

## Deliberative Democracy Beyond Process

AMY GUTMANN

*Politics, Princeton University*

and

DENNIS THOMPSON

*Government, Harvard University*

**T**HEORIES of deliberative democracy consist of a set of principles that are intended to establish fair terms of political cooperation in a democratic society. Some theorists believe that the principles should refer only to the process of making political decisions in government or civil society.<sup>1</sup> The principles of deliberative democracy, they argue, should not prescribe the content of the laws, but only the procedures (such as equal suffrage) by which laws are made and the conditions (such as free political speech) necessary for the procedures to work fairly. These theorists, whom we call pure proceduralists, insist that democratic theory should not incorporate substantive principles such as individual liberty or equal opportunity beyond what is necessary for a fair democratic process. They do not deny that substantive principles such as freedom of religion, nondiscrimination or basic health care are important, but they wish to keep these principles out of their democratic theories.

We argue that this effort to keep democratic theory procedurally pure fails, and that any adequate theory must include substantive as well as procedural principles. Our own theory, presented in *Democracy and Disagreement*, offers one such approach: it includes substantive principles (such as basic liberty and fair opportunity) that extend fairness to persons (for the sake of reciprocity, mutual respect, or fairness itself). Principles of basic liberty and fair opportunity can be defended on many substantive grounds; in that book we argue from a

<sup>1</sup>As Jürgen Habermas writes, “All contents, no matter how fundamental the action norm involved may be, must be made to depend on real discourses (or advocatory discourses conducted as substitutes for them)”. “Discourse ethics,” *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Sherry Weber Nicholsen (Cambridge, Mass.: M.I.T. Press, 1993), p. 94. For comments and other citations, see our discussion in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, 1996), pp. 17–18. Other theorists who would also be more inclined to limit deliberative democracy to process considerations and are therefore critical of including substantive principles in its theory include: Jack Knight, “Constitutionalism and deliberative democracy” *Deliberative Politics*, ed. Stephen Macedo (New York: Oxford University Press, 1999), pp. 159–69; Cass Sunstein, “Agreement without theory,” *ibid.*, pp. 147–8; and Iris Marion Young, “Justice, inclusion, and deliberative democracy,” *ibid.*, pp. 151–8. For our reply, see Gutmann and Thompson, “Democratic disagreement,” *ibid.*, pp. 261–8.

widely recognized principle of reciprocity or mutual justification among persons who are bound by the laws of a democracy.

But our argument here does not depend on accepting the whole theory in that book, or even the specific grounds of reciprocity on which we base the principles. We wish to maintain here that, on a wide range of available grounds, democratic principles must be substantive as well as procedural. A democratic theory that shuns substantive principles for the sake of remaining purely procedural sacrifices an essential value of democracy itself: its principles cannot claim to treat citizens in the way that free and equal persons should be treated—whether fairly, reciprocally, or with mutual respect—in a democratic society in which laws bind all equally.

Pure proceduralists make two kinds of arguments against including substantive principles—one from moral authority and the other from political authority. The argument from moral authority holds that the moral judgment of democratic citizens, not democratic theorists, should determine the content of laws. A theory that contains substantive principles improperly pre-empts the moral authority of citizens. The argument from political authority maintains that substantive principles similarly pre-empt the political sovereignty of citizens, which should be exercised not through hypothetical theoretical reasoning but through actual democratic decision-making. A theory that contains substantive principles unduly constrains the democratic decision-making process, including the process of deliberation itself.

We dispute both of these arguments and defend the inclusion of substantive principles in a theory of deliberative democracy. We agree with those theorists who point out that mere procedures such as majority rule cannot justify outcomes that are unjust according to substantive principles. But these theorists usually neglect the substantive value in the procedures, and assume that an outcome is justified if it is just according to their substantive principles.

In any case, our main argument against pure proceduralism is not the same as the standard objection that procedures can produce unjust outcomes, though we accept this objection. We also argue for including substantive principles in a democratic theory for another, generally neglected reason. Such principles should be included so that the theory can explicitly recognize that both substantive and procedural principles are subject to contestation in similar ways. A critical claim in our defense of a deliberative democratic theory that is both procedural and substantive is that the principles are to be treated as morally and politically provisional. This provisionality gives deliberation part of its point. Both procedural and substantive principles are systematically open to revision in an ongoing process of moral and political deliberation. If the principles are understood in this way, the usual objections against including substantive principles lose their force. The provisional status of all its principles thus constitutes a distinctive strength of deliberative democratic theory, and at the same time offers deliberative democrats an effective response to those who would exclude substantive principles from democratic theory.

Although we concentrate here on showing the problems with the form of pure proceduralism that justifies political outcomes by procedural criteria only, our general criticisms also apply against any attempt to segregate procedural and substantive principles in separate theories. Theorists who judge outcomes partly by substantive principles of justice are still pure proceduralists (with respect to their democratic theories) if they assume that the democratic procedures can be justified without reference to some of the same substantive values expressed by their principles of justice. Our argument is intended to show that this kind of sharp separation between procedural and substantive principles and theories is not sustainable.

To illustrate some of the major points in the argument for including both procedural and substantive principles in a deliberative democratic theory, we use a case involving deliberation about health care in the United Kingdom. In 1999, the British Government created a new body, the National Institute for Clinical Excellence (NICE), which is to provide assessments of treatments and clinical guidelines for use by the National Health Service (NHS).<sup>2</sup> The impetus for the new Institute came from the widespread recognition that the NHS could not fund care for all health needs, and needed to find a way to make its difficult decisions in a more public and deliberative manner. By creating a deliberative decision-making body, which includes both expert and lay members, the British Government may also have hoped that it could defuse some of the controversy about the hard choices that had to be made. But not surprisingly, shortly after its creation, NICE itself came under criticism in another deliberative forum—the House of Commons. Together these moments of deliberation—the proceedings of NICE and the Commons debate about NICE—are more appropriate for our purposes than cases from the US. They involve an attempt to institutionalize nationwide deliberation about health care priorities in a way that the US has tried only in certain states. Also, the deliberation takes place in a nation in which principles of justice in health care come closer to being satisfied than in the US, and therefore poses a greater challenge to our claim that such principles are necessary in any adequate theory of deliberative democracy. If a theory needs substantive principles when applied to health care in the UK, then a fortiori it should need them when applied to similar issues in the US.

