

Nino's Deliberative Democracy in the Dock: A Discourse Failure Critique

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In this essay, I critique Nino's (1996) view that a democratic majority rule framework best secures impartial consideration of citizens' interests through deliberative epistemic and moral virtues that lead to the enactment of impartialist policies. Pincione and Teson's (2006) discourse failure hypothesis, as well as evidence from public economics, show democratic deliberation is self-defeating, due to partialist group interests that distort deliberative democratic discourse, and, in turn, leads to the enactment of partialist legislation. I conclude that impartialist policies are better secured by a constitutional amendment limiting majority rule to public goods legislation and requiring super majority rule for redistributive legislation.

Keywords: democracy, deliberation, discourse failure, public choice economics, special interest groups, majority rule, super majority rule, public goods legislation, redistributive legislation

INTRODUCTION

The deliberative democratic ideal is twofold. First, deliberation has an epistemic virtue of enhancing citizens' knowledge of policy facts. Secondly, deliberation has the moral virtue of impartial discourse. Through a deliberative process of citing reasons for supporting policies or candidates, as well as careful debate, deliberators jointly arrive at a policy that impartially takes all citizens' interests into account in light of the available policy evidence (Page and Shapiro, 1992; Wittman, 1995; Nino, 1996; Christiano, 1997; Gutman and Thompson, 1998; Elster, 1998, 2003; Dryzek, 2000; Estlund, 2008).

Of course, in the ordinary run of actual democratic politics, actual deliberating citizen constituents and their elected political actors rarely if ever agree on a policy proposal that everyone unanimously holds impartially accounts for the interests of all affected by that proposal. Deliberativists in turn maintain that even when there is still widespread disagreement after good faith deliberation, it is good enough for the deliberative legitimacy of a proposal decided by majority rule that deliberators are constrained by morally impartialist language during deliberation (e.g., "this policy would benefit us all,") as opposed to partialist language (e.g., "this policy would benefit my group") (Habermas, 1996; Nino 1996).

However, in this essay, I argue, first, that appeals to the alleged superior epistemic and moral status of democratic deliberation (a la impartiality) are self-defeating because of what Pincione and Teson (2006) call systemic discourse failure. Otherwise educated citizens tend to be rationally ignorant of public policy facts and consequences, and are very susceptible to manipulation by political actors and interest groups. The latter, in turn, have a strong default incentive to distort the quality of public policy deliberation—leading to deliberative distortion of policy outcomes.

Secondly, I consider Nino's argument that deliberation within a democratic majority rule framework best secures impartial consideration of citizens' interests. While impartiality is a laudable political ideal, I argue that democratic deliberation within a majority rule framework is an unsuitable means for achieving impartial policies. As evidence from public economics strongly suggests, as deliberation increases, deliberation quality suffers from pervasive discourse failure by political actors and special interest groups, and predictably results in the enactment of partialist policies which deliberativists themselves oppose. Then, I consider an argument that subsidized non-profit media groups cannot be realistically expected to overcome the rational ignorance effect, and will not increase overall deliberation quality. If that analysis is correct, discourse failure should be presumed a permanent feature of democratic politics.

Finally, I sketch a constitutional amendment proposal mimicking the function of impartiality—that unanimity rule imperfectly achieves—requiring a super majority legislative vote to enact any redistributive legislation. This would effectively limit the incentive of interest groups to commit discourse failure by reducing the incidence of redistributive legislation from which they could benefit. This proposal, I argue, better ensures an impartial consideration of citizens' interests than Nino's deliberative democracy.

RATIONAL CHOICE THEORY, RATIONAL IGNORANCE, AND THE DISCOURSE FAILURE HYPOTHESIS

My critique of epistemic and moral defenses of deliberative democracy is grounded in rational choice theory, a descriptive thesis that, all other things being equal, the higher the costs of some actions, the fewer such actions persons will perform (Laver, 1997). The rational ignorance effect explains why most citizens who are uninformed about policies are nonetheless confident that their policy beliefs are true. First, it is costly for citizens to gather policy information from peer-reviewed social science journals or reliable intermediary sources. Secondly, no one individual, as a single voter, has good reason to believe her vote will be decisive in shaping the outcome of an election where large numbers of citizens vote.

Consequently, most citizens spend their time in leisurely activities that provide immediate psychological benefits, and those who devote spare time to political activism tend to be misinformed about public policy (Hardin, 2006; Brennan and Lomasky, 1993, Jaeck; 2011). Deliberativists, in turn, propose to overcome rational ignorance, and the false policy beliefs resulting from it, through subsidized education (Lieb, 2004). Toward the end of the essay, I'll critique a version of that proposal which appeals to the use of subsidized public media for advancing deliberative goals (Dyck and Moss, 2013).

Rationally ignorant citizens tend to either have false beliefs about well-documented policy consequences, or else they have true beliefs about policies but not for the best empirically available reasons. Moreover, they have a strong preference for "vivid social explanations" that support their default social views acquired at low psychological cost (e.g., celebrity testimony, moving anecdotes, testimonials.) These vivid explanations trade on an ambiguity between easily seen concrete facts and complex empirical evidence about public policies. Non-vivid explanations, by contrast, tend to promote careful consideration about policy consequences and not merely the slogans that support those policies. Understanding non-vivid explanations can be very psychologically demanding, and so rationally ignorant citizens overwhelmingly favor vivid explanations (Pincione and Teson, 2006: 13-18).

We must now connect rational choice theory to democratic deliberation. First, democratic deliberation is beset by systemic rational ignorance among the general public with respect to policy content. Rationally ignorant citizens generally take at face value public policies advanced in the name of "diversity," "equality," "freedom," "empowerment," "merit," "solidarity," "public interest," "social justice," "impartiality," etc., without tracking whether or not those policies actually advance these ideals.

Additionally, rationally ignorant citizens support such measures as minimum wage increases solely based on stated policy aims of advocates (viz., reducing poverty among the socio-economically worst-off workers.) They do not know minimum wage increases tend to render the already unemployed poor unemployable through hourly cuts, hiring freezes, and shifts toward automation (Neumark and Wascher, 1992; Sobel, 1999; Stewart and Swaffield, 2008; Couch and Wittenburg, 2001; Manchin and Rahman, 2003; Neumark and Schweitzer, and Wascher, 2004; Wang and Gunderson, 2011; Shuang and Zhang,

2013). The result is that democratic deliberation about raising the minimum wage seldom if ever consists of debates based on the available longitudinal evidence of the effectiveness or ineffectiveness of reducing poverty by this means. Instead, deliberating political actors, like their constituents, offer platitudes in favor of raising the minimum wage in order to reduce poverty among the worst-off workers.

