats *must not* be what they call *pure proceduralists*.¹ They make this argument by defending the following claim:

- (α) Only non-purely proceduralist theories can seriously endorse the principle of reciprocity.

In their terminology, a deliberative democratic theory is a *pure proceduralism* if and only if it “insist[s] that democratic theory should not incorporate substantive principles such as individual liberty or equal opportunity beyond what is necessary for a fair democratic process”.² And in their terminology, the principle of reciprocity holds that “citizens owe one another justifications for the mutually binding laws and public policies they collectively enact”.³ Since all deliberative democrats certainly aim to take reciprocity seriously, it's certainly true that if (α) is true then no deliberative democrat should be a pure proceduralist.⁴

¹ Gutmann and Thompson 2002. The paper is a chapter in Gutmann and Thompson 2004. The paper has been anthologized in several places (e.g., in Fishkin and Laslett 2003).

² Gutmann and Thompson 2002, p. 153. Gutmann and Thompson don't state that they are giving necessary and sufficient conditions. But their language implies that they are stating what they take to be the commitment that distinguishes purely proceduralist from non-purely proceduralist deliberative democratic theories. So I will assume and talk throughout as if they are giving necessary and sufficient conditions here. Even so, it bears noting that none of my arguments requires that Gutmann and Thompson are in fact giving necessary and sufficient conditions. If Gutmann and Thompson are merely giving a sufficient condition and proposing that it's this sufficient condition for being a purely proceduralist deliberative democratic theory that Habermas and the other pure proceduralisms they target satisfy, then my arguments still apply. Also, to be clear, all talk of *pure proceduralist* theories in this paper refers to *pure proceduralist deliberative democratic* theories. The paper concerns a debate in deliberative democratic theory. It says nothing about any aggregative democratic theories, including *pure proceduralist aggregative democratic* theories.

³ Gutmann and Thompson 2002, p. 156

⁴ Indeed deliberative democratic theories are often distinguished as a group in part by their shared commitment to the principle of reciprocity. Compare: “[Deliberative democrats] suppose that

I want to revisit Gutmann and Thompson's arguments for (α) . Their arguments for (α) are the most prominent and perhaps the most promising arguments in philosophy of democracy for the thesis that deliberative democrats shouldn't be pure proceduralists. I will argue that their arguments for (α) are unsuccessful. Whether considered individually or collectively, they don't threaten the enterprise of pure proceduralism.

My primary target will be Gutmann and Thompson's main argument for (α) . I will argue by constructive dilemma that that argument for (α) is unsuccessful. Subsequently I will argue that Gutmann and Thompson's secondary arguments for (α) are also unsuccessful. They are unsuccessful for reasons that will follow from my defense of the preceding constructive dilemma. My arguments will often draw on one of Gutmann and Thompson's explicit targets, Jürgen Habermas's deliberative democratic theory.⁵ But if my arguments work then they show that any purely proceduralist deliberative democratic theory that shares a certain one of Habermas's commitments can successfully respond to Gutmann and Thompson's case for (α) .

The structure of this paper is straightforward. I'll work from introducing Gutmann and Thompson's main argument for (α) (in section 1), to discussing some components of Habermas's pure proceduralism (in section 2), to stating and defending a constructive dilemma for Gutmann and Thompson's main argument for (α) (in section 3), to considering some objections and, in doing so, addressing Gutmann and Thompson's secondary arguments for (α) (in section 4).

outcomes will be democratically legitimate only so far as they emerge through external-collective processes of deliberation involving a free and equal exchange among everyone who will be affected by them" (Goodin 2000: p. 82); "[T]he deliberative democrat claims that parties to political conflict ought to deliberate with one another and through reasonable argument try to come to an agreement on policy satisfactory to all" (Young 2001: p. 671).

⁵ See Gutmann and Thompson 2002, p. 153 fn. 1

1. Since pure proceduralisms needn't be empty of substantive principles (see the necessary and sufficient conditions stated above) it will be useful to introduce some quick pieces of jargon. Let's call the substantive principles that pure proceduralisms *can* include *A-substantive principles*. The A-substantive principles are all and only those substantive principles that are necessary for fair democratic processes. Let's label as *B-substantive principles* all substantive principles that aren't A-substantive principles. And let's label as *reciprocal* fair democratic processes all fair democratic processes that seriously endorse the principle of reciprocity. So pure proceduralisms hold, for instance, that all fair democratic processes can be reciprocal without these processes incorporating any B-substantive principles.