## I. WHY RECIPROCITY REQUIRES DELIBERATION

To determine what kind of principles belong in a deliberative democratic theory, we need first to consider the meaning and implications of the fundamental principle of reciprocity. Reciprocity is widely recognized as a core principle of

<sup>2</sup>See statements by NICE's newly appointed director Michael Rawlins: Richard Horton, "NICE: a step forward in the quality of NHS care," *The Lancet*, 353 (March 27, 1999), 1028–9, and Gavin Yamey, "Chairman of NICE admits that its judgments are hard to defend," *British Medical Journal*, 319 (November 6, 1999), 1222.

democracy in its many moral variations—liberal, constitutional, procedural, and deliberative—but most theories do not give it the central role that deliberative democracy does. Reciprocity holds that citizens owe one another justifications for the mutually binding laws and public policies they collectively enact. The aim of a theory that takes reciprocity seriously is to help people seek political agreement on the basis of principles that can be justified to others who share the aim of reaching such an agreement.

Mutual justification means not merely offering reasons to other people, or even offering reasons that they happen to accept (for example, because they are in a weak bargaining position). It means providing reasons that constitute a *justification* for imposing binding laws on them. What reasons count as such a justification is inescapably a substantive question. Merely formal standards for mutual justification—such as a requirement that the maxims implied by laws be generalizable—are not sufficient. If the maxim happens to be “maximize self- or group-interest,” generalizing it does not ensure that justification is mutual. Something similar could be said about all other conceivable candidates for formal standards. Mutual justification requires reference to substantive values.

We can see more clearly why mutual justification cannot proceed without relying on substantive values by imagining any set of reasons that would deny persons basic opportunities, such as equal suffrage and essential health care. Even if the reasons satisfied formal standards, they could not constitute a mutual justification because those deprived of the basic opportunities could reasonably reject them. Denying some persons suffrage is a procedural deprivation that is inconsistent with reciprocity: we cannot justify coercive laws to persons who had no share in making them. Similarly, denying persons essential health care is a substantive deprivation that cannot be justified to the individuals who need it. That such denials are unacceptable shows that the mutual justification is neither purely formal nor purely procedural.

Because such denials of basic opportunities cannot be mutually justifiable, the principles of a democratic theory must be both procedural and substantive. A democratic theory whose principles would permit some persons to be unnecessarily deprived of a basic opportunity like health care does not take seriously the value of mutual justification implied by the principle of reciprocity. Furthermore, it does not treat persons as free and equal beings. While we argue from the fundamental principle of reciprocity, this principle converges in its implications with the ideal of free and equal personhood, which is the basis of many democratic theories, not only deliberative ones.

The principles of our deliberative democratic theory specify terms of cooperation that satisfy reciprocity. Such terms are similar to what John Rawls calls “fair terms of social cooperation.” But the procedural and substantive content of fair terms of social cooperation will vary with different interpretations of what reciprocity requires. A theory is “deliberative” if the fair terms of social cooperation include the requirement that citizens or their representatives actually

seek to give one another mutually acceptable reasons to justify the laws they adopt. The reasons, as we have seen, refer to substantive values no less than to procedural ones.

Although reciprocity is a foundational value in deliberative democracy, it does not play the same role that first principles, such as utility or liberty, play in theories such as utilitarianism or libertarianism. These theories derive all of their other principles from their first principles. Reciprocity is not a first principle from which the rest of justice is derived, but rather a regulatory principle that serves two different roles. First, it guides thinking in the ongoing process in which citizens as well as theorists consider what justice requires in the case of particular laws in specific contexts. Second, it shows the need for other principles to fill out the content of a deliberative democratic theory. Reciprocity points to the need to develop such principles as publicity, accountability, basic liberty, basic opportunity, and fair opportunity, which are necessary for the mutual justification of laws. As the first role of reciprocity suggests, such principles should be developed in an actual ongoing process of mutual justification.

An important implication of reciprocity is that democratic deliberation—the process of mutual reason-giving—is not equivalent to the hypothetical justifications proposed by some social contract theories. Such justifications may constitute part of the moral reasoning to which some citizens appeal, but the reasoning must survive the test of actual deliberation if it is to ground laws that actually bind all citizens. This deliberation should take place not only in the private homes of citizens or the studies of philosophers but in public political forums. In this respect, deliberative theory proposes a political ideal that is process-dependent, even if its content is not exclusively process-oriented.

The requirement that actual deliberation take place is not simply a matter of trying to ensure that citizens feel that their views were taken into account even when they disagree with the outcome. Actual political deliberation at some time is required to *justify* the law for this society at this time. The reason-giving process is necessary for declaring a law to be not only legitimate but also just. The process is necessary to give assurance that (substantive or procedural) principles that may be right in general are right in the particular case or rightly applied to this particular case. No amount of hypothetical reasoning is likely to bring out all the complexities that are relevant to determining whether a law is justified at a particular time in any given society. It would be difficult to decide on the basis of any general principle of basic opportunity whether, for example, NICE was justified in denying coverage for a new anti-flu drug (zanamivir) marketed as Relenza by the pharmaceutical company Glaxo–Wellcome.<sup>3</sup> What would be missing is not simply factual information but the weighing of facts and

<sup>3</sup>See “NICE appraisal of Zanamivir (Relenza)” posted at [www.nice.org.uk](http://www.nice.org.uk). For some of the reaction, see Stephen D. Moore, “U.K. rebuffs Glaxo on new flu drug,” *Wall Street Journal* (October 11, 1999), p. A19.

the balancing of values in the context of other health care and related decisions that officials as well as citizens need to make.

It may be helpful to think of the requirement of actual deliberation as analogous to a feature of scientific inquiry. Reciprocity is to justice in political ethics what replication is to truth in scientific ethics. A finding of truth in science requires replicability, which calls for public demonstration. A finding of justice in political ethics requires reciprocity, which calls for public deliberation. Deliberation is not sufficient to establish justice, but deliberation at some point in history is necessary. Just as repeated replication is unnecessary once the truth of a finding (such as the law of gravity) has been amply confirmed, so repeated deliberation is unnecessary once a precept of justice (such as equal protection under the laws) has been extensively deliberated. Deliberation may still be desirable, of course, even when justice does not demand it.

The practice of actual deliberation—giving justifying reasons for mutually binding laws to one's fellow citizens—itself both exemplifies and promotes the value of reciprocity. Citizens who have effective opportunities to deliberate treat one another not merely as objects who are to be judged by theoretical principles but also as subjects who can accept or reject the reasons given for the laws that mutually bind them. The reasons are not to be regarded as binding unless they are presented to citizens who have the chance to consider and reject them either directly or indirectly through their accountable representatives in a public forum. In this respect, the creation of NICE supported the value of reciprocity by providing citizens with an example of deliberation in action in which they could assess the justifications their representatives give for policies that will affect their wellbeing in important ways. The possibility of continuing debate in Parliament about the deliberative practices as well as the decisions of NICE further helps to realize reciprocity.

