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DELIBERATIVE DEMOCRACY DEFENDED: A RESPONSE
TO POSNER'S POLITICAL REALISM

In *Law, Pragmatism, and Democracy*¹ and related essays² Richard Posner raises several objections to what he calls 'Concept 1' democratic theories, by which he means principally 'the loftier forms of "deliberative democracy"'.³ In place of such views, Posner proposes 'Concept 2' democracy, a neo-Schumpeterian vision according to which democracy is 'a kind of market',⁴ a 'competitive power struggle among members of a political elite ... for the electoral support of the masses'.⁵ Given the wide range of views that are called deliberativist and the degree to which theorists of deliberative democracy disagree with each other, that Posner elects to direct his criticisms against a single concept presents several problems.⁶ In the following essay, then, I shall use Posner's criticisms of Concept 1 democracy as an occasion to sketch a specific version of deliberative democracy that, I

¹ R. Posner, *Law, Pragmatism, and Democracy* (Cambridge, Mass: Harvard University Press, 2003).

² R. Posner, 'Dewey and Democracy: A Critique', *Transactional Viewpoints* I/3 (2002), 'Smooth Sailing', *Legal Affairs* January/February (2004), 41–2.

³ Posner, *Law, Pragmatism, and Democracy*, op. cit., 130. For key statements of deliberative democracy, see the essays in eds J. Bohman and W. Rehg, *Deliberative Democracy* (Cambridge, Mass: MIT Press, 1997); ed J. Elster, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998); and eds J. Fishkin and P. Laslett, *Debating Deliberative Democracy* (Oxford: Blackwell, 2003).

⁴ Posner, *Law, Pragmatism, and Democracy*, op. cit., 166.

⁵ *Ibid.*, 130.

⁶ To get a flavour of the range of views in currency, compare G. Smith, *Deliberative Democracy and the Environment* (London: Routledge, 2003); R. Goodin, *Reflective Democracy* (Oxford: Oxford University Press, 2003); E. Leib *Deliberative Democracy in America* (College Park, Penn.: Penn State University Press, 2004); M. James, *Deliberative Democracy and the Plural Polity* (Lawrence, Kansas: University of Kansas Press, 2004); and R. Talisse, *Democracy After Liberalism* (New York: Routledge, 2005). See also J. Bohman, 'The Coming of Age of Deliberative Democracy', *The Journal of Political Philosophy* 6/4 (1998), 400–25, and S. Freeman, 'Deliberative Democracy: A Sympathetic Comment', *Philosophy & Public Affairs* 29/4 (2000), 371–418.

contend, survives Posner's criticisms. I shall call this version of deliberative democracy *Deweyan democracy*, since Posner fixes upon Dewey as a paradigmatic deliberative democrat.⁷ With my defence of Deweyan democracy in place, I shall then launch a criticism of Posner's alternative view of democracy.⁸ To be sure, one cannot expect in a single essay to settle the debates concerning deliberative democracy. The present objective is more modest: my aim is to show that neither Posner's objections to deliberative democracy nor his case for his own view are decisive.

A SKETCH OF DEWEYAN DEMOCRACY

We may begin by saying that Deweyan democracy is the style of deliberative democracy that is *decentered* rather than *statist*, *epistemic* rather than *procedural*, and, with respect to its epistemology, *pragmatist*.

To explain: versions of deliberative democracy that are influenced by Rawls tend to be *statist* insofar as they limit the scope of deliberation to only 'matters of basic justice' and 'constitutional essentials'.⁹ By contrast, Deweyan democracy is *decentered* insofar as it countenances sites of deliberation beyond the state.¹⁰ That is, Deweyan democracy promotes a wide view of the scope of deliberation; on the Deweyan view, public deliberation is an ideal for civil society, or as Dewey himself put it, a 'way of life'.¹¹ As James Bohman argues,

⁷ Posner, *Law, Pragmatism, and Democracy*, op. cit., 106. Those who are familiar with Dewey's work will find that the version of deliberative democracy I propose is much in line with Dewey's views. It is not my aim in the present essay, however, to establish this connection. The terminological issue is not crucial; the objective is to show that there is at least one version of deliberative democracy that can withstand Posner's objections.