Pincione and Teson (2006) examine many ways in which actual deliberative democratic institutions are self-defeating. For the purposes of this essay, I will critique the supposed epistemic and moral virtues of deliberation a la impartial consideration of citizens' interests. Deliberation does not correct rationally ignorant citizens' false policy beliefs because policy issues are routinely filtered by special interest groups which keep apprised of policy that positively or negatively effects their interests, distort the deliberative process, and unduly influence policy formation. This interest group influence, in turn, results in the enactment of partialist policies favoring specific group interests at the expense of majority interests.

By "interest groups" I mean for-profit and not-for-profit organizations which pressure political actors to pass legislation favoring the interests of that group in a way that subverts Nino's deliberative goal of impartial consideration of all citizens' interests, whether or not an interest group intends to benefit its members in a way that subverts the impartial consideration of citizens' interests. This definition has the advantage of dialectical neutrality. "Interest groups" so defined should be regarded as problematic from the point of view of deliberativists themselves, given the goal of policies that impartially consider citizens' interests, expressed through majority rule democratic institutions.

I cannot here give a full list line item list of impartialist versus partialist policies. I can, however, distinguish between what economists call "non-rivalrous" public goods legislation, which tends to be public regarding, versus "rivalrous" redistributive legislation, which tends to be partialist and is characterized by special interests (Macey, 1986; Pasour, 2015).

Public goods legislation includes military protection, environmental services, education, etc. Economists call these goods non-rivalrous in the sense that they are consumed by many citizens while each citizen benefits from her own consumption without reducing anyone else's benefit of her consumption (Pauly, 1967; Mueller, 1989; Laver 1997). Though military defense, environmental services, and public education may benefit some special groups (e.g., private contractors and school administrators) more than the public at large, those benefits are not excludable and rivalrous, since every citizen benefits from them, even if not to the same extent. Infrastructure for public use is also broadly non-rivalrous, excluding tolls for roads, tunnels, bridges, etc.

In contrast, rivalrous special interest group-based legislation is partialist because it is concerned with redistributing wealth and income from many citizens to particular groups, either through direct wealth transfers via subsidies, or through occupational licensing or tariffs, all of which are de facto barriers to entry for would-be competitors (Stigler, 1971). Above all, rivalrous legislation is partialist; a subsidy directly benefits group members by imposing direct or indirect costs on nearly all other citizens (Congleton, 1986; Hunter and Nelson, 1989; Becker and Mulligan, 2003).

Here is a crucial point: Both political actors who are in a position to grant wealth transfers (McChesney, 1997), as well as groups seeking wealth transfers (Chamon and Kaplan, 2013) have a strong incentive to deceive rationally ignorant citizens by using public interest language disguising partialist policies and incorporating subsidies into public goods legislation (Macey, 1986). The most vexing problem for deliberativist endorsement of deliberative democracy, then, is the strong incentive of political actors and special interest groups to commit discourse failure, by lie or omission, that a much celebrated policy alleged to be in the public interest is, in fact, a partialist policy favoring narrow group interests. This phenomenon is described by the Pincione-Teson *discourse failure hypothesis*.

“[D]iscourse failure [i]s a generic term denoting the public display of political positions ...traceable to truth-insensitive processes...that disregard[s] the best available reasons... in the relevant reliable scholarly disciplines...and...normally lead[s] to false beliefs about society. [The causes of discourse failure are...](1)The high costs that citizens face to

become acquainted with reliable social science...(2)The tendency by politicians to take advantage of the public's ignorance for personal and political gain – the politicians' posturing ...(3)...The incentives to posture...[that is, to exploit widespread ignorance]...directly related to the extent of redistributive powers.” (Pincione and Teson, 2006:17-18).

Consider how discourse failure follows from rational ignorance. Rationally ignorant Melinda mistakenly believes raising the minimum wage makes the very poor better off, because she reads a social media post presenting anecdotal evidence for this view. She forms this belief through an unreliable belief formation process that does not require weighing claims against evidence. For her to acquire the belief—for the best empirically reliable reasons—that raising the minimum wage makes the very poor worse off in the long-term, she would need a minimal understanding of price controls and their effects on markets for goods, services, and labor. Her ignorance of this fact makes her vulnerable to lying political actors and interest groups, who may reinforce her false policy beliefs in order to maximize votes and profits. That point generalizes to any rationally ignorant citizens vulnerable to persuasion through rhetoric.

NINO'S ARGUMENT: THE EPISTEMIC AND MORAL VIRTUES OF DEMOCRATIC DELIBERATION FOR IMPARTIAL CONSIDERATION OF CITIZENS' INTERESTS THROUGH AN INSTITUTIONALIZED PROCESS OF MORAL DISCUSSION

In this section, I present Nino's (1996) defense of deliberative democracy, which purports both epistemic and moral value. Democracy's epistemic value allegedly lies in the fact that majority rule, when preceded by deliberation, is the most reliable process for securing impartial policies. "...All affected by a decision...participate[d] in a discussion...and have the opportunity to justify to each other a certain solution to the conflict ...[which]... is nearly always impartial.....when more votes support a solution...the interests of more people are satisfied than when the solution is supported by fewer votes” (Nino, 1996: 118, 127).

Rawls's defends democracy with a qualitative argument, i.e., justice-as-fairness, that democracy is morally valuable when it prioritizes the interests of the worst-off citizens (Rawls, 1999). Nino, on the other hand, follows Habermas (1996) in arguing for a qualitative view of democracy as an institutionalized process of moral discussion under decision-making time constraints. According to Nino, the language of impartiality limits what interests may be represented, and deliberation so characterized in the context of majority rule is the most reliable procedure for discovering what policies impartially consider all citizens' interests. Therein lies the epistemic and moral virtues of democratic deliberation (Nino, 1996: 112-134).

Nino illustrates this intuitive point by imagining two groups, each containing the same number of members, who jointly own a condominium where the elevator is in a state of disrepair. We may consider the epistemic properties of two possible decision rules for the two groups to adopt with respect to potentially repairing the elevator: unanimity rule and majority rule. Unanimity rule is conceptually related to impartiality. If everyone who is affected by a proposal votes “yes” for it, there is overwhelming evidence that the proposal is impartial relative to all others which fail to secure unanimity (Nino, 1996: 118).

Unanimity rule is both advantageous and worrisome. On the one hand, unanimity efficiently rules out very partialist proposals which are obviously self-serving. To illustrate, suppose that within the condominium Group 1 members live upstairs and propose that elevator repair costs should be divided equally among the members of both groups. Now, suppose Group 2 members propose that because its members live downstairs and rarely use the elevator, and are willing to use the stairs to avoid paying any repair costs. Here, unanimous agreement by Group 1 and Group 2 on the Group 2 proposal would considerably set back Group 1 interests, who alone would bear elevator repair costs; for all intents and purposes, it is proposal for the status quo of the elevator remaining in disrepair. At the same time, Group 2 members will not hear of Group 1 Proposal of equally dividing elevator repair costs. Each group has the same number of members; so, each vetoes the other's self-serving proposal by refusing to vote for it.