The process of deliberation also has epistemic value. Decisions are more likely to be morally justifiable if decision-makers are required to offer justifications for policies to other people, including those who are both well informed and representative of the citizens who will be most affected by the decisions. The epistemic value of deliberation is especially great when the justification for a decision must combine factual and evaluative matters, as is the case with most health care decisions, including the kind that NICE makes. While experts may be the best judges of scientific evidence, they have no special claim to finding the right answer about priorities when degrees of risk and trade-offs of costs and benefits are involved.

## II. WHY RECIPROCITY REQUIRES SUBSTANTIVE PRINCIPLES

The practice of deliberation is an ongoing activity of reciprocal reason-giving, punctuated by collectively binding decisions. It is a process of reaching mutually binding decisions on the basis of mutually justifiable reasons. Because the reasons

have to be mutually justifiable, the process presupposes some principles with substantive content. It is possible, and sometimes desirable, to distinguish procedural and substantive aspects of principles and theories, but to turn these distinctions into separate principles or distinct theories is to distort both the theory and practice of (deliberative) democracy. Although for convenience we refer to principles and theories as procedural and substantive, strictly speaking democratic principles and theories have both procedural and substantive dimensions, and approaches that force a sharp division are misleading.

The principle of reciprocity itself expresses neither purely procedural nor purely substantive values. A reciprocal perspective is both procedural and substantive because mutual justification cannot proceed without appealing to reasons that refer to both procedures of government and substance of laws, often at the same time. Even philosophers like Stuart Hampshire who seek to exclude substantive justice completely from their procedural political theories acknowledge the need for some substantive values—such as “common decency”—in the very concept of justice.<sup>4</sup> Hampshire says justice is “primarily procedural”—not entirely so.<sup>5</sup> Like other philosophers who want to be pure proceduralists, he never says what constitutes the correct set of procedural principles, and why people who remain subject to tyrannical rule should settle for only procedural principles if they permit tyranny.

At a minimum, no one would seriously dispute that justifications should recognize some values expressed by substantive principles such as liberty and opportunity. It would hardly be sufficient for NICE to justify a decision to deny prescription drugs to West Indian immigrants on the grounds that they are not white. Even—or especially—if a large majority of British citizens would accept such reasoning, the justification would not satisfy any adequate standard of reciprocity. Nor would it be any more acceptable to deny prescription drugs to a disadvantaged minority on the grounds that they agreed with the conclusion. They might have agreed simply because they had less power than the groups that prevailed and had no better alternative in a bargaining situation.

To see more clearly why reciprocity requires substantive principles, we might further imagine a situation in which the process of decision-making itself was fair in the sense that the bargaining power of the parties was equitable, but in which the reasoning of the decision-makers was prejudiced (or could only be reasonably interpreted as based on prejudice) against West Indian immigrants or another disadvantaged minority group. The prejudiced reasoning then yields an outcome—supported by the vast majority—that denies critical health care to the disadvantaged minority. This outcome could not be justified on grounds of reciprocity, even if the procedures by which it was reached were otherwise completely fair. The justification for the outcome does not treat members of the

<sup>4</sup>Stuart Hampshire, *Innocence and Experience* (Cambridge, Mass.: Harvard University Press, 1989), p. 112.

<sup>5</sup>*Ibid.*

minority group as worthy of a justification that they could reasonably accept. Alternatively, one might say that the prejudiced reasoning denies members of the minority group the status of free and equal persons. Given the nature of the reasoning, this would be so no matter how fair the process of decision-making itself might otherwise be.

We can see the principle of reciprocity in action, and the mixture of procedural and substantive values it implies, in the debate about NICE in the House of Commons. The debate had hardly begun when an MP (who is also a physician) challenged the idea that NICE or anyone else has the moral or political authority to ration health care. Another MP responded, saying that rationing was necessary and therefore justifiable: “sometimes some treatments are not available when they would benefit patients or populations, because there simply are not the resources to provide all those treatments on the NHS.” Although the debate at first seemed to turn on issues about the legitimacy of the process (who has the authority to decide), most critics (as well as most defenders of the Government) agreed that NICE represented an improvement as far as process was concerned. Most recognized that the new decision-making process is preferable to the old, and much superior to the less deliberative process that prevails in the US.

The challenge instead was directed against the substance of NICE’s decision in its first review of a drug. NICE had recommended against the NHS’s funding the new anti-flu drug Relenza.<sup>6</sup> The critics worried that this decision would be a precedent that would justify NICE’s recommending against funding of other more expensive and effective new drugs, such as beta interferon (which treats the symptoms of multiple sclerosis). The critics argued that decisions denying coverage are likely to deprive less advantaged patients of life-enhancing and life-saving treatments that more advantaged patients receive, and that this unequal opportunity cannot be justified. It leaves the less fortunate without the health care and the life chances that, if any citizens enjoy, then all should be entitled to.<sup>7</sup> They appealed to substantive principles, not simply to a claim that the process was unfair, or even that it was not deliberative.

Defenders of NICE’s decision rightly realized that they needed to justify the substance of the decision because the deliberative process in which NICE had engaged (and in which they were engaging in the Commons debate) could not in itself be a sufficient justification of the decision. They explicitly invoked substantive standards to defend NICE’s decision. They argued, for example,

<sup>6</sup>See “NICE appraisal of Zanamivir (Relenza).” For some of the reaction, see Moore, “U.K. rebuffs Glaxo on new flu drug.” The Food and Drug Administration approved Relenza for use in the US despite a 13–4 vote of an outside panel of experts recommending against approval. Some critics believe that the drug has been overprescribed during the current flu season. See Sheryl Gay Stolberg, “F.D.A. warns of overuse of 2 new drugs against flu,” *New York Times* (Jan. 13, 2000), p. A18.

