**Progressive Constitutional Deliberation: Political Equality, Social Inequalities, and Democracy’s Legitimacy Challenge**

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**Abstract**

Social inequalities fuel a debate about the meaning of political equality. Formal procedural equality is criticized for reproducing discriminatory outcomes against disadvantaged groups but affirmative action, particularly in the form of group quotas, is also contested. When opposing conceptions of substantive equality support divergent views about which procedural rule genuinely respects political equality, democracies cannot identify a standard or rule of procedural fairness to be widely accepted as fair. This dispute over procedural fairness can carry on indefinitely and could challenge democracy’s legitimacy claim. I argue that democracies can renew their legitimacy claim by embracing this debate and by accommodating it through constitutional deliberation that must be as impartial and meaningful as possible. Impartiality ideally requires the presence of every citizen in this process because each of them has a unique and evolving experience of inequality. Meaningful deliberation is about offering periodic opportunities for constitutional reform, allowing for continuous feedback, reflection and learning.

**Keywords**

Democratic legitimacy, deliberative democracy, political equality, affirmative action, substantive equality, inequalities, constitutional reform

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**Introduction**

Democracies build a claim of legitimacy upon the perception that their decision-making processes respect citizens’ political equality and political decisions receive public approval under fair terms of political participation. Procedural fairness is fundamental for a democracy because democratic systems ask citizens to accept decisions even when they disagree with them. At a basic conceptual level, procedural fairness elicits respect for the fundamental idea of citizens’ political equality, meaning that the decision-making process should not privilege some citizens and disadvantage others, for instance, by not considering their concerns, grievances or ideas for political and social change.

Nevertheless, the very meaning of political equality is contested amidst criticisms that point to structures, institutions and biased beliefs that generate and perpetuate social inequalities (Young, 1989; 1990; Anderson, 1999; 2010; Kolodny, 2014; Lippert-Rasmussen, 2020). These criticisms often entangle arguments on substantive justice with opinions on procedural fairness, claiming that unfair social conditions create unfair terms of political participation which, in turn, reproduce these social conditions. Most notably, in debates over affirmative action, formal procedural equality is criticized for systematically disadvantaging certain groups such as women and minorities. Affirmative action is proposed not just as a remedy for these disadvantages but, more profoundly, as a requirement of justice (Beauchamp, 2002; Barry, 2005; Mason, 2006; Anderson, 2010; Lippert-Rasmussen, 2020). However, there are opposing views that criticize forms of affirmative action such as electoral quotas for introducing reverse discrimination (Hook, 2002; Pojman, 2014).[[1]](#endnote-1)

When views on procedural fairness are entangled with views on substantive equality, a dispute over the meaning of equality emerges that could challenge democracy’s claim of legitimacy founded on the notions of political equality and procedural fairness. Procedural fairness depends on the extent to which citizens believe that the rules treat them as equals and allow their views to be taken into account impartially, i.e., without the process itself predetermining the outcome by favouring some preferences or outcomes against others. Social inequalities, by rendering the meaning of political equality contestable, strike at this normative foundation of democracy as it becomes difficult for a political system to claim that there is a fundamental agreement on a set of decision-making rules as procedurally fair. This dispute calls for public rethinking of the meaning of political equality that must debate procedural fairness. Deliberative democrats call this process *meta-deliberation* (Bohman, 1996: 65; Fraser, 2003: 44-45; Thompson, 2008; Stevenson and Dryzek, 2012; Holdo, 2015: 1112; 2020; Landwehr, 2010; 2015). The problem is that arguments that entangle views of procedural fairness with views of substantive equality make it equally difficult to agree on the procedural terms that would guide this process too.

