

Comments on Jordan Dodd, “On Gutmann and Thompson’s Arguments that Deliberative Democrats Shouldn’t be Pure Proceduralist.”

Gutmann and Thompson argue that pure procedural theories of democracy cannot satisfy a principle of reciprocity, understood as a requirement that public policies be mutually justifiable to citizens. Pure procedural theories are those which do not include any substantive principles beyond those necessary for a fair democratic process. So the problem of the paper boils down to whether fair democratic procedures suffice for reciprocity. Gutmann and Thompson think they do not, whereas Dodd thinks they do.

Why might Gutmann and Thompson be right? They discuss democratic procedures that are fair in the sense that they involve equitable bargaining power. So understood, fair democratic procedures can obviously generate outcomes that violate reciprocity. The example used is that of West Indian immigrants who are denied access to healthcare as a result of prejudice against them. Dodd objects that this understanding of a fair democratic procedure is too limited. Habermas, for instance, has a more robust conception of fair democratic process, and Gutmann and Thompson take themselves to be arguing against pure proceduralists like Habermas. So what would a more robust conception of fair democratic procedures look like? Dodd suggests that Habermas is committed to the following claim:

- (β) A democratic procedure is fair if and only if the only policies that it can result in are mutually justifiable.

Dodd then argues that since (β) is a reasonable conception of fair procedures, Gutmann and Thompson’s argument against pure proceduralism is unsuccessful.

I think there are some problems with this argument.

1. If we assume that (β) does express a reasonable conception of fair democratic procedures that Habermas espouses, then not very much follows about Gutmann and Thompson’s position. (β) must be endorsed as true if it is to do any real work. Mere reasonableness does not suffice, since Gutmann and Thompson could be correct that it is false, even if it is a reasonable claim. Thus the claim on p. 10 that Gutmann and Thompson haven’t succeeded unless they can show that (β) is unreasonable is too strong. If the right conception of fairness is less robust than (β) supposes, then it doesn’t matter if a reasonable person could reasonably endorse (β). It would still be the case that pure proceduralist theories would not necessarily satisfy the principle of reciprocity. So I found the argument on pp. 8-10 unpersuasive in this respect.
2. I don’t think (β) can be a criterion of a fair democratic procedure for a pure proceduralist theory. A pure proceduralist theory only invokes substantive principle to provide content to its procedures. A pure proceduralist theory does not presuppose any procedure-independent standard of correct outcomes. It may be the case that any fair democratic procedure will result in mutually justifiable outcomes. But this needs to be *argued*, and cannot be *stipulated* as a conception of the procedures themselves. If we could define pure proceduralism in terms of outcomes, then every procedural theory could be redefined as a pure proceduralist theory. For instance, a cake-cutting

procedure would be fair if and only if the only outcome that could emerge is one that left each person happy. A trial procedure would be fair if and only if the only convictions that could emerge were of guilty individuals. These are obviously not satisfactory purely procedural criteria of fairness. (β) doesn't look any better to me.

3. We need two things then: (a) a satisfactory account of a fair democratic procedure in purely procedural terms that is more robust than mere equitable bargaining power, and (b) an argument that at least one fair democratic procedure, so understood, will not result in any outcomes that violate the principle of reciprocity.

(a) Dodd identifies two principles of Habermas's proceduralism, First, a fair democratic procedure must always accord equal respect to all parties (p. 6). Second, a fair democratic procedure must always treat individuals as free subjects (p. 7). Now, it may be possible to cash these principles out in purely procedural terms, i.e. in ways that define an actual procedure that could be implemented in the real world. I'm not sure how this would go. Perhaps it would be satisfactory to say that any arguments that participants put forward in deliberation must be consistent with a conception of persons as free and equal. Hence, if an argument presupposed the superiority of one group of persons over another (e.g. West Indians), then it is not a permissible argument in fair public deliberation.¹ This is a substantive conception of public reasoning, of course, but if it does not presuppose a procedure-independent standard of correct outcomes, then it could be what Dodd calls an A-substantive conception.

(b) Two points are worth mentioning here. First, I was confused by Dodd's target, i.e. the claim on p. 4:

(6) "Some fair democratic processes can result in mutually unjustifiable policies ..."

It struck me that a much more feasible target was the inference on p. 3 from:

(3) "Some fair democratic procedures are reciprocal only if they incorporate B-substantive principle" to

(5) "Only democratic theories that include B-substantive principles can seriously endorse the principle of reciprocity."

Reading p. 3, I had thought that the strategy would be to concede to Gutmann and Thompson that some fair democratic procedures would have non-reciprocal outcomes, but then argue that other fair democratic procedures would not. These other procedures would then not require B-substantive principles, and hence there would be at least one version of pure proceduralism that escapes their criticism. But Dodd instead wants to argue for the much stronger and much less plausible claim that no fair democratic procedure can result in non-reciprocal outcomes. I don't see why the weaker and more plausible claim would not suffice as a response to Gutmann and Thompson.

Second, we still have a problem in showing that at least one fair democratic procedure would not result in non-reciprocal outcomes. Even if we stipulate that permissible reasons in public deliberation must be consistent with a conception of persons as free and equal, it could still be the case that outcomes were non-reciprocal. Participants in deliberation could be mistaken, for instance, about a whole variety of moral and

¹ Bruce Ackerman, *Social Justice in the Liberal State*, Yale University Press, 1981.

empirical claims in such a way that the outcome of the procedure was not mutually justifiable. All this depends, of course, on what is meant by the horribly nebulous principle of reciprocity and the idea of mutually justifiable outcomes. But if we take some public policies as required by that principle – e.g. healthcare for all – then it is surely possible that any fair democratic procedure defined in purely procedural terms could fail to issue in that policy. At any rate, I don't see that Dodd has offered us any reason to think that there is at least one fair democratic procedure that can guarantee mutually justifiable outcomes. The stipulation in (β) that democratic procedures are fair if and only if they do result in mutually justifiable outcomes is singularly unhelpful.