<sup>7</sup>As one MP put it in the Commons debate: “When we talk about rationing of NHS treatments, we aren’t saying no one in the UK has them. What we are saying is that they aren’t available to poor people. The rich and those who can afford it can get these treatments privately” (House of Commons Debate, November 10, 1999).



that the decision not to fund Relenza would not adversely affect the basic life chances of any citizen, not even patients who are at high risk of complications from influenza. They called for more research on the effects of Relenza on high-risk patients, and suggested that if there were evidence of Relenza's benefit in reducing the serious secondary complications of influenza in such patients, then they would support NHS funding. Their arguments, whether correct on the merits, were entirely in order, and if correct they were also necessary to justify their conclusion. That they were necessary cannot readily be accommodated in a democratic theory that limits itself to procedural considerations only.

An obvious but no less important virtue of a theory that does not limit itself to procedural principles is that it has no problem with asserting that what the majority decides, even after full deliberation, is wrong. Within a deliberative theory, one should be able to condemn majority tyranny on substantive grounds: one should be able to say that a majority acts wrongly if it violates basic liberty by denying health care on grounds of race, gender, or poverty. Or suppose that the majority, following perfectly deliberative procedures, decides to institute a practice of compulsory organ donation. On a purely procedural conception of deliberative democracy, this law would be justified. If a deliberative theory includes substantive principles such as basic liberty which protect bodily integrity, democrats would be able to object to such a law, without abandoning their commitment to deliberative democracy.

Democrats of course may be mistaken when they assert claims based on substantive principles either because they draw incorrect implications from a correct principle or because they rely on an indefensible principle. Perhaps compulsory organ donation does not violate basic liberty, or perhaps this particular principle of basic liberty is flawed. Our argument for including substantive principles—based on reciprocity—not only allows for both kinds of mistakes; it also incorporates into the theory itself the insight that democratic theorists and citizens may be mistaken about both procedural and substantive principles. Deliberation explicitly deals with the likelihood of mistaken views about principles and their implications by considering the principles of a theory to be provisional, and therefore subject to ongoing deliberation. To point out the possibility of being mistaken about substantive principles is therefore not an argument against including such principles within a deliberative democratic theory.

The conclusions of purely procedural theories sometimes converge with the claims of the substantive standards that reciprocity requires. For example, a procedural theory of democracy may say that racial discrimination in voting is not justified because it excludes a class of human beings from citizenship, and this violates the procedural requirements of democracy, which demand the enfranchisement of all adult persons. This procedural reason is fine as far as it goes. But it does not go far enough in establishing why such discrimination is not justified. Democratic theorists should be able to object that racial discrimination

(for example, in the provision of health care by a for-profit Health Maintenance Organization) is not justified even if democratic citizenship or no other process values are at stake. Majority tyranny is objectionable on substantive, not only procedural, grounds.

Moreover, this kind of objection should be capable of being made from *within* a deliberative democratic theory. After all, democracy has never meant merely majority rule. Denying basic liberties and opportunities by racially discriminatory policies is either the result of state action or can be remedied by state action, and any such action or inaction requires a justification that could reasonably be accepted by those whose liberties and opportunities are denied. This is a direct implication of the basic requirement of reciprocity. The requirement to give such a justification—to invoke substantive principles in the public forum to justify a mutually binding law or policy—is therefore not an incidental feature of deliberative democracy. The substantive principles are integral to the deliberative process itself.

To say that the principles are integral to the process is not to deny that they may be justifiable outside of that process. Like any theorist of justice (or citizen making a claim about justice), deliberative democrats may put forward principles for consideration which they regard as justifiable—and which indeed may be correct, but simply not yet justified as laws. Deliberative theorists try to justify their substantive principles in a number of familiar ways, some just like those used by any theorist. We justify the substantive principles such as basic liberty in *Democracy and Disagreement*, first and foremost, on their own terms—by identifying core values, convictions, and paradigmatic cases where no one would reasonably deny that they were violated (for example, discrimination on grounds of race). Then by analogy and other forms of reasoning, we try to thicken and extend the principles to apply to more controversial cases. This is also how much of actual political deliberation proceeds.

Certainly, these substantive principles might be rejected, and perhaps even reasonably rejected, in a deliberative process that satisfies the procedural conditions of deliberative democracy. But a precisely parallel argument can be made about procedural principles. Procedural principles may also be rejected by a deliberative democracy (and so may a purely procedural conception of deliberative democracy). Pure proceduralists do not have access to some moral basis, which our conception lacks, on which to claim that the procedural constraints that they recommend for a constitutional deliberative democracy are correct or authoritative.

Some critics who object to including substantive principles in a deliberative democratic theory are themselves not pure proceduralists with respect to justice. They agree that justice requires the protection of basic liberties and opportunities, including perhaps even access to adequate health care. But they still insist that the subject matter of *democratic* theories should be kept distinct from questions of distributive justice. They are pure proceduralists with respect

to democracy, but not justice. Democracy, they imply, is supposed to tell us how to decide when we do not agree on what is just; we should not confuse matters by combining principles of justice with the procedures for deciding disputes about those principles.

This argument is not so much substantive as it is definitional: democracy (including deliberative democracy) *means* fair procedures, not right outcomes. The critics cannot rely on ordinary usage or the history of modern democratic theory, because representative democracy has rarely been characterized as exclusively procedural. Ordinary usage of a concept as complex as democracy is enormously varied, as are the conceptions of democracy found in modern democratic theory. And democratic practice itself is full of debates about substantive principles. Why then strain so hard to exclude them from the definition of democracy?

The reason cannot be that democratic theory is somehow internally inconsistent if it contains substantive as well as procedural principles. To be sure, the more principles a theory contains, the more likely there are to be conflicts among them. And including both substantive and procedural principles certainly increases the potential for conflict. But democratic politics itself is rife with conflict among principles, and a democratic theory that tries to insulate itself from that conflict by limiting the range of principles it includes is likely to be less relevant for recognizing and resolving the disagreements that democracies typically confront. When the disagreements mix substantive and procedural values as so many do in actual democratic practice, theorists who artificially segregate substance and procedure in separate theories of justice and democracy are prone to distort the role of both.

Some pure proceduralists may wish to keep out substantive principles because they are contestable, and democracy is supposed to be a means of resolving disagreement among contestable principles such as basic liberty. But the content of principles that are more procedural, such as majority rule or public accountability, are also contestable. A purely procedural theory does not avoid fundamental disagreement: conflicts among procedural principles are no less severe than among substantive principles. For example, in the debate in Commons about NICE's decision to deny coverage for beta interferon, the MP from North Wilshire implicitly raised a basic procedural question—to what extent does democratic control require local autonomy—when he argued that his constituents should have access to the drug. He objected that—because of the relative autonomy of regions—some citizens in other parts of the country could get beta interferon from the NHS while his constituents could not. This is “a terrible tragedy for constituents such as mine, who could be prescribed beta interferon if they lived in Bath or Oxford, but not in Wiltshire.”<sup>8</sup>

<sup>8</sup>House of Commons Debate, November 10, 1999. Also see Jo Lenaghan, “The rationing debate: Central government should have a greater role in rationing decisions,” *British Medical Journal*, 314 (March 29, 1997), 967–71.