With this paper, I argue that, while it seems impossible to achieve a once-and-for-all foundational agreement on which democratic rules and procedures are fair, as in the form of a Rawlsian contract on basic principles of justice, democratic legitimation should be seen as a process of continually rebuilding and renewing a legitimacy claim in view of inevitably intersubjective and evolving perceptions of fairness. Such process of renewal requires an inclusive and meaningful deliberative process that will also accommodate radical rethinking on existing institutions and norms and, potentially, enact substantial reforms of democracy’s baseline rules and procedures. Inspired by the work of Anne Phillips on equal presence and multiculturalism (1995; 2007), I propose a process of constitutional meta-deliberation that must consider all perspectives on equality, including group-specific perspectives, in a process of continual reflection. I justify this position on the grounds that each individual has a unique and evolving experience of inequalities and disadvantage and could form a distinct and evolving opinion about them and about the meaning of political equality. This constitutional form of meta-deliberation, I argue, could potentially transform institutions as well as ideas and opinions by being inclusive of the full diversity and potential evolution of the views and experiences of the citizens themselves. By inclusive I refer to a process that accommodates emerging nuances and disagreements in society including those to be formed around a group perspective now and in the future. Collective perspectives are ultimately held by people with developing experiences, and the fullest inclusion of this diversity as well as the fullest expression of their dynamics requires an inclusive and periodic – progressive in that sense – process of deliberative constitutional reform.

**Affirmative action and the dispute over political equality**

The debate on affirmative action hosts, at its very core, a dispute over the meaning of equality and fairness and could go as far as questioning how legitimate democratic institutions are to the extent that their basic procedural rules overlook relational asymmetries, structural injustices, biases and stereotypes behind racism and sexism. For instance, women make a greater effort to overcome social barriers, prejudices and stereotypes (Dahlerup, 2007). Critics regard the political under-representation of women and other disadvantaged groups in social and political roles as *prima facie* evidence that democracy’s standard norm of formal equality is unfair, and many of them call for the introduction of quotas in the selection of candidates or elected representatives (Lovenduski and Norris, 1993; Lovenduski, 1997).

The notion of equality is thus scrutinized with reference to social conditions and policy inequalities defined in structural, relational and distributional terms (Beauchamp, 2002; Barry, 2005; Mason, 2006; Anderson, 2010; Lippert-Rasmussen, 2020). Notions such as equal opportunity or equality of result have been invoked to support ideas on how people could become (more) equal with political and institutional proposals for the mitigation or neutralization of perceived injustices (Mason, 2006: 110; Harris and Narayan, 2014). The result is that there is a notable diversity of views on what political equality means, which centres around accepting or rejecting affirmative action – its justification as well as the means, beneficiaries, long-term effects and social costs (Barry, 2005; Anderson, 2010; Lippert-Rasmussen, 2020: 256). Interestingly, some of these views are addressing the question ‘which decision-making rules are fair’ by linking it to their own evaluation of social conditions and outcomes: how these rules operate against their own vision of substantive equality (Knight and Johnson, 1997: 304).

On the opposite side, proponents of formal equality - those who adhere to the equal legal status and same treatment of all individual members of society regardless of their social and demographic background – criticize forms of affirmative action for introducing blanket allocations of group-level rights that disregard heterogeneous individual circumstances. From a strict perspective on formal equality, group-specific allocations of rights and resources trigger criticisms of reverse discrimination on the grounds that they are crude and indiscriminate as they may offer privileges to already privileged members of that group. [[2]](#endnote-2) In politics, formal equality is defended on the basis that the equal distribution of civil liberties and rights allows every citizen equal impact on decisions (Dworkin, 2000: 191). Each citizen is given one vote with equal weight. Rules conforming to formal procedural equality are taken to be inclusive of diverse values in society and conducive to effective participation (Dahl, 1989; Rawls, 1996; Saffon and Urbinati, 2013).

Another key problem is that the goal of attaining substantive equality through group-centred actions confronts a complex reality of multiple and overlapping social identities and personal circumstances (Kymlicka, 1995: 144-145 Bird 2016). A critical perspective on affirmative action would suggest that no combination of group-level allocations of rights can satisfy all visions of equality and fair treatment and that, in politics, there is a tension between reconciling a general equality criterion with actual results that have disparate allocations and unequal distributions (Ganghof, 2012). Even if a vision of substantive equality were to be established as a guiding principle for reform, the amount and nature of interventions necessary for tailoring it to numerous individual circumstances would be intractable and therefore impossible for a political system to offer (Tebble, 2002: 266-272).