However, unanimity is also worrisome due to the holdout/status quo problem. A proposal fails if even one group member refuses to vote for it, even if the proposal is the most impartial solution for resolving a

collective action problem (Mueller, 1989). Unanimity rule allows Group 2 to easily crush Group 1's elevator repair proposal, simply by refusing to vote for it. The adoption of unanimity rule will tend to reinforce the partialist status quo, since falling one vote short of unanimity has the same effect as no one voting. Under unanimity rule, there is no incentive for Group 2 members to work out an arrangement with Group 1 members that impartially takes into account the interests of all members of both groups. In this way, because of the holdout/status quo problem, just one dissenter can spoil an impartialist solution.

For Nino, majority rule indirectly addresses the holdout/status quo problem that so afflicts unanimity rule, and better approximates impartiality than unanimity rule in practice. The key claim is that majority rule prevents Group 1 and Group 2 from enacting policies that discount the other's interests entirely in the way that each would be apt to do under unanimity rule, and so gives each group ample incentive to arrive at a more impartial solution that takes into account both groups' interests.

The failure of both proposals prompts deliberation about an alternative procedure for collective decision making. If a more than half of the individuals in both groups become irritated by the inconvenience of the elevator in disrepair, they will abandon unanimity rule and propose majority rule instead. Dissenters within both groups will also insist on a third proposal accounting for both groups' interests. Proposal 3 states that "Group 1 members shall pay 4/5 of the costs of elevator repair since its members use the elevator the most, and Group 2 members shall pay 1/5 of the costs of the repairs since its members use the elevator the least." Proposal 3 is importantly *not* a group proposal, since it considers both groups' interests relative to elevator use, and divides repair costs accordingly.

Proposal 3 garners more than fifty percent of the collective vote under Nino's account of impartial interests if at least three assumptions hold. First, neither Group 1 Proposal nor Group 2 Proposal can garner more than fifty percent of the vote (since each will veto the other's self-serving proposal.) Secondly, at least a few Group 1 and Group 2 members recognize the impartiality of Proposal 3, even if begrudgingly, and think it a better alternative to elevator disrepair. Thirdly, we must exclude threats of violence by one group against the other, such as knee-cap breaking, which may be instrumental for one group achieving a unanimous but partialist vote securing its interests. This would be self-serving unanimity without the moral and epistemic value of impartial consideration of all interests affected—so dear to deliberativists.

Nino then applies those observations to democratic legislative politics. Unlike the case of Group 1 and Group 2, there are majority and minority parties representing the interests of particular constituent groups within democratic assemblies. Supposing a two-party system of representation under majority rule, the minority party cannot veto a majority party proposal, since the former lacks numerical ability to achieve fifty percent of the vote without the help of coalition partners (Davis and Hinch, and Ordeshook, 1970).

Majority rule, argues Nino, provides the best possible approximation to impartiality (though I challenge his claim later.) His logic is that when a minority party in the legislative assembly favors a reform, if the proposed reform is more impartial than the status quo, it will garner support in the assembly from the majority party, jointly defeating the status quo. On the other hand, the more partial a policy is toward the interests of minority constituents to the near exclusion of majority constituents' interests, the less likely the proposal will garner fifty percent majority support needed for enactment. For this reason, any alternative proposal to the status quo, whatever it may be, will likely be less partialist than the status quo.

For Nino, if we construe democracy as a merely quantitative expression of a majority group's interests rather than a qualitative process requiring group members to justify those interests to one another, then counter-intuitive moral results obtain, namely, rule by the numbers. Thus, the deliberation of the many is only epistemically and morally valuable when it filters out self-serving reasons. He proposes an *Authenticity Test* for assessing the partiality/impartiality of political actor discourse. Impartial moral discourse is required to justify decisions where the interests of more than one person is concerned (viz., "elevator repair benefits us all" as opposed to "elevator repair pleases me since I use

it a great deal.” The first example would be impartialist, while the second would be partialist) (Nino, 1996: 115, 122).

Nino argues the Authenticity Test of deliberation content ensures impartial bargaining. Precisely because there are time limits built into the democratic decision making process, and because blatantly selfish reasons (e.g., “my party wants this”) are unlikely to garner majority support among representatives of diverse interests, reasons accepted from an impartial viewpoint (e.g., “we will all be better off”) are needed to strike a legislative bargain between parties. Thus, political actors who operate under the incentive structure of deliberative democracy will attend to the interests of the majority, pass the Authenticity Test, and enact impartial policies which benefit all citizens, or at the very least, the majority of citizens.

A DISCOURSE FAILURE CRITIQUE: IMPARTIAL TREATMENT OF CITIZENS’ INTERESTS AT LEAST REQUIRES THAT POLITICAL ACTORS DISCLOSE BAD CONSEQUENCES OF PUBLIC POLICIES, BUT THEY HAVE STRONG INCENTIVE TO LIE ABOUT THIS

Nino’s (1996) defense of deliberative democracy is theoretically elegant and internally consistent. Moreover, his Authenticity Test tracks what many political philosophers suppose are requirements for impartial discourse (Cohen, 2009; Benhabib, 1996; Freeman, 2000). Yet, I argue that the Authenticity Test is inadequate to guard against discourse failure because it does not include a requirement that a political actor publicly disclose any bad side effects of a policy she supports. Moreover, even if Nino attempted to fix the Authenticity Test by embedding within it such a requirement, political actors inclined toward discourse failure will simply lie when politically expedient, and swear their policies really do consider the interests of all affected. Since discourse failure can only be punished under oath as perjury, each political actor has a strong incentive to lie in everyday political speeches and press conferences (Shepsle, 1992).

Pincione and Teson’s (2006) discourse failure hypothesis allows us to predict with great accuracy that posturers (e.g., rationally informed lying politicians and special interest group leaders) have a strong incentive to exploit the rational ignorance of citizens in a deliberative democracy. In this way, political actors carry on impartialist discourse which passes the Authenticity Test, while yet enacting partialist policies favoring narrow group interests. For example, public interest discourse often masks policy proposals which, if enacted, would favor narrow group interests at taxpayer expense (Mashaw, 1980: 868).