The political debates over health care rationing that are occurring not only in the UK but also in almost every contemporary democracy clearly reveal the need to consider both procedures and outcomes in judging democratic justice. At stake are both the conditions under which these decisions are made and their content. Do the decision-making bodies bring together representatives of all the people who are most affected by the decisions? Are the representatives accountable to all their constituents? These procedural questions cannot be answered in the context of these debates without also asking: to what extent is the substance of the decisions justifiable to all the people who are bound by them? To exclude substantive criteria—such as liberty and opportunity—that judge the justice of decisions would be morally arbitrary and incomplete according to deliberative democracy's own premise of reciprocity. (To exclude substantive criteria would also be morally arbitrary and incomplete according to other premises that are often identified as fundamental to deliberative democracy, such as free and equal personhood or mutual respect.)

To affirm that a democratic theory should include substantive principles does not of course commit one to any particular set of principles. In *Democracy and Disagreement*, we propose a set of principles that are both substantive and procedural, and present arguments for their inclusion as part of the constitution of a deliberative democracy.<sup>9</sup> The arguments we present are intended to be part of a deliberative process itself, and in fact include fragments from actual deliberations. For example, we argue that laws or policies that deprive individuals of the basic opportunities necessary for making choices among good lives cannot be mutually justified as a principle of reciprocity requires. The basic opportunities typically include adequate health care, education, security, work, and income, and are necessary for living a decent life and having the ability to make choices among good lives. We therefore would include a principle of basic opportunity as part of any adequate theory of deliberative democracy.

Critics who object that this principle is not mutually justifiable or that other principles of equality are more mutually justifiable are effectively accepting the idea that democratic theory should include substantive principles. Even while challenging the content of the principles, they are nevertheless accepting that the terms of the argument should be reciprocal. Such challenges are welcome by the terms of the theory itself, which asks for reasons that can be publicly assessed by all those who will be bound by them.<sup>10</sup> This kind of challenge can then become part of the continuing deliberative process. The reason that such

<sup>9</sup>Gutmann and Thompson, *Democracy and Disagreement*, pp. 199–229.

<sup>10</sup>Not so welcome are other critics—those who reject the aim of giving substantive content to the claims of reciprocity or who reject the very standard of reciprocity. But neither are their claims cogent. Having rejected the idea of mutual justification, they are hard-pressed to explain how they can justify at all imposing coercive laws and policies on citizens who morally disagree with them. See section III below, and Gutmann and Thompson, *Democracy and Disagreement*, pp. 352–3.

a challenge fits within the terms of a deliberative theory itself is that the principles of the theory per se have a morally and politically provisional status.

### III. WHY THE PRINCIPLES SHOULD BE MORALLY PROVISIONAL

How is it possible for a theory to propose substantive principles to assess laws while regarding citizens as the final moral judges of the laws they make? The key to deliberative democracy's answer lies in the provisional status of its principles.<sup>11</sup> The principles of deliberative democracy have a different status in deliberative democracy than they do in most moral and political theories. They are morally and politically provisional in ways that leave them more open to challenge and therefore more amenable to democratic discretion. The moral basis of the provisional status of deliberative principles comes from the value of reciprocity. Giving reasons that others could reasonably accept implies accepting reasons that others give in this same spirit. At least for a certain range of views they oppose, citizens should acknowledge the possibility that the rejected view may be shown to be correct in the future.<sup>12</sup> This acknowledgement has implications not only for the way citizens should treat their opponents but also for the way they regard their own views.

The process of mutual reason-giving further implies that each participant involved take seriously new evidence and arguments, new interpretations of old evidence and arguments, including moral reasons offered by those who oppose their decisions, and reasons they may have rejected in the past. "Taking seriously" means not only cultivating personal dispositions (such as open-mindedness and mutual respect) but also promoting institutional changes (such as open forums and sunset provisions) that encourage reconsideration of laws and their justifications. One implication is that citizens and their accountable representatives should continue to test their own political views, seeking forums in which their views can be challenged, and keeping open the possibility of their revision or even rejection.

Deliberative democracy thus expresses a dynamic conception of political justification, in which provisionality—openness to change over time—is an essential feature of any justifiable principles. Provisionality takes two general forms. The principles are *morally* provisional in the sense that they are subject to

<sup>11</sup>The discussion here of moral and political provisionality draws on our analysis in "Why deliberative democracy is different," *Democracy*, ed. Ellen Frankel Paul et al. (Cambridge: Cambridge University Press, 2000), pp. 161–80.

<sup>12</sup>The range is determined by what we call "deliberative disagreements," which are those in which citizens continue to differ about basic moral principles even though they seek a resolution that is mutually justifiable. The dispute over abortion is an example of a deliberative disagreement because both sides can justify their views within a reciprocal perspective. A dispute about racial segregation is an example of a nondeliberative disagreement because one side can be reasonably rejected within a reciprocal perspective. See Gutmann and Thompson, *Democracy and Disagreement*, pp. 2–3, 73–9.

change through further moral argument; and they are *politically* provisional in the sense that they are subject to change through further political argument.

Morally provisional principles are presented as claims that can be challenged and changed over time in response to new philosophical insights, empirical evidence, or interpretations of both the insights and evidence. They are justified only when they are so presented. Many theories endorse something like this general outlook—for example, by adopting some form of fallibilism, or more simply by expressing general approval of moral and intellectual open-mindedness. But the provisional stance that deliberative democracy takes toward its own claims is distinctive in being integral to the theory. Deliberative democracy supports the means for fundamental change in the content of the theory itself. Deliberative democracy subjects its own principles, as well as other moral principles, to critical scrutiny over time. If as a consequence of such scrutiny, its fundamental principles substantially change—say, from a more egalitarian to a more libertarian orientation (or vice versa)—the theory is appropriately seen as undergoing revision rather than rejection.