Actual political decisions on this issue reveal other nuanced complexities and inconsistencies. On the one hand, democratic systems governed by a formal view of political equality have recognized group-specific differences as reasons justifying differentiated treatment along categories such as poverty or minority status. In various places, public decisions conforming to formal procedural equality have established criteria for differentiated treatment, such as unemployment, disability, mental health, old age etc. On the other hand, proponents of affirmative action welcomed public decisions favourable to their ideas even when they had been taken under procedural rules which they fundamentally criticize. However, a sequence of policy actions granting affirmative action in a given context does not mean that the underlying dispute over the meaning of political equality has been settled. Those who evaluate the rules of the game based on their views about substantive justice could still question the legitimacy of the rules themselves on that basis.

Underpinning these debates are diverse fundamental views on equality that clash with one another (See. Rae, 1981). Formal equality remains a controversial procedural norm in modern democracies insofar as it is criticised for not granting citizens substantive equal opportunity in terms of political influence (Knight and Johnson, 1997: 293). After all, formal equality does not constitute group rights as an integral element of procedural justice and does not recognize an *ipso facto* affirmative duty to promote a generalized idea of substantive equality.

It is important to note that fundamental differences about the meaning of political equality stem from an entanglement between substantive and procedural justice. Charles Beitz noted that, when the definition of what it means to be an equal member of the polity comes under dispute so will be any social outcome that will be influenced by the structural features of the procedure itself (1989: 72). More specifically, I would argue, contestations over perceptions of equality or fair outcomes may merge into ‘socially dependent’ interpretations of *procedural* fairness by which participants in the debate would reject a set of procedural rules as unfair if they clash with their perception of what substantive equality means, while they will only endorse the rules that will promote the social and political transformations they consider fair and/or just. Here, the answer to the question of whether equality is to be seen as ‘a property of procedures or a property of outcomes?’ (Mason, 2006: 21) is that the two are entangled around conceptions of substantive justice. Any decision-making norm will be seen as privileging one view of equality among others. It thus seems impossible to disengage instrumental grounds for justifying democracy from a discussion on the intrinsic value of democracy (Cf. Estlund, 2007: 83). No outcome-neutral political decision-making procedure can be found (Cf. Landwerh, 2015: 46), because views on procedural fairness are not independent of judgments over the fairness of the outcomes and of the underlying social conditions as evaluated in relation to unified – procedural and substantial – conceptions of fairness.

This entanglement between procedural fairness and substantive equality can be a disruptive problem for democracies. To the extent that democracies build a claim of legitimacy on political equality through a public perception that its processes and policies are treating our opinions, preferences and disagreements fairly, any prolonged criticism of substantive inequalities that links them to certain procedural rules in place may make the notion of political equality contested by at least some groups of citizens on the grounds that a) social conditions favour some views or some groups while disadvantage others in political participation – hence, they are not impartial - and b) that the outcomes of formal processes are biased because they tend to reproduce these inequalities and, as a result of this procedural bias, participation is less meaningful for some citizens.

**Meta-deliberation and democratic legitimacy**

Facing a fundamental disagreement over the way political equality and procedural fairness is enacted in democracy’s workings, a democratic system must find a way to defend and renew its legitimacy claim. Deliberative democrats understand that democratic institutions and procedures are not fixed once and for all, but they are, within the scope of liberal democracy, challengeable and revisable (Landwehr and Steiner, 2017: 801). The structure of democracy’s system must be justified (Thompson, 2008: 515). *Meta-deliberation* describes the process in which baseline democratic norms and procedures are subject to critical rethinking, which also involves the key question of how to democratise deliberation through institutional redesign (Landwerh, 2010; 2015). Meta-deliberation aims at fostering reflexivity, critical questioning and learning that would transcend individual cases and involve participants with substantially different normative commitments (Dryzek and Pickering, 2017). As Holdo stresses (2020a), meta-deliberation is the forum to discuss all sources of distortion and inequality and make corrections and improvements to the ways we deliberate, particularly…

‘when people experience being unfairly excluded or marginalized due to their failure or unwillingness to accept assumptions and norms that shape public deliberation. Because such experiences may indicate systemic failures of uptake, examining meta-deliberation is an important part of how we can make deliberative systems more reflective’ (Holdo, 2020a:107).