⁸ I shall not engage Posner's legal theory, which is concisely summarized in R. Posner, 'Legal Pragmatism', *Metaphilosophy* 35/1 & 2 (2004), 147–59.

⁹ J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 214.

¹⁰ Compare J. Habermas, *Between Facts and Norms* (Cambridge, Mass.: MIT Press, 1996), 298; I. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 46; J. Bohman, 'Realizing Deliberative Democracy as a Mode of Inquiry', *Journal of Speculative Philosophy* 18/1(2004) 23–43, p. 39.

¹¹ J. Dewey, *Freedom and Culture: The Later Works of John Dewey*, Vol. 13, ed. Jo Ann Boydston, (Carbondale, Ill.: Southern Illinois University Press, 1991).

Deliberative politics has no single domain; it includes such diverse activities as formulating and achieving collective goals, making policy decisions about means and ends, resolving conflicts of interest and principle, and solving problems as they emerge in ongoing social life. Public deliberation therefore has to take many forms.¹²

Deliberative democrats differ not only over the scope of public deliberation, but also over its principal aim.¹³ Deliberative *proceduralists* maintain that public deliberation is necessary, since proper deliberation, unlike merely aggregative arrangements, ensures fairness.¹⁴ *Epistemic* deliberativists appeal to the epistemic properties of public deliberation – they say that deliberation aims at democratic outcomes that are rational,¹⁵ wise,¹⁶ or even true.¹⁷ Insofar as it sees democratic deliberation as a kind of inquiry,¹⁸ Deweyan democracy is an *epistemic* deliberativism.

As I have noted, there are several epistemic deliberativisms in currency. What makes Deweyan democracy distinctive among these options is its decidedly *pragmatist* epistemology. In keeping with Dewey's own work on inquiry and his attacks on various forms of the 'spectator theory of knowledge', Deweyan democrats hold that the primary epistemic aim is not the beholding of transcendental objects

¹¹ J. Dewey, *Freedom and Culture: The Later Works of John Dewey*, Vol. 13, ed. Jo Ann Boydston, (Carbondale, Ill.: Southern Illinois University Press, 1991).

¹² J. Bohman, *Public Deliberation* (Cambridge: MIT Press, 1996), 53.

¹³ The distinction that follows between proceduralist and epistemic views of deliberation is common. Cf. Freeman *op. cit.*, 378–79; Dryzek *Deliberative Democracy and Beyond* (Princeton, NJ: Princeton University Press, 1996), 174; and C. List and R. Goodin, 'Epistemic Democracy: Generalizing the Condorcet Jury Theorem', *Journal of Political Philosophy* 9 (2001), 277–78.

¹⁴ J. Cohen, 'Deliberation and Democratic Legitimacy', in eds Bohman and Rehg, *op. cit.* 367–92. Cf. the discussion in D. Estlund, 'Beyond Fairness and Deliberation' *ibid.* 173–204, pp. 176–81.

¹⁵ S. Benhabib, 'Toward a Deliberative Model of Democratic Legitimacy', in S. Benhabib, *Democracy and Difference* (Princeton, NJ: Princeton University Press, 1996), p. 87; J. Dryzek, *op. cit.*, 174.

¹⁶ Young, *op. cit.*, 30.

¹⁷ D. Estlund, 'Making Truth Safe for Democracy', in eds D. Copp, J. Roemer and J. Hampton, *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993); C. Nino, *The Constitution of Deliberative Democracy* (New Haven, Conn.: Yale University Press, 1996); C. Misak, 'Making Disagreement Matter', *Journal of Speculative Philosophy* 18/1 (2004), 9–22.