Not all principles can be challenged at the same time from within a deliberative democratic theory, but any single principle (or even several principles) may be challenged at a particular time by other principles in the theory. Citizens and accountable officials can revise one principle in a sequential process in which the other principles are held constant. They can alter their understanding of all the principles by applying them in a different context or at a different time. For example, when the NICE Board decided against funding Relenza, it implicitly made the provisional status of its decision clear by limiting its decision to one influenza season only. NICE also recommended that additional trials be conducted and further data be obtained so that its decision could be reassessed in the next influenza season. Particular attention should be paid, the Board said, to finding out whether Relenza has positive effects on reducing serious secondary complications of influenza in high-risk patients. The moral basis for a decision against funding Relenza—the claim that the use of Relenza does not significantly affect anyone's basic opportunity in life—would no longer be defensible if evidence came to light showing that Relenza could significantly reduce serious complications of influenza in high-risk patients. In this way, both the process and the substance of the decision kept open the possibility of revising the recommendation in the future.

The possibility of revision applies not only to substantive principles but also to a principled defense of the practice of deliberation itself. This is why it is misleading to claim that substantive principles should have no place in the theory because they are merely philosophical proposals. Substantive principles are no more or less provisional—and no more or less philosophical proposals—than the case for deliberation itself. It is as possible to question, from within deliberative theory, whether deliberation is justifiable—and what it entails—as it is to question whether basic liberty is justifiable—and what it entails.

Consider the deliberation in Commons about whether NICE itself—also a deliberative forum—is the justifiable way to make health care decisions. This part of the debate began when several MPs objected that letting NICE make recommendations is “to shield the Government from the very difficult decisions that have to be taken.” Should NICE recommend beta interferon, which costs about £10,000 per patient per year and has been judged “marginally effective”? (It treats incurable multiple sclerosis “by reducing the exacerbation rate in patients who have relapsing–remitting disease without important disability.”<sup>13</sup>) Should NICE recommend the new taxane drugs for chemotherapy, which do not cure but, as one MP put it, “can add years to life at a cost of about £10,000 per year”? If NICE recommends against prescribing expensive new drugs that can provide some health care benefits to patients, will it thereby be shielding the Government from pressure to increase the total NHS budget? If NICE recommends in favor of the NHS prescribing these drugs, will it thereby be forcing the NHS not to fund some other existing and highly valuable treatments (or pressuring the Government to increase funding for the NHS)? The answer to these substantive questions thus depends on taking a position on what the process should be.

Not even the deliberative principle that calls for giving moral reasons in politics is beyond reasonable disagreement. Some critics of deliberation argue that bargaining is not only more common but also preferable as a way of resolving moral disagreements in politics. The claim that self-interested (or group-interested) bargaining processes are better than deliberative ones relies on the premise that interest-based politics is more morally desirable and mutually justifiable than a deliberative politics. Whether political bargaining satisfies reciprocity (or any other moral standards) depends in part on the actual consequences of political bargaining in a particular social context. If those consequences can be shown to be mutually justifiable to the people who are bound by them, or more mutually justifiable than the consequences of deliberative processes, then to this extent substituting bargaining for deliberation would satisfy the fundamental aim of deliberative democracy. At least one claim that deliberative democrats often make about the general superiority of deliberation over bargaining would need to be revised—but revised in order to satisfy the demands of deliberative theory itself.

In any actual political context, a general defense of bargaining is not likely to be plausible. The main problem with bargaining as a general substitute for deliberation is that it accepts the current distribution of resources and power as a baseline, the place to begin the negotiations. On the face of it this is not the best site for a moral defense of democratic procedures or outcomes.<sup>14</sup> It is significant that no one defending NICE’s rejection of Relenza attempted to justify the

<sup>13</sup>E. Rous et al., “A purchase experience of managing new expensive drugs: interferon beta,” *British Medical Journal*, 313 (November 9, 1996), 1195–6.

<sup>14</sup>Gutmann and Thompson, *Democracy and Disagreement*, pp. 57–8.

decision as the outcome of bargaining. Nor did anyone in Commons suggest that bargaining should play any role in the process, as they might propose for a labor-management dispute, or a controversy about tax policy.

Is there no limit to what deliberative democrats can treat as provisional? They can encourage reinterpretations of the meaning and implications of deliberative principles, even the guiding principle of reciprocity, but they cannot accommodate the wholesale rejection of the moral justification required not only by reciprocity but many other morally based democratic theories. Deliberative democrats can welcome criticism of any of their principles, including reciprocity, but they cannot accept a general rejection of the requirement that binding political decisions must be justified by moral reasons. The refusal to give up that requirement is not peculiar to deliberative democracy. To reject the idea of moral reasoning in politics *tout court* is to abandon not only deliberative democracy, but also any form of democracy that would claim that its laws are justified to the citizens who are bound by them. Although critics of deliberative democracy sometimes write as if they reject moral reasoning in politics, they rarely face up to what such a rejection would entail either in practice or in theory.

What such rejection would mean—even in a partial form in a particular case—can be illustrated by imagining what would have happened if NICE had made its decision about Relenza on the basis of considerations of bargaining power. The single most powerful agent in this case, the one who stood to gain the most from NICE's decision, was Relenza's manufacturer and distributor, the Glaxo-Wellcome pharmaceutical company. When Glaxo executives learned of the possibility that NICE might recommend against NHS funding of Relenza, they threatened to abandon Glaxo's operations in the UK. They also said they would encourage other pharmaceutical companies to boycott the British economy. As it turned out, NICE stood its ground and Glaxo backed down from its threat. Deliberation and justice coincided in this case, and both prevailed. That would have not been the outcome, given the baseline distribution of power, had NICE sought only to bargain.

Deliberative democrats thus reject—and not just provisionally—any theory that denies the need for moral justification, and therefore also any theory that bases politics only on power. Deliberative democrats are committed—and not just provisionally—to mutually justifiable ways of judging the distribution of power. Deliberative democracy accepts the provisionality of its principles but rejects the provisionality of moral reasoning itself as a way of assessing politics. Theorists who claim that politics is only about power must reject far more than the moral terms and the adjudicative means of deliberative democracy. They must also reject criticism of any current distribution of power, however unjust it may be. Or if they criticize it, they must do so in terms that—on their own view—the persons who would be constrained by the power have no moral reason to accept. If they decline to search for political principles and practices that can be



mutually justified, who should listen to them? Certainly no one who is motivated to find fair terms of social cooperation. Their audience can be only people who have themselves already given up on finding mutually defensible reasons. Those who would renounce reciprocal reasons are therefore trying either to persuade the already converted or to reach the unreasonable. In the first case their audience has no need and in the second case no reason to listen.<sup>15</sup>

#### IV. WHY THE PRINCIPLES SHOULD BE POLITICALLY PROVISIONAL

We are now in a better position to address the second objection against including substantive principles in deliberative democratic theory—that their inclusion usurps the political authority of democratic citizens. A democratic theory that includes substantive principles can declare that a law citizens make is unjust, however correct the procedures by which they make it. It is no comfort to the defender of the authority of citizens to be told that the substantive principles are morally provisional. Even morally provisional principles—if they are the most theoretically justifiable at the time—carry the implication that they should be politically enacted. Acting on this implication denies democratic citizens the authority to determine through a deliberative process what should be politically enacted and why. To respond to this objection, deliberative democracy relies on the second kind of conditional status—political provisionality.