Meta-deliberation is crucial to the legitimacy of modern democracies (Landwerh, 2010b) not least because satisfaction with democracy depends on a degree of congruence between normative conceptions of justice or fairness and existing institutional norms (Connolly, 1993[1974]: 29). However, meta-deliberation faces the same challenge: how to establish a standard of procedural fairness for this process too in view of unequal power relations, the marginalization of some people and groups and the narrow coverage of some perspectives (Hayward, 2004; Olson, 2011; Holdo, 2020b; Also: Fraser, 1990; Mansbridge, 1999; and Young, 2001). For Landwerh:

‘If we acknowledge a plurality of conceptions of the common good or view deliberation as inevitably power‐driven, the inherent virtues of deliberation become too uncertain to base claims to legitimacy on them’ (Landwerh, 2015: 43)

Meta-deliberation is supposed to enable a meaningful debate on these questions at the level where, ideally, some notion of procedural consensus must be agreed upon to allow societies to deal with these disputes peacefully and constructively (Cf. Landwehr and Steiner, 2017: 788). But it seems that configuring the procedural terms of meta-deliberation stumbles at the same problem meta-deliberation is supposed to settle. Differences regarding the meaning of political equality and procedural fairness will manifest themselves as irreconcilable views on which procedural norm must govern meta-deliberation too.

Broadly speaking, in a political society, there can be no such thing as pure procedural justice, whereby the outcomes of a procedure would supposedly derive their claim to justice (or fairness, more specifically here) from the procedure itself only (Cf. Rawls, 1999 [1971], Chapter II), because, at any level, procedural norms will be challenged with reference to diverse and antithetical views on substantive justice. Nor can there be either perfect or imperfect procedural justice in the sense that a process would supposedly guarantee or at least promote decisions that comply with an agreed-upon standard of justice (See Landwerh 2013: 303). As Douglas Rae noted, ‘we are always confronted with more than one practical meaning for equality and equality itself cannot provide a basis for choosing among them’ (1981: 150).

This observation raises two important and interrelated questions regarding whether a meta-deliberative process can ever settle this normative dispute, and whether there can be a way to configure the process of meta-deliberation and plausibly claim procedural fairness. These are different but interrelated questions. I am agnostic regarding the first question. Democracy’s legitimacy largely depends on the extent to which democracy is viewed to be meeting the requirement of political equality and procedural fairness, and not on whether it has indeed a record of ending substantive disputes once and for all. Still, I try to address the second question, recognizing that positions on political equality may not just be distinct from one another but also irreconcilable with one another, in the sense that a democracy may never end the disputeover the meaning of political equality but still needs a way to legitimize itself in view of this dispute. As Dryzek and Pickering note (2017), deliberation is not necessarily about searching for a consensus to end a debate but about how societies navigate the tension between diversity and commonality. Yet doing so is challenging, because a meta-deliberative process must satisfy the requirements of procedural fairness first. How should it accommodate all opposing views impartially and do so meaningfully?

As stated above, a meta-deliberative process will be impartial to the extent that the procedural rules do not preclude or disadvantage some proposals on procedural and substantive justice from equal consideration in the process. [[3]](#endnote-3) The next section will explain why a meta-deliberation process should grant equal presence to all citizens on the question of reforming baseline democratic institutions. Later, I will specify the term ‘meaningful’ with regard to the procedural-substantive justice entanglement which I already presented in this section. The dispute has a constitutional nature because it hosts proposals that embody various ideas on substantive equality that can be transformed into proposals for reforming baseline norms and institutions of democracy. Hence, meaningful meta-deliberation concerns the prospect of constitutional reform because the constitutional level is the most consequential level of decision-making (Cf. Eisenstadt et al., 2015). Finally, for a debate with no discernible telos, meaningfulness also requires that the outcomes of the meta-deliberation process – the enacted procedural norms – must be subject to new rounds of deliberation and constitutional revision.