A deliberativist may reply that our objection discounts the possibility that individual preferences can be transformed through the deliberative process, thereby securing more impartial legislation (Masse, 1983; Elster, 2003; Wittman, 2008). However, this reply misses the point of the discourse failure critique. Though individual preferences can be transformed by deliberation, there is theoretic and empirical evidence that the institutional incentives of democracy are very unfavorable for this purpose. In actual democracies, the most significant determinants for policy implementation are agenda setting rules—not deliberation per se. The term “agenda” used here means a set of rules that determines which alternatives face each other in a voting contest. These include (but are not limited to) time and budget restrictions (Baumgartner et al., 2009), committee veto power and amendment rules (Shepsle, 1992: 245; Bloch and Rottier, 2002), the order of voting (Enelow, 1997: 153), and strategic voting (Landes and Posner, 1975). Given those determinants of policy implementation, policy content tends to reflect the efforts of the organized groups which have made the most of their opportunities to capture the legislative agenda relative to the disorganized efforts of rationally ignorant citizens en masse (Olson, 1971).

The upshot is that we should not expect that policies enacted within a democratic deliberative framework will be characterized by impartiality. Instead, strategic policy agenda setting political actors will enact partialist policies by means of the democratic process, while employing innocuous public interest language within deliberative assemblies and within popular deliberative fora. Nino’s Authenticity Test still allows for sophisticated forms of discourse failure because there is no requirement that political actors publicly disclose any expected bad consequences (e.g., side effects) of popular public policies they support—and even if there were such a disclosure requirement, there is no way to legally punish deceitful statements by political actors unless those statements are uttered under oath.

At this point, a deliberativist might reply my observations only show deliberation quality is subject to corruption. Even so, she might press, that does not mean that we should discourage popular deliberation among the citizenry. If anything, an increase in participation by groups with diverse views (Lambsdorff, 2002) should offset deliberation corruption caused by narrow interest group influence, and increase deliberative quality, if only because the larger the number of groups who engage in participation, the more diversity of views (Boehmke and Bowen, 2010; Cohen-Eliya and Hammer, 2011).

The problem with the deliberativist reply is this: Ultimately the participation model fails to take seriously the fact that discourse failure is largely caused by the rational ignorance effect, and by pervasive interest group influence in policy exploiting rational ignorance. A diversity of views, even if achieved, is no safeguard against discourse failure, and the latter precludes the enactment of impartial policies. Indeed, we have evidence that increasing popular participation will reduce deliberative quality. Rather than providing reasoned arguments for favored policies, rationally ignorant citizens exchange platitudes that they tend to equate with impartial concern for others' interests—they do not assess policy consequences to determine to what extent a policy is partialist or impartialist. Systemic rational ignorance in turn sends a signal to special interest groups that the costs of deceiving rationally ignorant citizens are quite low, relative to expected benefits of partialist legislation (Mothadi and Row, 2003).

On the other hand, Pincione and Teson's *Display Test* requires that a citizen or political actor publicly state any bad consequences she can reasonably predict will result from a policy she advocates. Failing the Display Test allows us to reasonably conclude that the citizen or political actor is not, after all, impartially taking her fellow citizens' interests into account, even if she intends to do so. A citizen or political actor may fail the Display Test by posturing, that is, by failing to publicly acknowledge the predictably bad effects of a policy that she can reasonably anticipate given her knowledge of social science. Secondly, a citizen or political actor fails the Display Test if she advocates a policy while being rationally ignorant of the predictably bad effects caused by enacting that policy (Pincione and Teson, 2006).

Now, there are two ways that a political actor may pass the Display Test. First, she may be a True Believer if she publicly acknowledges the predicted bad effects of a policy but posits independent moral reasons for enacting the policy *in spite of* its expected bad consequences (Pincione and Teson, 2006). Or, she may what I call an Honest Learner, who publicly acknowledges the bad consequences for citizens of the policy, and proposes some alternative policy that does not have those effects (Hoffer, 1954).

Consider an example illustrating both responses. Suppose a Rawlsian who is committed to distributive justice in taxation learns that the consequence for implementing a new capital gains tax on the wealthy (to use the collected monies to improve the plight of the worst off) has been the flight of entrepreneurs to countries which have no capital gains tax. At this point, our Rawlsian may insist that Rawls's difference principle imposes on her a moral duty to impose the tax on the entrepreneurs, even if entrepreneurs strategically respond to the tax scheme by leaving the country; in that case, she is a True Believer who is willing to publicly disclose the bad consequences (for the worst off citizens) of her favored policy, yet support the policy for independent moral reasons. Alternatively, our Rawlsian might abandon her previous support for the capital gains tax scheme in favor of some other scheme she believes will actually to be to the advantage of the worst-off citizens; in that case, she is an Honest Learner.

Conceptually, someone could pass the Display Test either by responding as a True Believer or Honest Learner. Even so, Pincione and Teson (2006) note that, empirically speaking, political actors who come to know popular policies they support have bad consequences for the citizens they are alleged to aid (or for third parties who bear those policy costs) have every incentive to commit discourse failure within the incentive structure of deliberative democracy by lying about the policy's effects. This is because passing the Display Test is electorally costly for political actors seeking reelection in particular.

We can illustrate the political incentive to commit discourse failure by contrasting the politically popular support for minimum wage increases with the empirically verifiable negative effects of

minimum wage increases for the worst-off citizens the increases are allegedly intended to aid. To give but one example, there is evidence that raising in the minimum wage in Africa disadvantaged already poor and uneducated citizens, confirming that the negative effects of raising the minimum wage on the poor in the United States are cross-cultural. Moreover, there is evidence that an increase in the minimum wage leads to employer discrimination against poor and uneducated workers, and a corresponding increase in the weekly labor hours of middle class and educated workers (Yamada, 2016).

If a political actor who supports raising the minimum wage publicly also admits she expects this will hurt the worst off citizens by making a sizable subset of them unemployable, and if she supports the measure anyway as a True Believer, she puts herself at a comparative electoral disadvantage relative to her rationally informed political opponent who postures to citizens about the effects of raising the minimum wage. Thus, political actors have great incentive to posture with vivid explanations in a way that fails the Display Test, if only because passing the Display Test is electorally costly in most cases.

A PUBLIC CHOICE EVALUATION OF DELIBERATIVE DEMOCRACY: EXPLANATORY MODELS

Public choice theory (broadly construed) is the economic study of incentives and constraints on collective behavior within specific institutional structures (Voigt, 2008). Public choice theorists reject the “public interest” government model that holds market actors are self-interested while political actors are altruistic public interest maximizers. On the public choice view, both market and political actors are self-interested, and elected political actors are vote maximizers. This assumption allows us to more accurately predict the behavior of political actors—as well as explain policy outcomes—than the public interest model (Gwartney and Wagner, 1988: 3-28; Rasmusen and Ramseyer, 1994; Brennan and Buchanan, 1977). We need not suppose that political actors care only about themselves; even so, altruistic and egoistic political actors alike must garner sufficient votes to obtain and retain elected office.