Gutmann and Thompson don't offer a valid statement of their main argument for (α). But here is a valid, and I suggest accurate, reconstruction of their main argument for (α):

- (1) A fair democratic process is reciprocal if and only if all policies that can arise from it are mutually justifiable (i.e., are reasonably justifiable from the standpoint of all possibly affected parties).
- (2) Some fair democratic processes result only in mutually justifiable policies only if they (the processes) incorporate B-substantive principles.
- (3) So, some fair democratic processes are reciprocal only if they incorporate B-substantive principles.
- (4) If (3) is true, then only democratic theories that include B-substantive principles can seriously endorse the principle of reciprocity.
- (5) So, only democratic theories that include B-substantive principles can seriously endorse the principle of reciprocity.

(5) entails (α). All deliberativists can and should accept (1) and (4). So, unsurprisingly, I'm going to argue against Gutmann and Thompson's argument for (2).

Here is a reconstruction of their argument for (2):

- (6) Some fair democratic processes can result in mutually unjustifiable policies that deprive some individuals of a B-substantive value.
- (7) If (6) is true, then such democratic processes will result only in policies that are mutually justifiable and don't deprive some individuals of a B-substantive value only if they (the processes) are amended to incorporate some relevant B-substantive principles.
- (8) So, some fair democratic processes result only in mutually justifiable policies only if they (the processes) incorporate B-substantive principles.

(8) is just (2) repeated. (7) requires some clarification. Suppose some fair democratic process could result in a mutually unjustifiable policy that deprives some individuals of some B-substantive value – say, equal access to health care. (7) claims that if there are such cases, then the fair democratic process operant in them will cease to result in whatever mutually unjustifiable, B-substantive value-depriving policy it does only if it (the process) is amended to incorporate some B-substantive principle(s) – say, the principle of equal opportunity – that precludes such policy outcomes.

This clarification made, I won't say anything else about (7). I'll be arguing that (6) is false. We can see how Gutmann and Thompson argue for (6) by looking at a case that they offer up in its defense:

[I]magine a situation in which the process of decision-making itself was fair in the sense that the bargaining power of the parties was equitable, but in which the reasoning of the decision-makers was prejudiced (or could only be reasonably interpreted as based on prejudice) against West Indian immigrants or another disadvantaged minority group. The prejudiced reasoning then yields an outcome – supported by the vast majority – that denies critical health care to the disadvantaged minority. This outcome could not be justified on grounds of reciprocity, even if the procedures by which it was reached were otherwise completely fair. The justification for the outcome does not treat members of the minority group as worthy of a justification that they could reasonably accept.⁶

Gutmann and Thompson only argue for (6) by appealing to cases similar to this one. So their argument for (6) is straightforward: (6) is true because in these West Indian immigrant-type cases fair democratic processes result in just the sorts of policies described in (6).

2. Let us look now at Habermas's pure proceduralism. I want to do four things here. First, I'll describe what, for Habermas, are the necessary and sufficient conditions for x being a fair democratic procedure. Second, I'll argue that Habermas's account of these conditions both captures and is shaped by his ascription to two substantive principles. Third, I'll argue that Habermas only ascribes to A-substantive principles. Fourth, I'll look briefly at whether Habermas's conditions for x being a fair democratic procedure are reasonable.

For Habermas,

⁶ Gutmann and Thompson 2002, p. 159

- (β) A democratic procedure is fair if and only if the only policies it can result in are mutually justifiable (i.e., reasonably justifiable from the perspectives of all who might be affected by them).

Little is needed to justify (β) as giving Habermas's conditions for x being a fair democratic procedure. (β) follows from applying Habermas's general 'discourse principle' to democratic procedures. The discourse principle is: "Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses".⁷ Since Habermas clearly intends the discourse principle to abstractly set, for instance, the validity conditions for all fair democratic procedures, using it to set Habermas's conditions for x being a fair democratic procedure seems unproblematic.

It's a relatively quick matter to see that (β) both captures and is shaped by two substantive principles. These are Habermas's principles of political equality and autonomy. Habermas's principle of political equality holds that x is a fair democratic procedure only if x always accords equal respect to all relevant parties. Isolating this principle, Habermas writes that "The concept of democratic procedures itself relies on a principle of justice in the sense of equal respect for all".⁸ For Habermas, this basic egalitarian principle of justice is what requires the *alls* in (β) – i.e., that fair democratic procedures are just those from which *all* resultant policies are reasonably justifiable from the perspectives of *all* who might be affected by them. Thus Habermas's principle of political equality is both captured in and shapes the content of (β).