**Radical Intersubjectivity and Equal Presence**

So far, I have explained why the debate on inequalities and political equality is crucial for democracy’s claim of legitimacy and I also stated that the constitutional nature of this debate requires two conditions for meta-deliberative fairness to be met: inclusion and meaningfulness. I will now further explain why impartiality requires the full inclusion of all citizens with their views and opinions on the matter. In particular, the meta-deliberative process must acknowledge that normative positions on democracy are *intersubjectively* formed – and seek to include all positions that entail a commitment to the idea of democratic equality even if they express antithetical views on how it must be configured – thereby recognizing that each individual has a unique experience of life and could form her own ideas about political equality.

Given the presence of diverse and opposing views on equality and justice, thisintersubjectivity of views can be described as radical, because the experience of inequalities varies from individual to individual and there may be radically different judgments on the desired policy reform and ideal institutional change. The experiences and perceptions of disadvantage can feed into a heated dispute over inequalities, ultimately, questioning the meaning of political equality from various radical standpoints. Because individuals are the basic units of judgment, *radical intersubjectivity* best describes how clusters of interpersonal differentiations of status, treatment and opportunities will manifest themselves as diverse interpretations of what is wrong, which inequalities are unjust and why, and what should be done about them.

Value diversity elicits deliberations with the fullest possible expression of these diverse views (See Rostbøll, 2017: 621). All proposals for democratic institutional change must be given equal consideration in the discussion about democratic norms because the origins of value judgments are found in diverse individual experiences and perceptions. All positions are therefore contestable and should not be taken as axiomatic but, instead, they must be discussed and arbitrated (See Minow, 1990: 115, 154-156, 262). Acknowledging radical intersubjectivity means that no side in the debate can refuse to submit its own view to a public process of deliberation by presenting it as the true position against all others. What an impartial process promises to those who participate is not to guarantee victory for their views but to enact a commitment to the idea of equal inclusion and consideration of each individual opinion.

We are thus looking for a normative principle to govern a meta-deliberative constitutional process in the most impartial way of accommodating radically subjective opinions. The principle I propose is equal presence, inspired by the work of Anne Phillips on presence, representation and multiculturalism. Phillips (1991; 1995) develops an argument about how ideas, beliefs and preferences should be represented in decision-making. Gender and other social identities are an important part of what makes one representative (Phillips 1995: 13; 1998: 228; See also Lovenduski and Norris, 2003; Celis et. al., 2008). Group perspectives cannot be fully and properly articulated through the typical principal-agent relation by members of other groups, but they should be expressed in elected posts by those who experience them (Phillips, 1995, 47-56). Representative bodies must ensure that the perspectives of disadvantaged and under-represented groups are equally present (Phillips, 1995: 68 and 84; Also: Williams, 1998).

Equal presence does not guarantee specific results. For Phillips, equal presence is basically an expectation… ‘that this will bring a wider range of *experiences* and a different set of priorities into the political arena’ (Phillips, 2007: 168, emphasis added). Equal presence is thus justified on the grounds that it would strengthen the substantive representation of the perspectives of the under-represented groups. A comprehensive agenda for women, for instance, is more likely to be brought to politics by women themselves in all stages of decision-making (Phillips, 1985: 176), particularly when new problems and issues emerge (Phillips, 1995: 44; Also: Young, 1997; Williams, 1998; Mansbridge, 1999b and 2005). The closer the identities of the representatives reflect the population’s demographics, the greater the capacity of equal presence to create a forum of discussion and decision that is inclusive of diverse perspectives. Bringing a fuller range of experiences centre-stage also enhances the prospects for social transformation (See also Gould, 1996: 184; Williams, 1998). For instance, the proportional presence of women in positions of authority can have a profound impact on society beyond the status of women (Mansbridge, 1999b; Murray, 2013).

Importantly, Phillips’ parallel work on multiculturalism recognizes the risk of reifying rigid and all-encompassing perceptions of group identity and warns against giving group leaders a quasi-dictatorial say in defining group preferences at the expense of multiple within-group contestations and individual differentiations (Phillips, 2007: 168). Inside each demographic or cultural group, there are diverse viewpoints regarding so-called ‘common practices’ associated with the group itself and there will be challenges against established group norms (Phillips, 2007: 160, 167, 179). Internal contestations are to be found in all contexts in which ‘markers of gender, race, ethnicity, culture, and religion continue so profoundly to shape our lives’ (Phillips, 2007: 168, 175). Hence, we need a system of representation that reflects more of that difference (Phillips, 2007: 176), by recognizing the rights and needs of individuals whose choices under certain circumstances cannot be simply dismissed as inauthentic, tamed or coerced (Philips, 2007: 178).