¹⁸ J. Bohman, 'Democracy as Inquiry, Inquiry as Democratic', *American Journal of Political Science* 43/2 (1999), 590–607 and 'Realizing Deliberative Democracy', *op. cit.*

or the dispassionate hunt for truths, but rather the intelligent resolution of emergent problematic situations.¹⁹

Deweyans understand knowledge-seeking as an ongoing process of confronting problems and striving for resolutions that keep in touch with, and hence are responsive to, subsequent evidence and experience. Accordingly, Deweyan democrats see democracy as a mode of collective problem solving that, like scientific inquiry, is fallibilist, experimentalist and ongoing.²⁰

POSNER'S CRITIQUE OF DELIBERATIVE DEMOCRACY

Posner launches several objections to deliberative democracy, the most forceful of which are well articulated in the following quotation:

Deliberative democracy, at least as conceived of by Dewey, is as purely aspirational and unrealistic as rule by Platonic guardians. With half the population having an IQ below 100 (not a point that Dewey himself ... would have been comfortable making, however), with issues confronting modern government highly complex, with ordinary people having as little interest in complex policy issues as they have aptitude for them, and with the officials whom the people elect buffeted by interest groups and the pressures of competitive elections, it would be unrealistic to expect good ideas and sensible policies be a process aptly termed deliberative.²¹

We may extract from this quotation two separate lines of objection. The first contends that deliberative democracy fails because citizens lack sufficient *interest* in politics; the second holds that, given the complexity of contemporary political issues, citizens lack the *aptitude* for deliberative democracy. Put another way, the first faults deliberative democracy for holding an unrealistic view of the degree to which the average citizen can be expected to engage politically, and the second contends that even if contemporary citizens were disposed towards deliberative democracy, they are so feeble that public deliberation can result only in foolishness. I shall take these objections in reverse order.

¹⁹ H. Putnam and R. Putnam, 'Epistemology as Hypothesis', *Transactions of the C. S. Peirce Society* 26/4 (1990), 407–33; T. Burke, *Dewey's New Logic* (Chicago, IL: University of Chicago Press, 1994).

²⁰ F. Cunningham, *Theories of Democracy* (New York: Routledge 2001), 145; Bohman, 'Realizing Deliberative Democracy', op. cit., 24.

²¹ Posner, *Law, Pragmatism, and Democracy*, op. cit., 107.

The Aptitude Objection

Posner's aptitude objection enjoys a distinguished pedigree running back to Plato; however, the version of deliberative democracy that I have sketched is not as vulnerable to this criticism as may at first appear. The Deweyan democrat does not countenance a direct democracy of omniscient citizen-statesmen/women who perpetually deliberate about the complex problems facing the nation-state. As a *decentered* deliberativism, Deweyan democracy recognizes different spheres of democratic politics, running from more local forms of association in civil society to state and national levels of governance. The expectation is that the more local levels of association will be more directly democratic; however, Deweyan democracy is fully consistent with representative institutions at the levels of state and national governance.

Of course, not every citizen can be expected to keep abreast of the latest data relevant to complex questions of national policy. Insofar as Deweyan democracy is *epistemic* and *pragmatist* it does not, as Posner alleges, see representation as 'a second-best solution to the problem of governance'.²² Rather, it sees representation as an epistemic necessity. That is, Deweyan democrats recognize a division of epistemic labour between citizens, representatives and other holders of public office. What is denied is that these divisions represent differences of epistemic *kind*. The link between the various levels of political decision is the idea of proper inquiry; that is, representatives in the highest levels of national government are to *deliberate* in roughly the same way as citizens in local civil associations. In fact, as Cass Sunstein has argued, the United States Constitution is designed to create a 'republic of reasons'²³ in which citizens, representatives, electors and government officials engage in deliberation with regard to the various decision functions they serve.

Posner is likely to respond that these institutional and conceptual nuances are beside the point. The problem, Posner may argue, is not only that analysis of the issues confronting the nation require high levels of expertise, but rather that even on the more local levels and with regard to less complex issues, citizens simply lack the intellectual resources necessary to make public deliberation a fruitful exercise.

²² Ibid. 167.

²³ C. Sunstein, *Designing Democracy: What Constitutions Do* (New York: Oxford University Press, 2001), 239.