⁷ Habermas 1996, p. 107

⁸ Habermas 1996, p. 266

Habermas's principle of autonomy holds that x is a fair democratic procedure only if x always treats all persons it might affect as being free subjects. Since, for Habermas, one "dogmatic core" of his democratic theory is that "human beings act as free subjects only insofar as they obey just those laws they give themselves in accordance with insights they have acquired intersubjectively",⁹ his principle of autonomy requires the following. It requires that x is a democratic procedure only if all policies that result from x are given by a people to 'themselves in accordance with insights they have acquired intersubjectively'. For Habermas, this condition is best satisfied if we endorse (β)'s requirement that all policies that result from fair democratic procedures must be reasonably justifiable *from the perspectives of all who might be affected by them*. Thus Habermas's principle of autonomy is also both captured in and shapes (β).

It follows from the preceding remarks that the principles of political equality and autonomy are both A-substantive principles in Habermas's theory. For Habermas, both supply necessary conditions for adequately formulating (β). Thus, for Habermas, each is an A-substantive principle – i.e., is necessary for fairness in democratic procedures – because each is necessary for determining the necessary and sufficient conditions for x being a fair democratic procedure. As Habermas puts it, his "conditions that *enable* communicative sociation [e.g., fair deliberation] must not be mistaken for contingently imposed *constraints*".¹⁰

Does Habermas's theory include any substantive principles other than his principles of political equality and autonomy? I don't believe so. But let's turn to the more crucial point. The more crucial point is that Habermas's theory certainly doesn't include any B-substantive principles. Habermas isn't averse to B-substantive principles themselves. But he argues that

⁹ Habermas 1996, p. 445-446

¹⁰ Habermas 1996, p. 323 emphasis in original

it must be actual democratic processes in a context c that determine what B-substantive principles are endorsed in c . For Habermas, any B-substantive principles (e.g., principles that accord individual private rights) that are endorsed by any political system are politically legitimate if and only if they are endorsed as an outcome of fair democratic procedures.¹¹ Naturally then, so far as substantive principles go, Habermas's theory only includes A-substantive principles.

It remains for us to ask the following question. Is (β) a reasonable set of conditions for x being a fair democratic procedure? It's certainly a coherent and *prima facie* plausible set of conditions. As a methodological point, I suspect that our standards for reasonableness in this domain are often impacted by our intuitions – especially by our intuitions about what is just. And for what it's worth, (β) is reasonable by my intuitions. Indeed it seems to me far more reasonable than some standards for x being a fair democratic procedure that Gutmann and Thompson seem to assume – e.g., standards on which x can be a fair democratic procedure even if it results in obviously mutually unjustifiable policies. It bears noting as well that Gutmann and Thompson don't offer us an argument that (β) is unreasonable. The upshot here is that while a lot would certainly need saying to show that (β) *is* reasonable, at present it seems a mistake to not judge that the following disjunction is true:

(γ) Either (β) is reasonable or it's an open question whether (β) is reasonable.

3. Consider now the following constructive dilemma:

(9) (γ) is true.

¹¹ cf. Habermas 1996, p. 450

- (10) If (β) is reasonable, then Gutmann and Thompson's main argument for (α) is unsuccessful.
- (11) If it's an open question whether (β) is reasonable, then Gutmann and Thompson's main argument for (α) is unsuccessful.
- (12) So, Gutmann and Thompson's main argument for (α) is unsuccessful.

Let's look at the two horns of the dilemma in turn. Here is an argument for (10):

- (13) We can reasonably use (β) to set the conditions for x being a fair democratic procedure.
- (14) If (13) is true, then it's reasonable to conclude that the only policies that can result from fair democratic procedures are mutually justifiable.
- (15) So, it's reasonable to conclude that the only policies that can result from fair democratic procedures are mutually justifiable.
- (16) If (15) is true, then Gutmann and Thompson's main argument for (α) is unsuccessful because (6) is false.
- (17) So, Gutmann and Thompson's main argument for (α) is unsuccessful.