Political provisionality means that deliberative principles and the laws they justify must not only be subject to actual deliberation at some time, but also that they be open to actual reconsideration and revision at a future time. Like the rationale for treating principles as morally provisional, the justification for regarding principles as politically provisional rests on the value of reciprocity. From the perspective of reciprocity, persons should be treated not merely as objects of legislation or as passive subjects to be ruled. They should be treated as political agents who take part in governance, directly or through their accountable representatives, by presenting and responding to reasons that would justify the laws under which they must live together. We showed earlier (in Section I) why reciprocity requires actual not merely hypothetical deliberation. Because deliberative principles must be justified in an actual deliberative process in which citizens or their accountable representatives take part, the political authority of democratic citizens is to a significant degree respected.

But it still may be objected that once a principle or law is justified in this process, it acts as a constraint on other new laws that citizens may wish to make. Because the body of citizens and their representatives who deliberate about the new laws are never exactly the same as those who enacted the old laws, the democratic authority of citizens at any particular time is held hostage to principles justified at a previous time. Providing such constraints is of course

<sup>15</sup>Ibid., p. 353.

what constitutions are supposed to do, and that may be why some deliberative democrats are wary about regarding their principles as part of a constitution. But if all the principles of deliberative democracy are seen as provisional in the sense of being open to revision over time, these constitutional constraints that embody substantive principles such as basic liberty and opportunity are not so threatening to the political authority of citizens.

Deliberative democrats do not favor continual deliberation, but they are committed not only to deliberation about laws at some time but also to the possibility of actually reconsidering them in the future. The extent to which any law is subject to actual reconsideration should depend on the strength of the available moral reasons and empirical evidence (and any other morally relevant considerations) supporting it, which often change over time. In the case of Relenza, part of the reason that NICE's decision was justified is that it called for review after a year's time, an appropriate interval in light of the significant changes that may occur over the course of even a single flu season. A decision by any official body not to fund Relenza even if otherwise well supported would not be justified without its providing for the possibility of continuing deliberation in the future. To be sure, at some point a decision is reached, as it was in this case, and it is justifiably enforced. But deliberative theory emphasizes, more than other democratic theories, what happens before the decision and—even more to the point of provisionality—what happens after.

Political provisionality thus goes further than its moral counterpart. It implies that principles should be open to challenge over time in an actual political process that not only permits but encourages revision. Even when a law is rightly enacted today, the practices and institutions of deliberative democracy should ensure that it is subject to the regular reconsideration that is necessary to its justification over time. Deliberative democrats should therefore be especially suspicious of practices that routinely defer to the “intent of the framers” or that make constitutional amendments almost impossible even when the inherited reasons for supporting the laws in question are not compelling. Deliberative democrats should be favorably disposed toward practices that attach sunset provisions to everyday laws and procedures, and require administrators to issue periodic “impact statements” describing the effects of these laws and the regulations that enforce them. We noted earlier that the moral justification for NICE's decision against funding Relenza—the claim that the use of Relenza does not significantly affect anyone's basic opportunity in life—depends in part on evidence that the drug does not significantly reduce complications in high-risk patients. In its deliberations, NICE demonstrated its respect for political provisionality by taking specific institutional measures: limiting their decision to one flu season, providing for continuing review, and recommending further research.

The objection that the presence of substantive principles in a deliberative theory pre-empts democratic authority, it should now be clear, either proves too

much or too little. It proves too much if the mere inclusion of substantive principles is taken to imply that these principles must therefore be politically binding on citizens. This objection would apply equally to the inclusion of procedural principles, which may be no less reasonably contestable than substantive principles. If the objection were accepted, it would require democratic theory to exclude *all* reasonably contestable principles, procedural as well as substantive. The objection proves too little if the complaint is only against making provisional judgments (however substantive) that challenge laws enacted by proper procedural methods. Even the critics of deliberative democratic theory could hardly fault it for rendering provisional judgments of this kind. If political theory were disbarred from offering such judgments, it would have little relevance to the democratic politics it purports to criticize.

## V. WHEN MORAL AND POLITICAL JUDGMENTS CONFLICT

Ideally, the moral and political judgments that deliberative democracy renders coincide. What deliberative politics decides will satisfy deliberative morality. Indeed, this happy conjunction occurs more often than is usually assumed. In the case of NICE, the decision against funding Relenza, made in a process that was more deliberative than that in which such decisions were made in the past, seems to be morally justified (at least provisionally). The most reliable studies, as reported by NICE, show that the only benefit of Relenza is a one-day reduction of influenza symptoms in the median patient at a direct financial cost to the public of as much as 10 million pounds annually. NICE also took into account the cost of the expected increase in visits to doctors by typical influenza patients (most of whom are otherwise healthy), and the risk that the increase would overload the health care system for a very minor health benefit. Furthermore, NICE found no evidence that Relenza reduces any of the serious, life-threatening effects of influenza on high-risk patients.

Nevertheless, there were some critics who raised reasonable moral objections to NICE's decision. In the Commons debate, the physician-MP mentioned earlier complained that the decision not to cover Relenza discriminated against poor people. "When we talk about rationing of NHS treatments, we aren't saying no one in the UK has them. What we are saying is that they aren't available to poor people. The rich and those who can afford it can get these treatments privately." The money saved for all patients would be at the expense of the poor because more affluent citizens could obtain Relenza by means of postcode prescribing. The decision by NICE against funding Relenza would therefore at least appear to be sacrificing the welfare of some poorer citizens in order to save taxpayer money.

Whatever the merits of this MP's criticism, all parties to the dispute over Relenza should be able to agree that he has raised a serious moral question about a decision that was reached by politically justifiable (deliberative) process. Even

if, under current conditions, the NHS cannot do anything about this differential access to drugs such as Relenza, defenders of the decision (and other similarly hard choices) should be prepared to acknowledge the moral costs inherent in a situation in which rich people tend to live in richer districts that provide better health care and they also can buy any health care treatment on the market while poor people are completely dependent on the NHS for funding those treatments that may be cost-effective for society as a whole.