I interpret Phillips’ positions on equal presence and multiculturalism as two important comments on how group-specific perspectives can be meaningfully expressed in representative bodies as well as how the problem of inclusion still plagues the idea of group representation. Significantly so, acknowledging diversity rejects a predefinition of a group perspective that will overlook or silence the differentiated voices of its own members.

Feminist theorists have acknowledged within-group asymmetries and intersectional differentiations of experience, disadvantage and power relations (Young, 1989; Mansbridge, 1999b: 637-639; Lutz et al., 2011; Evans, 2016). The feminist literature has dealt with the problems of sub-group domination (Young, 2000: 150) and within-group inequalities (Dovi, 2002: 735). There is recognition that perspectives vary among members of the disadvantaged groups (Gould, 1996: 182; Snider and Carmines, 1997; Williams, 1998: 6). Each person experiences reality in a unique way and may understand their social and personal conditions differently. An individual’s real-life status is shaped by memberships in various demographic and social groups (See, for instance, Maier and Klausen, 2001; Weldon, 2002: 1156-1159). People experience - either personally or as witnesses of other lives – several manifestations of discrimination, such as racism, bias and othering, and are likely to find themselves in some position of asymmetrical power and structural disadvantage, which includes, but is not limited to, gender, sexual orientation, appearance, disability, national, ethnic or regional origin and language.

These critical views do not suggest that we should cease to identify group-specific patterns of inequality or oppression, but they present us with an anti-essentialist account of those differences (Young, 1990: 43-44). In her ‘politics of difference’ approach, Young (1989: 258) defends a notion of justice different from liberal and communitarian conceptions, in which group-differentiated perspectives and histories cannot be completely understood and adopted by those who come from outside the group that experiences them. Democracy should recognize and represent the distinct voices and perspectives of its constituent groups, including those of the oppressed and the disadvantaged groups whose point of view is dismissed in politics (Young, 1990: 185-185; Young, 2000: 122). There is a procedural dimension of justice and political theory must pay attention to the processes through which conceptions of the good life will be expressed in multiple ways. However, Young was sceptical of descriptive representation on the grounds that ‘a relation of identity or similarity with constituents says nothing about what the representative does’ (Young, 1997, 354). Young argues that oppression manifested as exploitation, violence, powerlessness and cultural imperialism has a structural and group-related dimension, but she recognizes that individuals, by virtue of their social relations, are subjected to multiple and asymmetrical forms of marginalization, domination and oppression that permeate sectional categories (Young, 1989: 48; 1990: 42; 2000: 99).

Considering equal presence through the lens of radical intersubjectivity and difference supports the idea of deliberative impartiality and meaningfulness. Equal presence recognizes individuals in their own autonomy of experience and judgment and does not disqualify arguments structured on group-centred perceptions of injustice. On the one hand, a fair process would ideally give each member of the political community equal presence in order to express a unique life experience. After all, whatever a public decision might be, each of us will be affected in a unique way and each of us is entitled to express a distinct opinion about this experience. On the other hand, equal presence, by hosting the whole range of experiences and opinions, is procedurally inclusive of each individual who would want to express a view and a preference for the introduction of reforms, including those that share a group perspective and refer to group-related, structural and relational properties of society. The process must set the terms of participation as open as possible to include the widest range of diverse standpoints on basic norms of democracy.