(13) is true by assumption on this horn of the dilemma. (14) is conceptually entailed by (13), and so it follows deductively that (15) is true. (16) is true because Gutmann and Thompson's West Indian immigrant-type cases are premised on an understanding of what it is for x to be a fair democratic procedure according to which it's not the case that the only policies that can result from fair democratic procedures are mutually justifiable. But given (γ) , an argument premised on such an understanding of what it is for x to be a fair democratic procedure is unconvincing. It's unconvincing because (13) allows us to

reasonably conclude that policies like those in Gutmann and Thompson's West Indian immigrant-type cases *can't* result from fair democratic procedures because they (the policies) aren't mutually justifiable. So if we take the first horn of the dilemma, then Gutmann and Thompson's argument for (6) can reasonably be rejected and as such their main argument for (α) can reasonably be rejected as well.

It may seem then that the better route is for Gutmann and Thompson to reject (11). But that isn't so. Suppose it's an open question whether (β) is reasonable. If it is then – as our argument for (10) shows – (β) looms large as an undefeated defeater for (6). And if this defeater remains undefeated, then Gutmann and Thompson's argument for (6) can hardly be thought successful. Indeed it seems clear that Gutmann and Thompson can't allow that the antecedent of (11) is true on pain of allowing that their main argument for (α) is misdirected from the start. After all, if our argument for (10) is sound then Gutmann and Thompson can't succeed in arguing against Habermas by arguing for (α) *unless* they can show that (β) is unreasonable. But as I've noted, (β) is not something that they direct their arguments against.

4. We have on the table an initial defense of the above constructive dilemma. Let us consider some objections:

Objection:

The dilemma gets off the ground only if we grant that pure proceduralisms can incorporate A-substantive principles. But why grant this? If pure proceduralisms are to merit the name, they can't incorporate even A-substantive principles.

Reply:

This objection depends on a misunderstanding of the way in which purely procedural deliberative democratic theories are ‘purely procedural’ theories. These pure proceduralisms are ‘purely procedural’ in the sense that they place no constraints on what policies can be adopted in any given political community *other than* that whatever policies are adopted must be adopted by means of a fair democratic procedure. (This is, I take it, a corollary of Gutmann and Thompson’s remarks about what distinguishes pure proceduralist from non-pure proceduralist deliberative democratic theories). Intuitively then, a primary concern of any purely procedural deliberative democratic theory is to discern what is required for x to be a fair democratic procedure. Given this, it would be hard (maybe impossible) for a theory to be a pure proceduralism without incorporating some A-substantive principles. Some substantive normative principles will almost surely have to be appealed to in order to set the conditions that are required for x to be a fair democratic procedure. To take just one example: Even a very minimal pure proceduralist deliberative democratic theory that holds that a democratic procedure is fair if it institutes both equal suffrage and free speech for all voting age persons incorporates A-substantive commitments.¹² It has at least minimal substantive commitments to both political equality and autonomy.¹³

Objection:

¹² Of course, the minimal pure proceduralist deliberative democratic theory would have to cash out its equal suffrage condition in a suitably *deliberativist* manner or else the theory wouldn’t qualify as a deliberative democratic theory. This could be done, e.g., by requiring that all voting occur through a Deliberative Polling apparatus – cf. the discussion of Deliberative Polls in Ackerman and Fishkin 2002.

¹³ None of this is to say that there isn’t linguistically a ring of oddity to pure proceduralisms incorporating A-substantive principles. But the linguistic oddity doesn’t track a philosophical problem.

The dilemma is guilty of straw-manning. It's true that one way to read Gutmann and Thompson's main argument for (α) is as being that pure proceduralisms cannot take reciprocity seriously *because they do not license B-substantive principles*. But – as e.g., the West Indian immigrant case suggests – another way of reading that argument is that pure proceduralisms cannot take reciprocity seriously *because they cannot place adequate (i.e., reciprocity respecting) constraints on the outcomes of fair democratic procedures*. The dilemma notices and targets only the first of these readings.

Reply:

This objection's talk of 'two readings' of Gutmann and Thompson's main argument for (α) is misleading. It's certainly true that Gutmann and Thompson endorse the claims that distinguish each of the purported readings. But their argument for the claim that distinguishes the second reading *just is* their argument for the claim that distinguishes the first reading. That is, their main argument for (α) is that pure proceduralisms cannot place adequate (i.e., reciprocity-respecting) constraints on the outcomes of fair democratic procedures *because* pure proceduralisms do not incorporate B-substantive principles. So the above charge of straw-manning is unjustified. The constructive dilemma targets the claim that distinguishes what the objection calls the first reading of Gutmann and Thompson's main argument for (α) . But the constructive dilemma undermines Gutmann and Thompson's main argument for (α) on both the purported readings if it undermines either.