For even at the level of local and less complex issues, deliberation is an activity that requires high degrees of intellectualization and abstraction, and in our 'tenaciously philistine society', citizens 'have little appetite for abstractions'.²⁴

But on this issue, the data are not univocal. To be sure, there is a formidable literature on public ignorance.²⁵ However, there are other data that present another picture. James Fishkin's²⁶ experiments with deliberative polling and the related work of John Gastil²⁷ on citizen juries suggest not only that citizens are capable of reasoned discussion of pressing issues, but also that their opinions and voting behaviour tend to track changes in their levels of informedness.²⁸ Perhaps more importantly, participants in Fishkin's experiments tend to find the experience of political deliberation worthwhile and satisfying,²⁹ and other data suggest that participants in deliberative polling experiments are more likely to participate politically in the future.³⁰

Posner is unimpressed with these considerations. In fact, he has criticized Fishkin's and Bruce Ackerman's call for a new national holiday modeled on the deliberative poll, *Deliberation Day*. In response to the idea that there should be a nation-wide deliberative event open to all citizens, Posner has claimed that '[i]f spending a day

²⁴ Posner, *Law, Pragmatism, and Democracy*, op. cit., 2003, 164.

²⁵ See L. Bartels, 'Uninformed Votes: Information Effects in Presidential Elections', *American Journal of Political Science* 40/1 (1996), 194–230; B. Page, *Who Deliberates? Mass Media in Modern Democracy*. (Chicago, IL: University of Chicago Press, 1996); I. Somin, 'Voter Ignorance and the Democratic Ideal', *Critical Review* 12/4 (1998), 413–58; eds S. Elkin and K.E. Soltan, *Citizen Competence and Democratic Institutions* (College Park, Penn: Penn State University Press, 1999); M. Weinshall, 'Means, Ends, and Public Ignorance in Habermas's Theory of Democracy', *Critical Review* 15/1–2 (2003), 23–58; E.M. Selinger, 'Expertise and Public Ignorance', *Critical Review* 15/3–4 (2003), 375–86.

²⁶ J. Fishkin, *Democracy and Deliberation* (New Haven, Conn.: Yale University Press, 1991) and *The Voice of the People* (New Haven, Conn.: Yale University Press, 1997).

²⁷ J. Gastil, *By Popular Demand* (Berkeley University of California Press, 2000).

²⁸ B. Ackerman and J. Fishkin, *Deliberation Day* (New Haven, Yale University Press, 2004), 52–9. See also the findings discussed in R. Goodin and S. Niemeyer, 'When Does Deliberation Begin?', *Political Studies* 51/4 (2003), 627–49.

²⁹ Ackerman and Fishkin, op. cit., 59; N. McAfee, 'Three Models of Democratic Deliberation', *Journal of Speculative Philosophy* 18/1 (2004), 44–59, pp. 51–5; J. Mansbridge, 'On the Idea that Participation Makes Better Citizens', in eds Elkin and Soltan, op. cit., 291–325.

³⁰ R.C. Luskin and Fishkin, 'Deliberation and "Better Citizens"', unpublished, on file with the authors.

talking about the issues were a worthwhile activity, you wouldn't have to pay voters to do it'.³¹ That is, in response to data suggesting that citizens indeed have the aptitude for democratic deliberation, Posner shifts ground, raising what I above called the *interest* objection.

The Interest Objection

The interest objection, you will recall, maintains that deliberative democracy fails because it is unreasonable to expect citizens to take sufficient *interest* in political matters to motivate them to publicly deliberate. Again, a vast literature examines political nonparticipation and distrust of politicians.³² However, there is, again, another story to be told.

One of the striking features of current modes of political discourse is that they are couched in a self-image that is thoroughly epistemic.³³ Television news channels profess to offer 'no spin' zones and 'fair and balanced' reporting that is 'accurate' and 'trusted'. Popular books of political commentary and criticism, the publication of which is now a multi-million dollar industry, claim to expose 'lying liars' and various other sources of 'fraud,' 'illusion,' and 'deception'. Similarly, popular critiques of the media target 'bias' and 'propaganda'. On political talk radio programming across the USA, citizens daily participate in political discussion that at times involves significant degrees of complexity.³⁴ Popular criticism of George W. Bush, both in the United States and abroad, focuses almost exclusively on his intelligence, truthfulness and judgment. Similarly, representatives and pundits are commonly criticized for being 'partisan', that is,

³¹ Posner, 'Smooth Sailing', op. cit. 2004; 41. Ackerman and Fishkin propose to pay a modest stipend – \$150.00 – to each citizen who elects to participate in Deliberation Day (ibid., 17).