**Progressive constitutional deliberation**

I have so far associated procedural fairness with equal presence and, addressing the procedural-substantive justice entanglement, I introduced the idea of meaningful deliberation, acknowledging that inclusion is a necessary but not sufficient condition for this type of the dispute. I will now explain what the idea of meaningful meta-deliberation means in the context of a progressive constitutional meta-deliberative process.[[4]](#endnote-4)

First, meta-deliberation is meaningful insofar it opens the prospect of constitutional reform by including all views, such as group perspectives and the several connections many have made between procedural fairness and substantive justice. This process should be open-ended and could lead to the introduction of norms and institutions that may depart from formal equality. As Chambers (2018: 305) states, when designing deliberative processes with decision-making processes such as a referendum, attention should be paid to both the inclusiveness and the substance of the debate and deliberation. The substance of this debate here suggests that a process of deliberation is fair to the extent that it offers an open-ended prospect of institutional transformation.

Second, a meaningful deliberative process must acknowledge that contestations over values and principles are dynamic because they are fuelled by unaccommodated preferences, further disillusionments, later reconsiderations and, ultimately, new experiences. New disagreements and claims arise following changes in institutions and social conditions over the passage of time and generations. Because disputes will be refuelled by evolving life experiences and new ideas, iteration is a key property of a deliberative system (Thompson, 2008: 214-215; Goodin, 2005). A new constitutional norm may be contested from day one. Consequently, meta-deliberation must recognize that it will inevitably leave remainders or raise new issues and must provide an avenue for considering both present as well as future views and ideas. This requires new rounds of deliberation and recurrent opportunities for constitutional revision. Citizens should be allowed to express their opinions after experiencing the outcome of a constitutional decision, particularly regarding the experience of resource asymmetries, biases and silences (Olson, 2011). Moreover, no decision will require concessions on one’s substantive position of what the desired form of democratic institutions should be (See Jones, 2006: 192). In democracies, desired outcomes are contested outcomes to come, never finding a resting point, but contestation about the status quo creates and reconfigures the public space (Arditi, 2009).

Third, meaningfulness requires unleashing the potential for a transformation of ideas and opinions. Democracy benefits from communication and feedback (See Anderson, 2010: 89). A core assumption of deliberative theory is that preferences are endogenous to decision-making processes and can be transformed by communicative interaction (Habermas, 1996: 188; della Porta, 2006: 340). In the deliberative framework, before any reform of public institutions and norms takes place, communication, learning and reflection precede by ideally effectuating deeper changes of opinions and preferences. Moreover, ideas and preferences not only shape political decisions, but they are reshaped by the outcomes of these decisions and then feed back into the decision-making process. Processes of communication, reflection and learning increase democracy’s capacity:

‘to initiate discussions on how a system currently fails to provide adequate opportunities for all citizens to participate in public discourse and can improve in this regard’ (Holdo, 2020b: 349).

In reality, communication can either facilitate these transformations or may have little or no effect on preferences and ideas (Landwerh, 2010). The meta-deliberative process is about steering the system’s reflective capacity towards the transformation of institutions, facilitating an exchange of ideas and new influences on preference formation. This involves thinking and rethinking about systemic weaknesses in terms of key norms and assumptions that govern public deliberation (Bohman, 1996; Dryzek, 2010; Fraser, 2003; Holdo, 2015; 2020a).

Constitutional meta-deliberation can activate four key qualities that will boost a potential avenue for the transformation of norms, ideas and preferences: discursiveness, coordination, uptake and reflexivity. These qualities could enable the voices of the disadvantaged to be heard, silences to be broken and biases and inequalities to be exposed and problematized. First, the dialogical nature of deliberation, defined by Landwehr and Holzinger as ‘discursiveness’ (2010), promotes the exchange and assessment of opinions and reasons. When participants engage in a dialogue about norms and values, their arguments and actions aim to both hear and reshape the ideas beliefs and preferences of others. Ongoing discussions can nudge them into making an effort to talk to others and understand their standpoint and concerns. A public dialogue also helps with the clarification of ideas and arguments.

Second, deliberation is a decision-related interaction (Thompson, 2008: 502) and constitutional deliberations are highly consequential political acts. Because participants know that decisions will be binding for a period of time, they understand that the current discussion is important, and they are more likely to make an effort for *coordination* (Landwerh, 2010; 2015) by participating and paying attention to the process.