Public economic theoretic and empirical studies pose significant problems for the alleged epistemic and moral value of democratic deliberation. For our narrow purposes, I consider only the role of interest groups in undermining deliberative democratic ideals by misinforming citizens and distorting public discourse in a way that leads to the enactment of partialist legislation.

Let’s first consider the theoretic models that cast doubt on the idea that impartial policy results from increased democratic deliberation. There are two sides of the study of interest groups and political information. The first is the demand side: Farmers, teachers unions, and any organizations receiving government funding, auto manufacturers, environmentalists, etc., correctly perceive that maximizing their policy objectives depends heavily on their lobbying effectiveness. All things being equal, interest groups have a greater incentive to keep abreast of policy information, as well as candidates and incumbents, than the average rationally ignorant voter (Pincione and Teson, 2006; Pincione, 2012).

There is also a supply side for policy information, and here lies the greatest potential for discourse failure via interest group issue framing (Austen-Smith, 1997). Interest groups disseminate both accurate and inaccurate information to voters with respect to ballot initiatives and candidate policy preferences, depending on the groups’ beliefs about how increased voter policy knowledge will affect ballot outcomes in which groups have a vested interest (Potters and van Winden, 1993; Austen-Smith and Wright, 1992; Austen-Smith, 1993; Ainsworth, 1993; Cotton, 2016; MacKenzie, 2017; Stratmann, 2017).

Consider a case of discourse failure with respect to the supply side. A teacher’s union in a failing school district engages in discourse failure when it advocates for a property tax override on the basis of civic responsibility, while failing to report the fact that each year local property taxes have risen by six percent over an eight-year period corresponding with falling student performance on standardized tests. Since the union knows most citizens prefer vivid explanations, its members believe (usually correctly) that rationally ignorant citizens will vote emotionally for the override (Pincione and Teson; 2006).

Indeed, the following hypothetical shows the strong incentive of a union in a failing district to commit discourse failure by downplaying its persistently poor performance record. A union in a district leading all others in student performance would supply voters with accurate information about its performance record

under the plausible assumption that doing so is costless thanks to internet and social media, since doing so would increase public support for the tax increase. Of course, this hypothetical union could appeal exclusively to voter civic responsibility while not invoking its stellar performance record. However, this strategy would be very peculiar, and perhaps even instrumentally irrational. If anything, an appeal to civic responsibility by a union with a stellar performance record is superfluous, and a stellar record just is the all-things-considered reason for advocating the tax. Only in the absence of a stellar record will a union appeal to exclusively to civic responsibility to garner votes for the tax increase.

The union's incentive to downplay its persistently poor performance record is greater still if the majority of voters in the district rent rather than own real property, for then only a subset of citizens—middle class land owners—will pay the full costs in property taxes for the property tax override. The example demonstrates how special interest groups have a strong incentive to commit discourse failure by filtering out, refusing to acknowledge, or downplaying any policy information that could potentially undermine their policy objectives, whatever the content of those objectives (Austen-Smith, 1997).

A PUBLIC CHOICE EVALUATION OF DELIBERATIVE DEMOCRACY: EMPIRICAL EVIDENCE

There is empirical evidence going at least as far back as the 1980s that interest group formation leads to the enactment of partialist policies. Historically, collective action costs of interest group formation have fallen, so smaller, less financially funded groups arise where their members are sufficiently motivated (Olson, 1971; Coates, Heckelman, Wilson, 2007, 2011). Part of the explanation for falling collective action costs is falling costs of transportation associated with greater urbanization, as well as lower information costs thanks to new technologies (e.g., the internet) that interest groups utilize more effectively than rationally ignorant voter (Evans, 1996; Cotton, 2016).

Notably, there is a correlation between increased interest group lobbying in Germany from 1970 to 2003 and the decline in production during those same years (Bischoff, 2003). Similar results have been noted in other western, economically prosperous countries (Mueller and Murrell, 1985; 1986; Peltzman, 1980; Vjollca, Tuinstra, and van Winden, 2005). Falling interest group formation costs do not mean lobbying costs have fallen as well. Rather, the more competitive groups are, and the more asymmetric are their preferences, the more political actors can raise the costs of lobbying; this is called the crowding effect (Mohtadi and Roe, 2003) and the faster subsidy values dissipate (Epstein and Mealem, 2012).

Additionally, an entire literature has arisen from so called all-pay auctions (Aidt and Hillman, 2008; Risse, 2011; Baye, Kovenock, and de Vries, 1996). In such contests, typically legislators and bureaucrats implement a two-stage contest (e.g., auction,) in which at least two groups pay to participate in a government lottery for a subsidy. The higher one group's initial investment relative to the other group, the greater the probability that the legislators will award that group with the subsidy on auction. All groups pay a marginally higher cost to compete in lobbying for a single subsidy than one of them would pay without group competition. Usually, only the winning group gets the subsidy, and the losing group does not get a money-back-guarantee, which further emboldens political actors who benefit from the scheme to rent out government services to the highest bidders (Hillman and Katz, 1987).

Moreover, interest group lobbying not only diverts private wealth and taxpayer monies from wealth creation, it also reduces the incentives of otherwise reasonable citizens to contribute to the production of public goods, since under an incentive structure of group competition for group-specific goods, the benefits of individual citizens free-riding on the efforts of their productive fellow citizens' efforts outweighs the benefits of producing goods and services (Riaz, et al. 1995; Baik 2008). Indeed, according to careful studies of interest group proliferation, there is a correlation between increased interest group participation, the growth of U.S. and European government budgets from the 1970s through the early 1990s (Guseh, 1997), and a statistically significantly negative effect on the growth of GDP corresponding to groups rent-seeking activities resulting in reduced production and dead weight costs (North and Wallis, 1982; Bischoff, 2003: 202-208; Becker and Mulligan, 2003).

Legislators have rationally responded to group proliferation and lobbying (Kelleher and Yackee, 2009) by actively looking for issues that allow them to focus on the winners of policies (e.g., interest group members), while losers (e.g., the general public) are not easily identified. The overall effect is to hide the costs to tax payers of group transfers in a way that incentivizes future group lobbying (Kiaz, et al. 1995; Aidt, 2016). Moreover, competition among groups (McKay, 2012) diverts private wealth, as well as taxpayer monies, from productive activities and the creation of public goods in a way that reduces the incentives of otherwise reasonable citizens to contribute to the production of public goods (Horgos and Zimmermann, 2009) and incentivizes political actors to act as policy auctioneers (Baron, 1989).