³² E.J. Dionne, *Why Americans Hate Politics* (New York: Touchstone Books, 1992); J.J. Judis, *The Paradox of American Democracy* (New York: Routledge, 2001); eds S.J. Pharr and R. Putman, *Disaffected Democracies* (New Jersey: Princeton University Press, 2000); T.E. Patterson, *The Vanishing Voter* (New York: Knopf, 2002).

³³ Although I am speaking here particularly from within the context of the United States, the point is not restricted to that context.

³⁴ This is to say nothing about the sophistication of the deliberations that one can find on sports radio programming, where call-ins regularly display an impressive command of statistics, facts and other data.

blindly-loyal to a prefabricated party line and thus not responsive to the arguments and not reasons offered by the opposition.

I concede that for the most part this epistemic self-image is *merely* an image, perhaps a mirage. Claims to epistemic fairness, reasonableness, trustworthiness and honesty function mostly as slogans that serve marketing and public-relations objectives. However, in light of the market pressures operative in the modern media industry, we must conclude that such slogans are effective. And these slogans are effective precisely because citizens tend to see themselves as well-informed and rational; they tend to see their political opinions as based on reasons and argument rather than being expressions of raw preferences. At the very least, they hold that reasons, evidence, argument and truth *matter* for political discourse and decision.

That is to say, our public culture of political discourse is *quasi-deliberative*. The various media outlets promote a unified view of what proper democratic politics should be. Specifically, it should be a fair and balanced ongoing critical exchange of reasons and arguments among epistemically honest and earnest political inquirers. Even slight deviations from these epistemic norms are quickly criticized, and the norms are reinforced, at least in speech, at every turn. Given these considerations, it is not clear that citizens are as uninterested in political deliberation as Posner contends.

Posner will be unimpressed. He recognizes that 'political rhetoric is deeply hypocritical, and that politicians must 'flatter the people and exaggerate the degree to which the people actually rule'³⁵. He will maintain that the character of our public political self-image is, again, beside the point. He will insist that no matter what we may *believe* about ourselves, the fact remains that people are uninterested in political participation of the sort that the deliberative democrat prescribes. But if Posner is correct here, it is difficult to see why the hypocrisy and rhetoric is *necessary*. To repeat, the deliberative self-image may be merely a rhetorical or strategic device, but its prevalence is a *prima facie* indicator of its effectiveness, and its effectiveness indicates that the deliberative image resonates positively with citizens. That is, if it were true that citizens see their political activity as being no different from purchasing a toaster,³⁶ the rhetoric of deliberation would have no purchase. But clearly it *does* have a purchase.

³⁵ Posner, *Law, Pragmatism, and Democracy*, op. cit. 153.

³⁶ *Ibid.*, 41.

A Further Objection: Stability

Posner might concede that citizens have some interest in political discussion and debate, and even that deliberation could be ‘meaningful and productive’³⁷ in certain local contexts; however, he will add that it is nonetheless a bad idea to place deliberation at the ‘heart of politics’.³⁸ He thus launches a new argument, what I shall call the *stability* objection to deliberative democracy. The argument is that as American society is ideologically heterogeneous and hence deeply divided over religious and moral fundamentals, a politics of deliberation will tend to exacerbate the latent conflict among different commitments by ‘bringing them into open contention’,³⁹ thus leading to instability and social strife. Thus, the objection runs, deliberative democracy is inadvisable because it will create overt hostility where there is currently only implicit disagreement.

It is paradoxical that Posner appeals to Cass Sunstein’s work on group polarization in support of the stability objection. As Posner reads Sunstein, the lesson is that whereas ‘commerce mostly brings people closer together’, deliberation ‘often drives them apart’ because ‘[d]eliberation within a like-minded group tends to induce agreement with the most extreme views of the members because it is they who have the most definite views’.⁴⁰ Hence the result of deliberation is to ‘push ideologically defined groups further apart from each other, polarizing public opinion’,⁴¹ This is at best a mistaken reading of only half the point of Sunstein’s findings with respect to group polarization. Properly understood, the polarization effect provides an argument in *favour* of deliberative democracy in general, and, as I shall argue, of Deweyan democracy in particular.⁴²

The Real Lesson of Group Polarization

In a series of recent writings, Sunstein has examined a statistical regularity known as *group polarization*. Group polarization is a

³⁷ Ibid., 137.