In this case there was some reasonable disagreement about whether the political judgment conformed to the moral judgment, but in many other cases there may be no doubt that the (procedurally correct) political judgment conflicts with the (carefully considered) moral judgment. A deliberative process that deliberative democrats recommend may yield an outcome that runs contrary to one or more of the substantive principles of justice that deliberative democrats also wish to defend. This kind of conflict does not seem to be a serious problem for a purely substantive theory, which simply declares the outcome of the process unjust. Similarly, a purely procedural theory faces no serious problem here either; it declares the outcome just, as long as the procedures were proper. But, as we have seen, a deliberative democratic theory should include both procedural and substantive principles because the pure approaches at best neglect and at worst deny the moral complexity of democratic politics. A democratic theory that recognizes what is morally at stake in political decision-making must contain principles that are both substantive and procedural. Moreover, as we have also seen, the basic premise of deliberative democratic theory—reciprocity that calls for mutual justification among free and equal persons—supports both substantive and procedural principles.

Thus, compared to the purer theories, deliberative democracy more fully faces up to the potential conflicts between moral and political deliberation. It does not provide a simple resolution, but instead relies on deliberation itself to deal with the conflicts as they arise. But then the question persists: how can deliberative democrats affirm substantive conclusions about politics and still support the value of actual deliberation, which may or may not produce those same conclusions? Political philosophers, including deliberative democrats like us, reach substantive conclusions (including conclusions about what procedures are most justifiable) without engaging in any actual political deliberation. This seems to fly in the face of the commitment to actual rather than hypothetical adjudication of political disagreements.

Some critics of deliberative democracy pose this problem as a paradox of deliberative democracy.<sup>16</sup> The critics argue that if, on the one hand, they accept the arguments and conclusions of a substantive deliberative theory (such as the one we present in *Democracy and Disagreement*), they need not bother calling

<sup>16</sup>Frederick Schauer, "Talking as a decision procedure," *Deliberative Politics*, ed. Macedo, pp. 17–27.

for actual political deliberation. The substantive theory provides all the reasons anyone who accepts it needs for making sound political judgments, and without the aid of any actual deliberation. If, on the other hand, critics reject the arguments and conclusions of the substantive theory, then they should also reject the deliberation that it recommends. Either way, deliberative theory that includes substantive principles seems to eliminate the need for the practice of deliberation.

As our earlier discussion of moral and political provisionality should indicate, this objection does not express a genuine paradox. The procedural and substantive principles (even the political conclusions) that deliberative democrats defend do not pre-empt actual deliberation. According to the very terms of the theory, the (substantive and procedural) principles and conclusions need to be subjected to the rigors of actual deliberation over time; that is part of what it means to treat them as politically provisional. (Moral provisionality also benefits indirectly from political provisionality, because individuals thinking in the privacy of their own homes or offices often draw on ideas, arguments, and perspectives—or respond to challenges—that public deliberations bring to their attention.) Deliberative democrats offer their principles and conclusions not as authoritative philosophical constraints on democratic politics but as provisional contributions to democratic deliberation.

The conclusions that deliberative democrats reach about substantive and procedural principles should be understood as normative hypotheses about political morality. Given certain assumptions about reciprocity, for example, certain principles are the most mutually justifiable. The hypotheses are normative because simply showing that some people, even a majority, in fact reject the principles or their policy implications does not refute them. Restricting coverage for experimental drugs to only those who are willing to participate in random clinical trials, for example, may be the best policy even if a majority of citizens reject it.

But the principles and policies recommended by deliberative theorists are still hypotheses because they may be refuted or refined by showing that there are better arguments for competing principles or conclusions in the same context. And they are hypotheses about political morality—not morality in general—because their confirmation, refutation, or revision calls for public deliberation in the democratic process. Whether a normative hypothesis is confirmed, refuted, or refined, this kind of criticism can succeed only by subjecting rival arguments to the rigors of actual deliberation. Deliberative theorists should of course take into account the imperfections from which any such process suffers in practice. But so should they take account of the imperfections in their own process of reasoning, less obvious though these imperfections may be (to them if not to other theorists).

The problem of the conflict between moral and political judgment is misconceived if it is understood as requiring a choice in general or in advance between substantive and procedural principles. Both kinds of principles are subject to deliberation and are equally provisional in the way we have described.

The choice between substantive and procedural principles—when they conflict—is similarly subject to deliberation and should accordingly be regarded as provisional. Neither substantive nor procedural principles have priority even though citizens sometimes justifiably choose one over the other at some particular time.

In the debate about NICE in Commons, both the critics and the defenders appealed to both substantive and procedural principles. They addressed the justice of the decision (does it violate equal opportunity by hurting poor people?), and the process (does it insulate the government from demands to increase expenditures for health care?). Even while agreeing that the process was better than in the past, some critics challenged the substance of the decision. And even while agreeing that the substance of the decision was correct, some critics questioned the process. Some criticized and some defended both substance and process. But no one tried to argue that as a general rule one had priority over the other, or that the disagreement should be resolved by deciding once and for all whether substantive or procedural principles should prevail. In this respect the debate in Commons illustrated the nature of public deliberation in many of the best democratic forums. The debate also captured the moral complexity of democratic politics far better than do theories that seek to resolve the conflict of substance and procedure by excluding one or the other, or declaring one rather than the other trump.

Deliberative democratic theory can and should go beyond process. It can consistently incorporate both substantive and procedural principles. It should go beyond process for many reasons that we have suggested, but above all because its core principle—reciprocity—requires substantive as well as procedural principles. Reciprocity is widely accepted as a core principle of democracy, but even those democrats who do not emphasize this principle argue from ideals such as free and equal personhood, mutual respect or avoidance of majority tyranny, which like reciprocity require both substantive and procedural principles to justify the laws that democracies adopt.

Deliberative democratic theory is better prepared to deal with the range of moral and political challenges of a robust democratic politics if it includes both substantive and procedural principles. It is well equipped to cope with the conflict between substantive and procedural principles because its principles are to varying degrees morally and politically provisional. Deliberative democratic theory can avoid usurping the moral or political authority of democratic citizens—and yet still make substantive judgments about the laws they enact—because it claims neither more, nor less, than provisional status for the principles it defends.