Objection:

(β) has been successfully criticized (see e.g., Bohman 1996, McCarthy 1998, and Pettit 2003) to the point that it is no longer an open question whether (β) is reasonable. Thus the constructive dilemma is unsound because (γ) is false.

Reply:

Two points here. First, it seems to me that to reject (γ) based on criticisms of (β) to date is unjustified. But for present purposes what needs noting is that we can easily generate alternate versions of the above constructive dilemma if it happens to be the case that (γ) is false. Perhaps the most interesting alternate route is as follows. Suppose (β) and (γ) are false. But suppose the reason why each is false *isn't* that Habermas is wrong that a necessary condition for x being a fair democratic procedure is that the only polices it can result in are mutually justifiable. If this were the case, then we could craft or appeal to some pure proceduralism that maintains that necessary condition and run an alternate version of the constructive dilemma that stems from that pure proceduralism. Extant pure proceduralisms that could plausibly be appealed to are, for example, those of Iris Marion Young and Fabienne Peter.¹⁴ As we saw when looking at the first horn of the constructive dilemma, it is foremost Habermas's commitment to the preceding necessary condition that allows us to use his pure proceduralism to fuel the constructive dilemma.

Second, the preceding point notwithstanding, it seems clear that if Gutmann and Thompson's main argument for (α) depends on (γ) being false, then their main argument for (α) is misdirected from the start. One way of reading Gutmann and Thompson's arguments for (α) is as an attempt to construct reciprocity-based arguments against pure proceduralism

¹⁴ See Young 2000 and Peter 2007.

that *do not* depend on debating what conditions are required for x to be a fair democratic procedure. But that attempt isn't likely to be successful if their main argument for (α) depends on (γ) being false. Indeed if our first point in reply to the present objection is correct, then Gutmann and Thompson's main argument for (α) seems to be doubly misdirected. It seems to require both that (γ) is false and that (β) would not be reasonable even if it were amended to state not necessary and sufficient conditions but just a necessary condition for fairness in democratic procedures.

Objection:

The dilemma only targets one of Gutmann and Thompson's arguments for (α) – allegedly their main argument. But even if we grant the dilemma, Gutmann and Thompson can fall back on other arguments that they offer.

Reply:

As I've noted, it's true that the dilemma only targets one of Gutmann and Thompson's arguments for (α). But the other arguments Gutmann and Thompson offer are less plausible than the one the dilemma targets. More to the point, the work we have done to defend the dilemma is sufficient to undermine the other arguments that Gutmann and Thompson offer.¹⁵ Let us consider their most promising secondary arguments:

¹⁵ We will only look at secondary arguments that Gutmann and Thompson offer in their 2002. Is this an oversight? Should we also be considering arguments in *Democracy and Disagreement*? I don't believe so. As Jack Knight has argued, although Gutmann and Thompson explicitly reject purely proceduralist deliberative democratic theories in *Democracy and Disagreement*, they don't offer arguments therein to support that rejection (Knight 1999, p. 162-167). Indeed, as Knight points out, Gutmann and Thompson's *arguments* therein appear to bolster support for *endorsing*, not *rejecting*, purely proceduralist deliberative democratic theories. Plausibly Gutmann and Thompson 2002 is in part a response to this sort of criticism of *Democracy and Disagreement*.

- (18) “The conclusions of purely procedural theories sometimes converge with the claims of the substantive standards that reciprocity requires. For example, a procedural theory of democracy may say that racial discrimination in voting is not justified because it excludes a class of human beings from citizenship, and this violates the procedural requirements of democracy, which demand the enfranchisement of all adult persons. This procedural reason is fine as far as it goes. But it does not go far enough in establishing why such discrimination is not justified. Democratic theories should be able to object that racial discrimination (for example, in the provision of health care by a for-profit Health Maintenance Organization) is not justified even if democratic citizenship or no other process values are at stake. Majority tyranny is objectionable on substantive, not only procedural, grounds.”¹⁶
- (19) “An obvious but not less important virtue of a theory that does not limit itself to procedural principles is that it has no problem with asserting that what the majority decides, even after full deliberation, is wrong. Within a deliberative theory, one should be able to condemn majority tyranny on substantive grounds: one should be able to say that a majority acts wrongly if it violates basic liberty by denying health care on grounds of race, gender, or poverty. Or suppose that the majority, following perfectly deliberative procedures, decides to institute a practice of compulsory organ donation. On a purely procedural conception of deliberative democracy, this law would be justified.”¹⁷