³⁸ Ibid., 139.

³⁹ Ibid., 135.

⁴⁰ Ibid., 174.

⁴¹ Ibid.

⁴² Note Posner’s puzzlement over how Sunstein can be a deliberative democrat in light of his work on group polarization (ibid., n. 39).

phenomenon that has been found in all manner of group-decision tasks across a wide variety of populations. Basically, group polarization means that 'like-minded people, after discussions with their peers, tend to end up thinking a more extreme version of what they thought before they started to talk'.⁴³ This is not to say, as Posner alleges,⁴⁴ that members of a deliberating group tend to gravitate towards the view of the most extreme member, but rather that, in the absence of criticism and dissent, *all* members of a deliberating group shift to a more extreme version of their pre-deliberation beliefs. Sunstein's findings show that doxastically homogeneous groups deliberating in the absence of critical voices are *epistemically unstable* – they are prone to doxastic shifts towards greater extremity that are not occasioned by the introduction of new reasons, evidence or argument.

The lesson to draw from Sunstein's work is not that group discussion is a bad thing that must be minimized. This would be an odd proposal – it is, after all, inevitable that like-minded persons will gravitate towards each other in political conversation. The lesson is rather that deliberation in the absence of contestation must be discouraged. Hence Sunstein, in his searching study of the political implications of the Internet⁴⁵ and in other writings,⁴⁶ has argued for a number of legal interventions that would minimize the ability of individuals to use the Internet as a filtering device or echo chamber. Among these is the suggestion that especially partisan political websites be required to carry links to sites expressing opposing views, and that there should be government subsidies for the creation and maintenance of a website devoted to public deliberation. The idea is to block the polarization effect by widening the 'argument pools'⁴⁶ to which the average citizen is exposed.

Returning to Posner's stability objection, we now see that the phenomenon of group polarization does not warn against political deliberation *per se*, but only against political deliberation conducted exclusively among like-minded citizens. Further, the risk of instability due to fundamental conflict increases when deliberation across ideological differences is discouraged. Thus Posner's argument that

⁴³ C. Sunstein, *Why Societies Need Dissent* (Cambridge, Mass.: Harvard University Press, 2003), 112.

⁴⁴ Posner, *Law, Pragmatism, and Democracy*, op. cit.,

⁴⁵ C. Sunstein, *Republic.com* (Princeton, NJ: Princeton University Press, 2001).

⁴⁶ C. Sunstein, 'The Law of Group Polarization', eds in Fishkin and Laslett, op. cit., 80–101, p. 84.

deliberation should be discouraged because it will generate overt conflict is ironically misguided. As Sunstein suggests, in order to avoid the kinds of conflict occasioned by opposing extremisms, we must cultivate a more deliberative politics.

Of course Sunstein recognizes that legal interventions are not in themselves sufficient; he acknowledges that '[a] well functioning democracy has a *culture* of free speech, not simply legal protection of free speech'.⁴⁷ A culture of free speech requires that citizens embody 'a certain set of attitudes' such as 'independence of mind', a 'willingness to challenge prevailing opinion', and a readiness to give 'a respectful hearing to those who do not embrace the conventional wisdom'.⁴⁸ Thus Sunstein recognizes that deliberative democracy is not merely a procedure, but requires a certain sort of citizen; more specifically, it requires that citizens cultivate proper epistemic habits.

It is for this reason that Deweyan democracy is especially well positioned to deal with the challenge of group polarization. To repeat, unlike procedural deliberativists, Deweyan democrats hold that the commitment to democracy is a commitment to a certain kind of life, namely, a life of ongoing inquiry. Moreover, Deweyan democrats understand inquiry as a continuing engagement between individuals in which reasons and arguments are exchanged. Such a life requires the cultivation of epistemic habits of the sort identified by Sunstein. In this sense, Deweyan democracy is able to manage the threat of polarization and is well insulated against the kind of instability Posner has identified.