Interest group-based policies fail to impartially take into account citizens' interests, not least because they take full advantage of voter rational ignorance. For example, renting voters do not internalize the full costs of voting for a school budget override, since only a wealthy subset of property owners pay the full economic costs for the enactment of the override (of course, even renting voters do internalize some costs via rent increases due to property taxes increases, but if it comes to this, the same is true of non-voting renters who may not wish to internalize any override costs.) On the other hand, renting voters do fully internalize the psychological benefits of voting for the override, perhaps because voting makes them feel good, or because they can signal their virtue to others (Clark and Lee, 2016), thereby sustaining a perverse and wasteful incentive structure (Brennan and Lomasky, 1993).

Particularly damning for deliberativists who aim to increase participation, there is also evidence that interest groups actually reduce popular participation. For example, interest groups persuade local governments to establish off-cycle elections (e.g., elections that take place in odd years), particularly in the case of school board elections. Off-cycle school board election turn-out is usually abysmally low, and it has been supposed that voter rational ignorance, in conjunction with reduced media attention, enables interest groups to push their agenda through with minimal opposition (Anzia, 2011).

The lackluster results of deliberative democracy, and its failure to achieve the impartialist aims of its advocates, should not be surprising given rational ignorance and discourse failure. Interest groups in deliberative democracies are at the center of a political information web and have a comparative advantage in channeling that information in ways most conducive to their own interests (McCormick and Tollison, 1981; Hillman and Samet, 1987; Jaeck, 2011; Stone, 2011). The net result is partialist legislation favoring narrow group interests at the expense of majority interests (Eskridge, 1988).

EPISTEMIC CRITIQUE OF PROPOSAL FOR ADDRESSING DISCOURSE FAILURE THROUGH SUBSIDIZED MEDIA

At this point, a deliberativist might argue that the rational ignorance effect is indeed a problem for deliberative democracies, but not an insoluble one (Page and Shapiro, 1992; Moshe and Hammer, 2011). For example, allegedly the presence of non-profit media groups like CSPAN significantly reduces the rational ignorance effect by providing citizens with comparatively low-cost uncut political information. So, thought goes, governments should provide large subsidies to non-profit media groups that educate voters (Dyck and Moss, 2013).

That argument at least has the virtue of recognizing the rational ignorance effect as a legitimate problem for deliberation quality. Moreover, it is true that CSPAN provides citizens with reliable information about candidates and policies. There are approximately 244 million adults in the U.S., and CSPAN boasts 9 million of them access CSPAN weekly. In contrast, combined annual viewership for FOX, CNN, and MSNBC was a measly 2,722,000 in 2016 for day-time (6am-6pm television), and 4,764,000 for prime-time (CSPAN, 2017).

However, we have no good reason to believe that CSPAN is a source of deliberative recruitment among its regular viewers. While most regular 47 million CSPAN viewers have college degrees and are already politically active, the following question is worth asking: "Are the regular CSPAN viewers more knowledgeable about public policy because of how much they have watched CSPAN, *or* are regular CSPAN viewers already knowledgeable, and use CSPAN to keep abreast of policy developments?" Until we know there is a causal relationship between CSPAN content and the number of viewers who had no or

little knowledge of politics who became interested in gathering accurate policy information because of CSPAN, we do not know what effects that subsidizing other media would have. And it seems such evidence is not likely to be forthcoming, not least because of discourse failure. I suggest that CSPAN is not a source of deliberative recruitment among initially uniformed and/or uninterested citizens. It is more likely a low-cost device for policy wonks to stay abreast of policy developments.

A second objection is that the deliberativist inadvertently construes the numbers of CSPAN viewership as a proxy for viewer policy knowledge. The fact that 47 million adults viewed in CSPAN in 2013 (Eggerton, 2013) does not show that all or most of these viewers have greater policy knowledge than those who watch, say, FOX, CNN, and MSNBC —although, of course, *regular* CSPAN watchers presumably do have greater policy knowledge than most CSPAN, FOX, CNN, and MSNBC watchers. The deliberativist proxy argument overlooks the fact that there are psychological costs for attaining policy knowledge that few viewers will bear: most citizens with full time jobs who care for children demonstrate a very rational revealed preference for low cost policy information over high cost information. Even media representatives—who are more informed than average citizens (Cooper, Nownes, and Johnson, 2007)—are still rationally ignorant, and frequently commit discourse failure when commenting on the intersection of economics and public policy. The rational ignorance hypothesis, in conjunction with the discourse failure hypothesis, predicts that the higher are the psychological costs to citizens and reporters alike for gathering accurate policy information, the less accurate information they will gather relative to policy wonks themselves.

When rationally ignorant citizens come into contact with special interest groups, the effect is *not* to increase citizens' knowledge, but to consolidate citizens' false policy beliefs and exacerbate the rational ignorance effect. Rationally informed special interest groups have ample incentive to filter policy information in a way that furthers the group's policy objectives, even at the expense of deceiving and misinforming rationally ignorant citizens. For example, news and social media frequently cite the 2014 Economic Policy Institute Open Letter to Congress signed by 600 academics as adequate evidence showing that increasing the minimum wage would help the worst off. The point is not that economists never disagree amongst themselves about the effects of the minimum wage. Rather, the point is that longitudinal studies in the economic literature show that increasing the minimum wage tends to reduce employment among the worst-off citizens (*viz.*, Sabia and Burkhauser, 2010). Those studies are rarely, if ever, cited by reporters who comment on the effects of minimum wage increases.

Here is the crux of the worry about subsidized non-profit media as a source of deliberative recruitment and policy education. Some public policies are very costly to understand, and at the same time, this understanding is necessary for assessing the impartiality of those policies (à la the consequences for welfare of the general citizenry.) Yet the paradox is that any attempt to simplify policy presentation risks citizens forming false policy beliefs, since interest groups posit vivid explanations citizens find congenial, thereby defeating the deliberativist proposal for educating citizens in this way. That, in turn, suggests non-profit media subsidies will probably not overcome voter rational ignorance (Hardin, 2006).

An optimistic deliberativist may propose a fourth branch of government dedicated to controlling deliberation quality by supervising non-profit media (Lieb, 2004). Yet, my discourse failure critique suggests that a fourth branch would be especially susceptible to discourse failure due to yet greater interest group infiltration into non-profit media groups. It is thus reasonable to conclude that discourse failure is a permanent feature of deliberative democracy, deliberativist aspirations for deliberation quality control notwithstanding (Pincione and Teson, 2006).