Neither (18) nor (19) is a threat to Habermas’s pure proceduralism. Regarding (18): For the sake of argument, suppose we agree that (18) distinguishes a criterion that all democratic

¹⁶ Gutmann and Thompson 2002, p. 161

¹⁷ Gutmann and Thompson 2002, p. 161-162

theories must satisfy. Democratic theories must be able to show on substantive grounds why states of affairs that involve, for example, institutionalized racial discrimination are not justified. If our discussion above is accurate, then Habermas's pure proceduralism can answer this criterion. It can argue – by appealing to the A-substantive principles that it employs – that a substantive reason why any institutionalized racism is unjustified is that it is, for example, incompatible with the egalitarian principle of justice that undergirds Habermas's principal of political equality. The more general point here is that it doesn't follow from x being a pure proceduralism that x is flat footed to accommodate a substantival criterion like the one stated above. Rather the ability of any given pure proceduralism to accommodate such a criterion has to be assessed by evaluating the A-substantive principles that it (the pure proceduralism) endorses.

Regarding (19): (19) is at bottom an iteration of (18). Thus it is vulnerable to the response just given. But (19) merits noting because it better indicates the sort of flawed inference that at times undermines Gutmann and Thompson's attempts to argue for (α). The flawed inference is to build a case against *theories that limit themselves to procedural principles* and immediately infer that this entails a problem for all *pure proceduralisms*. Any such inference is apt to be problematic because – by Gutmann and Thompson's own lights – pure proceduralisms need not limit themselves to procedural principles.¹⁸ Furthermore, such inferences are certainly apt to fail in the case of Habermas's pure proceduralism since it involves A-substantive principles – as I've suggested any pure proceduralism must.

¹⁸ Note that it's implausible to suppose that Gutmann and Thompson are using the term 'procedural principles' in such a way that they mean to count all A-substantive principles as procedural principles. There are at least three reasons for this. First, Gutmann and Thompson don't distinguish the category of A-substantive principles. Second, they rely on there being a clean, intuitive contrast between the category of substantive principles and the category of procedural principles. Third, (18) and (19) plainly don't go through if 'procedural principles' should be read as if Gutmann and Thompson are implicitly counting all A-substantive principles as procedural principles.

Objection:

Recall again Gutmann and Thompson's apparent analysis: A deliberative democratic theory is a pure proceduralism if and only if it "insist[s] that democratic theory should not incorporate substantive principles such as individual liberty or equal opportunity beyond what is necessary for a fair democratic process". The following possibility hasn't yet been considered. We could, in principle at least, read Gutmann and Thompson's analysis as incorporating the following *restriction* on what counts as a 'fair democratic process': A democratic process is fair if it incorporates equitable bargaining power for all parties that might be affected by its outcomes. Recall that Gutmann and Thompson appealed to this sort of sufficient condition in stating their West Indian immigrant case. If we read the above analysis as incorporating this restriction then the arguments in the present paper are guilty of straw-manning. They stem from a misreading of Gutmann and Thompson's basic set of conditions for being a purely proceduralist deliberative democratic theory.

Reply:

It isn't plausible to impose the suggested restriction. For two reasons the cost of imposing it is too high. First, (β) is plainly incompatible with the suggested sufficient condition. If the suggested restriction were imposed then Habermas's theory wouldn't count as a pure proceduralism. So imposing the restriction would save Gutmann and Thompson from my Habermasian reply at the cost of reading Gutmann and Thompson in such a way that they were simply mistaken to identify Habermas's theory as one of their targets. Second, it's not clear that any of the theories that Gutmann and Thompson identify as pure proceduralisms and locate their arguments against would count as pure proceduralisms if we were to impose

the suggested restriction.¹⁹ If that's the case, then imposing the restriction would come at the cost of requiring – rather absurdly – that Gutmann and Thompson are entirely mistaken about whose theories their arguments would work against if they work at all. Simply put, it is fairly uninteresting to read Gutmann and Thompson as intending that their analysis be read with the suggested restriction in place. The restriction would block my arguments at the cost of opening up Gutmann and Thompson to what amount to far worse criticisms – i.e., criticisms of talking past or straw-manning their opponents from the start.