A CRITIQUE OF POSNER'S ALTERNATIVE

There are a number of other lines of criticism raised by Posner, but they tend to be underdeveloped. For example, he accuses deliberative democrats of being disingenuous in their support for democracy; he alleges that deliberativists are in fact interested only in achieving certain policy objectives, and they see deliberative democracy as a convenient instrument for the realization of those goals. He declares that therefore deliberative democrats will 'desert democracy in the pinch'.⁴⁹ Although Posner's suspicions may be well placed with

⁴⁷ Sunstein, *Why Societies Need Dissent*, op. cit., 110.

⁴⁸ Ibid.

⁴⁹ Posner, *Law, Pragmatism, and Democracy*, op. cit., 159.

respect to certain versions of deliberative democracy, the allegation does not stand against all deliberativisms and it does not stand against Deweyan democracy. In any case, I hope to have shown in the foregoing section that at least one version of deliberative democracy, namely Deweyan democracy, can respond to Posner's challenges. It remains to evaluate Posner's democratic realist alternative to Concept 1 democratic theories.

Posner's Concept 2 democratic theory is a standard form of democratic realism. Praising Schumpeter throughout, Posner professes to eschew the utopianism of deliberative theories by sticking to the humble facts about contemporary democracy: citizens do not care much for politics, they are not very bright, and they 'have no interest in debate'.⁵⁰ Given this, democracy is best conceived of as a market of 'consumer sovereignty'⁵¹ in which the 'natural leaders' compete for the votes of the 'sheep'.⁵² Contending that his view is 'more respectful of people as they actually are', he characterizes his position as 'realistic'⁵³ and 'unillusioned'.⁵⁴

Posner presents his democratic realism as following directly from his 'everyday pragmatism'.⁵⁵ He characterizes everyday pragmatism as 'the mindset denoted by the popular usage of the word "pragmatic," meaning practical and business-like, "no-nonsense," disdainful of abstract theory and intellectual pretension, contemptuous of moralizers and utopian dreamers'.⁵⁶ Posner holds that this mindset 'has been and remains the untheorized cultural outlook of most Americans';⁵⁷ it is the practice of prioritizing the 'empirical over the theoretical' and the methodological directive to 'start from what we have'.⁵⁸ In his view, the anti-theory orientation of everyday pragmatism favours the hard-nosed empiricism of democratic realism.

However, it is not clear that everyday pragmatism and democratic realism are in fact complementary views. Consider that standard versions of democratic realism, such as Schumpeter's, are posed as technically robust social scientific *theories* and so are thoroughly

⁵⁰ Posner, 'Smooth Sailing', op. cit., 42.

⁵¹ Ibid., 41.

⁵² Posner, *Law, Pragmatism, and Democracy*, op. cit., 183.

⁵³ Ibid., 165.

⁵⁴ Ibid., 145.

⁵⁵ Ibid., ch. 1.

⁵⁶ Ibid., 50.

⁵⁷ Ibid.

⁵⁸ Ibid., 184.

academic – they are addressed mainly to social scientists for the purpose of explaining and predicting the political behaviour of a given population.⁵⁹ Accordingly, such views are decidedly *not* proposed as a description of ‘the untheorized cultural outlook of most Americans’. In fact, as critics note, realist models of democracy are replete with ontological, methodological and moral commitments that are ‘abstract’ and ‘philosophical’ in the senses Posner deplors.⁶⁰

Further, we must not overlook the fact that contemporary citizens will not recognize *themselves* in the democratic realist’s theory. Recall that according to Posner’s realism, political argument is simply rhetorical bargaining, political speech is simply demagoguery, political commentary is simply the expression of blind interests, and political action is simply the assertion of preference. One may accept this image as a *third-personal account*, that is, as a depiction of how *others* operate, but when this third-personal account is considered from a first-personal perspective – when it is taken as an account of one’s *own* political behaviour – it loses its credibility. Consider that Posner’s view requires that you and I understand our *own* political commitments as expressions of raw preference, not the outcome of sincere attempts to weight various arguments, considerations and evidence. According to Posner, when you and I enter into political discussion, each of us is simply campaigning for our respective preferences. When you attempt to formulate a rational reply to an objection I have raised, you are in fact merely *rationalizing*. When you criticize me for being uncharitable, dishonest or unfair to your views, you are being *hypocritical*. Insofar as you and I agree that this description of our activities, if true, is problematic and lamentable, we are deluded.