LIMITING DEMOCRATIC DISCOURSE FAILURE BY LIMITING THE SCOPE OF DELIBERATION: A TENTATIVE PROPOSAL FOR RESTRICTING REDISTRIBUTIVE TAXATION THROUGH SUPER MAJORITY RULE

There is empirical evidence that interest groups distort deliberation content within legislative assemblies and popular culture generally (Romer and Rosenthal, 1978; (Richardson, 1994; Potters &

Sloof, 1996). Discourse failure explains why, within deliberative democracies, posturing political actors and interest groups adhere to public discourse that does not technically violate the Authenticity Test while enacting legislation that clearly fails the Display Test by committing discourse failure. I argue for constitutional reform to minimize discourse failure so that policies enacted may be approximately impartial: namely, a super majority rule for redistributive legislation.

As a preface to that argument, let's consider Nino's (1996) admonishment that in the elevator case majority rule decision is required in order to avoid the status quo result (e.g., the decision not to fix the elevator), and ensure a decision that impartially considers Group 1 and Group 2 interests. However, Nino is mistaken in recommending majority rule as the optimal rule for impartial policies. My earlier treatment of Nino's elevator case unanimity, which holds that Group 1 should pay 4/5 of the costs of elevator repair since its members use the elevator the most and Group 2 should pay 1/5 of the costs since its members use the elevator the least (e.g., Proposal 3,) is the most impartial solution, since it ties contribution amounts for elevator repair to per-group member frequency of elevator use.

We must now apply these observations about the moral importance of impartial consideration of interests to the case of actual political discourse and policy. Given reality of regime change in electoral politics, impartial public policy accounts for citizens' interests while both allowing the majority to yield power and securing the rights of the minority by placing limits on what the majority may do.

Of course, in actual democratic politics, unanimity based on impartial consideration of citizens' interests would not merely be prohibitively costly (even if the eventual agreement would be fairly impartial.) More to the point, impartiality of that sort is unlikely if history is any indication. And making those observations, Nino, along with fellow deliberativist Habermas (1996), supposes that democratic decision-making is epistemically and morally superior to alternative decision rules since it best approximates impartial consideration of citizens' interests in the absence of unanimous consent. We should not concede Nino's claim, certainly not given the discourse failure hypothesis and the widespread evidence for it within actual deliberative democracies (Pincione and Teson, 2006; Pincione, 2012).

Hayek argues that democracy is a means, not an end in itself, justified by and limited by "... the purpose we want it to serve." He goes on to posit that "... lack of sufficient agreement on the need of certain uses of coercive power should mean that nobody can legitimately exercise it... the power of the majority ultimately derives from, and is limited by, the principles which the minorities also accept" (Hayek, 2011: 172, 171). Though he and I argue democracy ought to serve the purpose of individual liberty, I recognize this proposal is highly contentious. Less contentious is the observation that there will tend to be more disagreement among the majority and minority regarding redistributive legislation than public goods legislation. This is because each interest group supposes itself worthy to receive a subsidy or privilege from the majority, whether on the basis of need or desire (Levmore, 2010; Jordan and Meirowitz, 2012), whereas all groups recognize the importance of public goods for which they are taxed and benefit from (viz., police protection,) without which they would all be worse off (Laver, 1997).

I argue, in the spirit of Hayek, that there is nothing sacrosanct about democratic majority rule; it is at best a means to an end, that end being the impartial consideration of citizens' interests. And with respect to Group 1 and Group 2 members in the elevator case, Proposal 3 is the most impartial. It follows, then, that even if Group 1 and Group 2 arrive at Proposal 3 through majority rule, they should require a unanimous vote to overturn that arrangement, effectively making Proposal 3 the impartialist status quo.

What is needed now is an argument linking our observations of discourse failure to an institutional device, namely, a constitutional amendment, for limiting discourse failure by limiting democratic deliberation and reducing the incidence of interest groups lobbying for legislation that prioritizes group interests over majoritarian interests (Macey, 1986; Mueller, 1991).

In actual public policy, the redistributive state incentivizes discourse failure (Pincione and Teson, 2006), as well as group participation in contests to enact partialist policies (Denzau and Munger, 1986; Treich, 2010; Topolyan, 2014). Moreover, "... without some anti-[deliberative] checks... one could expect democratic majorities to be inherently prone to redistribute too much wealth and to lower both the return on capital and the rate of economic investment" (Rapaczynski, 2004: 203). That is precisely what we observe both with respect to democratic deliberation and policies enacted under majority rule.

I argue that the Display Test shows whether or not a given policy is impartialist, because part of what it means to consider citizens' interests impartially *must* mean political actors disclosing any bad consequences for citizens of policies they support, and determining whether those negatively affected by those policies still support them for the independent moral reasons advanced by the policies' advocates. Therefore, a political actor who lies blatantly or by omission about known bad consequences of a policy is, ipso facto, not taking into account the interests of all citizens affected by a policy.

Even so, the Display Test is not designed as an institutional device for reducing discourse failure, though it can alert us to discourse failure. Given the reality of the redistributive state which incentivizes discourse failure, we require a device to counteract and limit the pernicious effects of discourse failure, as well as reduce partialist policies and increase impartialist policies. And any such device must itself limit opportunities for political actors to commit discourse failure by limiting democratic deliberation.

Since discourse failure is a permanent feature of deliberative democracy here to stay, the best we can hope for is mitigating its bad consequences by reducing deliberation. Specifically, a constitutional amendment which reduces the scope of democratic deliberation is needed to reduce discourse failure (Pincione, 2012). When considering what kind of constitutional amendment would be effective in reducing discourse failure, I am struck by the following observation: Public economics has contributed rich concepts to public law (see especially, Macey, 1986; Eskridge, 1988). Even so, there is, to the best of my knowledge, as yet no explicit conceptual distinction in statutory language between public goods and redistributive legislation, notwithstanding the skillful ways in which economists and legal scholars have interpreted these concepts into statutes and regulations. This is very significant a la discourse failure!

Public goods legislation tends to be impartialist because goods provided through taxation are usually non-rivalrous and benefit the general citizenry. Whereas redistributive legislation tends to be partialist because goods provided through taxation are usually rivalrous and benefit narrow group interests, concentrating policy benefits among specific groups and distributing policy costs to taxpayers at large (Becker, 1983). This statutory language vacuum, which fails to make this conceptual distinction, is then filled by political actors and interest groups incentivized to commit discourse failure who use impartialist language which passes the Authenticity Test while failing the Display Test by lying about bad consequences of policies for citizens of partialist policies favoring narrow group interests. I believe that partially explains the prevalence and influence of interest groups in contemporary democratic politics.

My proposed constitutional amendment would limit opportunities for political actors to commit discourse failure in two ways. First, any redistributive proposal would require 4/5 super majority vote plus the signature of the executive. Super majority rule importantly provides an institutional proxy veto against grossly partialist group proposals in a way that mimics the impartiality of unanimity rule (Spindler, 1990; McGinnis and Rappaport, 1999; Knight, 2000; Heckelman and Dougherty, 2010; Cheng and Ming, 2019; Kishishita, 2019).