5. I conclude that our earlier constructive dilemma is a real problem for Gutmann and Thompson's case for (α) . As we've seen, the dilemma's two horns each lead quickly to the conclusion that Gutmann and Thompson's main argument for (α) is unsuccessful. The same conclusion follows if Gutmann and Thompson can only reject the dilemma by trying to reject its first premise. Furthermore, Gutmann and Thompson's case for (α) isn't saved by trying to re-read their basic terminology or by trying to appeal to their secondary arguments.

These concluding remarks might seem suggest that this paper was a wholly negative undertaking. But it surely wasn't. We set out to show that Gutmann and Thompson's arguments for (α) are unsuccessful. That's a negative goal. But to the extent that we achieved that goal, we achieved it primarily by means of both clarifying what certain pure proceduralists are committed to and identifying some crucial moves that are open to pure proceduralists. That much is a positive undertaking.

¹⁹ The other deliberative democratic theories that Gutmann and Thompson identify as pure proceduralisms and explicitly target are those of Jack Knight, Cass Sunstein, and Iris Marion Young. See Gutmann and Thompson 2002, p. 153 fn. 1. Gutmann and Thompson cite the contributions of these philosophers to Macedo 1999. The arguments in Sunstein 1999 are compatible with his endorsing but certainly don't require that he endorse the restricting sufficient condition. The arguments in Knight 1999 and Young 1999 show straightforwardly that both of these philosophers reject the restricting sufficient condition.

We've also discerned what may be the crucial standing ground for pure proceduralists if they are truly to be able to seriously endorse the principle of reciprocity. This is Habermas's condition that x is a fair democratic procedure only if the only policies it can result in are mutually justifiable. This necessary condition is very strong. Identifying it as a crucial standing ground tells us a strong claim about legitimacy and justifiability that pure proceduralists may require to be true in order for their general enterprise to be viable. So our negative project tells us not just some ways in which arguments against pure proceduralists shouldn't be structured. It also indicates where debates over the prospects of pure proceduralism should head.

References

- Ackerman, Bruce and James Fishkin. 2002. "Deliberation Day", *Journal of Political Philosophy* 10: 129-154.
- Bohman, James. 1996. *Public Deliberation: Pluralism, Complexity, and Democracy*. Cambridge, Mass.: MIT Press.
- Fishkin, James S. and Peter Laslett (eds.). 2003. *Debating Deliberative Democracy*. Oxford: Blackwell UP.
- Goodin, Robert. 2000. "Democratic Deliberation Within", *Philosophy & Public Affairs* 29: 81-109.
- Gutmann, Amy and Dennis Thompson. 2004. *Why Deliberative Democracy?* Princeton UP.
- 2002. "Deliberative Democracy Beyond Process", *Journal of Political Philosophy* 10: 153-174.
- 1996. *Democracy and Disagreement*. Cambridge, Mass.: Harvard UP.
- Habermas, Jürgen. 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Trans. William Rehg. Cambridge, Mass.: MIT Press.
- Knight, Jack. 1999. "Constitutionalism and Deliberative Democracy," in Macedo (1999): 159-169.
- Peter, Fabienne. 2007. "Democratic Legitimacy and Proceduralist Social Epistemology", *Politics, Philosophy and Economics* 6: 329-353.
- Pettit, Philip. 2003. "Deliberative Democracy, the Discursive Dilemma, and Republican Theory", in Fishkin and Laslett 2003: 138-162.
- Macedo, Stephen. 1999. *Democracy and Disagreement*. Cambridge, Mass.: Harvard UP.
- McCarthy, Thomas. 1998. "Legitimacy and diversity: Dialectical reflections on analytical distinctions", in Michel Rosenfeld and Andrew Arato (eds.), 1998, *Habermas on Law*

- and Democracy*, Berkeley: University of California Press: 115–153.
- Sunstein, Cass R. 1999. “Agreement without Theory,” in Macedo (1999): 123-150.
- Young, Iris Marion. 2001. “Activist Challenges to Deliberative Democracy”, *Political Theory* 29: 670-690.
- , 2000. *Inclusion and Democracy*. Oxford: Oxford UP.
- , 1999. “Justice, Inclusion, and Deliberative Democracy,” in Macedo (1999): 151-158.