My point here is not the morally optimistic one that citizens are nobler than Posner’s view allows. It is rather that citizens generally understand their political opinions to be more than simple prefer-

⁵⁹ Consider the technical sophistication of contemporary realists such as A. Przeworski, ‘Minimalist Conception of Democracy: A Defense’, in eds I. Shapiro and C. Nacker-Cordon, *Democracy’s Value* (Cambridge: Cambridge University Press, 1999), 23–55 and R. Hardin, ‘Street Level Epistemology and Democratic Participation’, in eds Fishkin and Laslett, *op. cit.*, 163–81.

⁶⁰ I cannot here rehearse the main objections to democratic realism, but see G. Mackie, *Democracy Defended* (Cambridge: Cambridge University Press, 2003) for an extended critical treatment. My argument here is that, whatever its virtues and vices, democratic realism is a roust social theory and so is not an easy fit with Posner’s pragmatism.

ences and so they typically see their political activities as something different from their consumer activities. Put more strongly, our everyday practices of popular political discourse indicate that citizens generally take their political beliefs to stand in need of arguments and evidence, they often believe their political opponents to be mistaken rather than simply craven, and they think that political argument is possible as something distinct from political bargaining. Consequently, Posner's description misrepresents this common aspect of democratic practice.

Admittedly, this does not in itself constitute an objection. However, note that on Posner's view, the popular self-understandings and self-descriptions I have emphasized above are in fact widespread misunderstandings and flawed descriptions. Hence his realism commits him not only to the homely view that democracy is a kind of market, but also to the more astonishing claim that the general populace in American – and other – society is highly deluded about the nature of its own political behaviour. However, the claim that millions of people are deeply benighted with respect to their own motives surely involves the kind of theorizing that everyday pragmatists attempt to *avoid*. More importantly, it is the kind of claim that stands in need of exposition. This is why many expressions of democratic realism include complex and sophisticated theories of propaganda and ideological manipulation.⁶¹ Again, such theories are beyond the ken of an everyday pragmatist.

In this sense, democratic realism involves something much more robust than the simple description of democracy as market-like. It harbours an account of the citizen's political motivation and activity that seems at odds with many of our political practices. To repeat, the realist depiction renders the common democratic practice of political discussion and debate nonsensical. Posner may certainly endorse such an estimation of our practice; however, insofar as everyday pragmatism is opposed to ostentatious theorizing, academic abstraction and detached speculation, it is an awkward companion for democratic realism. It is debatable whether democratic realism is a viable political theory, but it is in any case not a pragmatist theory in Posner's sense of the term.

⁶¹ See W. Lippmann, *Public Opinion* (New York: The Free Press, 1922); N. Chomsky and E. Herman, *Manufacturing Consent* (New York: Pantheon Books, 2002).

CONCLUSION

I have argued in this essay that one version of deliberative democracy can meet the challenges Posner has posed to Concept 1 theories. I have also argued that Posner's commitment to Concept 2 democracy is in tension with his everyday pragmatism, insofar as the former is a highly theorized political theory and is at odds with the self-conceptions of the ordinary citizens to which Posner's pragmatism instructs him to remain faithful. These considerations constitute neither a decisive repudiation of Posner's position, nor a knock-down proof of Deweyan democracy, nor an argument in favour of Deweyan democracy over competing deliberativist views. However, they do show that Posner has oversimplified the matter by casting the issue in terms of an easy choice between a simple "realistic" market model that "begins with what we have" and a lofty deliberative model that begins in the clouds. Accordingly, our present choice is not between unrealistic deliberativist models and a realistic consumer model, but rather between several deeply theoretical accounts. On one of these accounts, common aspects of our political practice indicate that citizens are thoroughly deluded with regard to the content of their political beliefs and discussions; although citizens generally take themselves to reason-responsive, they are in fact simply advancing raw preferences. Another account takes seriously the epistemic practices and communicative norms implicit in existing political discourse and attempts to devise a view of democracy in which these norms can be more fully engaged and cultivated. Neither Posner's criticisms nor his proposal are decisive. The question of how we should theorize democracy is still open.⁶²

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