Redistributive legislation is less likely be enacted the more disagreement there is about which groups should receive subsidies, and the higher is the threshold for enacting redistributive legislation. Since a super majority is required to enact such legislation, disagreement among deliberating citizens and their elected political actors is likely to reduce the enactment of redistribution legislation a great more than at present (Morgan and Vardy, 2011). Under this incentive structure of disagreement with teeth, we should expect a sharp reduction in the number of groups lobbying for their respective partialist interests, significantly less than the number of groups lobbying for their interests under a system allowing redistribution for goods under simple majority rule (e.g., the status quo for most western democratic countries.)

Secondly, under the amendment I have in mind, public goods projects would still be enacted by majority rule. Even so, each piece of legislation would contain a "money-back-guarantee" clause for tax payers, who in turn would have a legally enforceable claim on the government to receive the already paid sum and if others found legal loopholes to avoid payment. In the relevant literature, this arrangement is known as an assurance contract (Schmidtz, 1991:66). Non-payers would then be

motivated to contribute to public goods, on pain of underproduction of public goods, a fitting result a la impartiality. We should not unduly raise the transaction costs for enacting genuine public goods legislation; that is the logic of continuing to allow fifty percent majority rule plus executive signature for public goods legislation, as opposed a super majority threshold for enacting legislation for the provision of public goods.

Since public goods legislation (but not redistributive goods legislation) is impartialist, we can reasonably predict the enactment of more impartialist legislation by separating redistributive from public goods legislation, and requiring 4/5 super majority rule for the former (Bradbury and Johnson, 2006). In that way, the assurance contract establishes an impartial justification for tax policy based on frequency of public goods use that does not depend whether a citizen is among the majority or the minority group. Notice how the second part of the constitutional amendment (i.e., assurance contract) mimics the effects of unanimity rule and ensures that if anyone fails to pay her per-use share, then all others may withdraw their contributions. In this way, there are no losers and no dead weight costs; no one is made worse off if anyone fails to contribute since each can recoup her money, and all are better off if everyone contributes.

If this constitutional amendment were enacted, courts would be bound to enforce that amendment as stated without concerning themselves with interest group-based legislative bargains contained the in statutory language, since these bargains would not be possible to form in most cases (Macey, 1986: 228; Ritz, 2008). Minimizing discourse failure is best accomplished by reducing the scope of democratic deliberation from “majority rule for public goods legislation and redistributive legislation” to “majority rule for public goods legislation and super majority rule for redistributive legislation” (Spindler, 1990).

A deliberativist may, of course, object that super majority, like unanimity rule, privileges the status quo. And while that is true, the first relevant reply is that as things stand, the status quo in western democracies favors majority rule, which is very vulnerable to deliberation by political actors and special interest groups who satisfy Nino’s requirements of impartial moral discourse (e.g., “this policy would benefit everyone,”) while enacting very partialist policies that do not advance the interests of the citizenry. For example, under the current status quo, policies often award subsidies to groups—de facto even if not de jur—simply because those groups are better informed about politics and more adept at advancing their interests through political channels than are rationally ignorant citizens en masse.

Here is a second reply in defense of super majority rule. Recall that the supposed epistemic value of democratic majority rule lies in the fact that the more people who support a proposal, the more likely it is that the proposal is impartialist, and at the same time majority rule takes into account (where unanimity does not) the limits of time and energy in collective decision-making (Nino, 1996: 124-34). As Nino himself posits, “...when more votes support a solution...the interests of more people are satisfied than when the solution is supported by fewer votes” (Nino, 1996: 127). Nino’s own reflections here, I believe, support an argument for super majority rule for redistributive legislation, even if, perhaps, deliberativists who are wary of a status quo are reluctant to extend Nino’s argument to its logical conclusion.

Thirdly, one should not (though it is tempting) object to a status quo just because it is a status quo. What matters morally when assessing any status quo is what kinds of substantive partialist or impartialist outcomes are produced by particular political institutions and arrangements. Super majority rule better preserves the morally relevant impartiality of unanimity rule without being saddled by the holdout problem which plagues unanimity rule. In this way, super majority rule is simply a common sense way of insisting that redistributive legislation will be enacted if and only if most citizens can overcome widespread disagreement as to which groups should receive subsidies. Under super majority rule, when political actors meet as deliberators, they, representing their respective constituents, must reach a compromise with respect to redistributive legislation more impartial than a redistribution decided by simple majority rule. Otherwise, any excessively partialist redistribution proposal will fail.

In connection with this third reply, it must also be remembered that current public law makes no explicit distinction between public goods versus redistributive legislation (Macey, 1986; Eskridge, 1988). A constitutional amendment which made this distinction explicit would tend to draw attention to the fact that some redistributive schemes are not obviously partialist in the morally pernicious interest group sense critiqued above. To give but one example, need-based housing and welfare schemes aid people of all walks of life solely because of the tragic nature of their circumstances (Hayek, 2011), and not because they are

better informed and organized than the general public. Moreover, super majority rule-enacted public aid for individuals demonstrably in need would account for the interests of tax payers (whose own resources are limited, better than current policies, not least because of transparency in redistribution. That kind of impartialist status quo *should* be favorable from the point of view of deliberativists themselves.

A final consideration. Minimum wage increases are ostensibly enacted to reduce poverty among unskilled workers, but they displace unskilled workers and deprive them the opportunity of selling their labor on the open market, often forcing them to resort to black market exchanges. For all of the calls to “Fight for Fifteen!,” no one can seriously contend that raising the minimum wage will advance the interests of unskilled workers, given the strong evidence to the contrary (Sabia and Burkhauser, 2010). Within deliberative democracies, discourse failure makes the worst-off citizens worse off still by the partialist policies enacted due to discourse failure. That is disconcerting from a deliberative viewpoint.

One prominent defense of the supposed epistemic and moral virtues of deliberative democracy argues, “...successful deliberation has instrumental value when it block[s] ...[political] power’s interference with reason” (Estlund, 2008: 193). From a deliberative viewpoint, then, partialist policies violate impartialist deliberative requirements. Yet, actual democratic deliberation is routinely beset by discourse failure and is self-defeating, since it results in grossly partialist policies. At the very least, then, the instrumental moral and epistemic value of actual deliberative democracy is questionable at best.

Deliberativists who favor impartialist policies should want institutional processes which deliver impartialist policy outcomes, even if this means giving up the empirically mistaken (though theoretically elegant) idea that deliberative democracy has the epistemic and moral virtues that deliver those impartialist policies. Super majority rule for redistributive legislation, in contrast, mimics the impartiality of unanimity rule, and is an institutional process which makes it more probable than not that impartialist public policy will prevail in the long run.

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