Third, the constitutional level raises the stakes of political participation and favours public reasoning. This increases the chances for deliberative *uptake*. Scudder defines uptake as ‘the fair consideration of the arguments, stories, and perspectives that particular citizens share in deliberation’ (Scudder, 2020: 504). In addition, the language of the constitution has a degree of normative generality that orientates acts of persuasion and the process of learning itself towards a dialogue over ideas with references to general principles and the common good, which, further favours uptake.

Finally, reflexivity is the profound result of a discussion that encourages uptake. Reflexivity is about achieving ‘a degree of scrutiny by participants of their own positions as well as the positions held by others’ (Dryzek and Pickering, 2017: 357). The reflexive capacity of those participating in a meta-deliberative process is stimulated by the effort to ponder on the way the democratic system is organised, and rethink about why and how its structure must be amended (Dryzek and Stevenson, 2011: 1867; Also: Holdo, 2020b: 2). Discursiveness, coordination, uptake and reflexivity can be mutually reinforcing qualities of deliberation. While their development is not guaranteed, recurrent deliberations, structured around the meaning of democratic norms, may help unleash this dynamic.



A question participants in a meta-deliberative process may ask is how this process could contribute to strengthening equality of opportunity in view of multiple patterns of resource asymmetries, existing biases and structural and relational asymmetries (Sanders, 1997; Hayward, 2004). This question, however, cannot be addressed by specifications of the meta-deliberative process that would favour one vision of substantive justice against others, because, once they do so, they will violate the condition of impartiality, according to which the process must be *equally* inclusive and meaningful for all views and proposals. Instead, the deliberative process must provide an open-ended way for societies to discuss and take into account all criticisms with the view to considering and enacting consequential political acts in response to these discussions (See Fung, 2007; Warren, 2017).

While observations of disadvantage could support criticisms of the meta-deliberative process itself as initially designed, the very purpose of constitutional meta-deliberation is exactly to trigger such critiques and bring them centre-stage for the next round of reform. Criticisms, reservations and new ideas will generate a learning process in which patterns of disadvantage and inequality are exposed and problematized (Landwerh, 2013: 310). As Anderson notes, in a debate on inequalities, the purpose is to investigate ‘the persistence of large, systematic, and seemingly intractable disadvantages that track lines of group identity, along with troubling patterns of intergroup interaction that call into question our claim to be a fully democratic society of equal citizens’ (2010: 3). We start by seeking ‘a diagnosis of injustices in our actual world, rather than from a picture of an ideal world’ (Anderson, 2010: 3).

‘To craft such designs, we must analyze our motivational and cognitive biases, diagnose how they lead people to mistreat others, and how institutions may redirect them to better conduct’ (Anderson, 2010: 4)

Hence, the way democracies can address the seemingly irreconcilable clash between individual perspectives and group perspectives is by bringing group perspectives up into the constitutional process through the presence of the people who hold them as important reasons for reform and have them engaged in a broader dialogue among all other perspectives and views on political equality. This will include any internal disagreements within each of these perspectives. It will also enable participants to recognize that some voices have been marginalized or discover those who share the same views and wish to amplify them through a collective voice. This way, constitutional meta-deliberation offers the most consequential opportunity for criticism, interaction and feedback to materialise in actual political and institutional transformations. Iterative deliberations will allow new discussions about which social differences and social relations remain unjust and why. As a result, the discussion in each round of deliberation will further expose biases and problematize perceived inequalities.

Finally, progressive constitutional deliberation is likely to incentivize collective action because it will structure the debate around a real prospect for reform. With collective action groups can overcome resource disadvantages and can end internalized silences. Collective demands represent shared experiences and opinions about baseline institutional norms on the perspective of equality and inclusion.[[5]](#endnote-5) In that regard, claiming rights involves acts through which citizens, groups and communities are constituted and reconstituted, both advancing and challenging aspects of democracy (Zivi, 2012).

Actual political systems can only approximate the ideal of an inclusive meta-deliberative process, given several practical limitations of how to implement principles and ideas in actual contexts. For instance, the deliberative ‘public sphere’ could be decentralized and could include formal and informal discussion platforms (Mansbridge, 1999a; Holdo, 2020a), such as meta-deliberative fora (Landwehr, 2015; Thompson, 2008), mini-publics (Chambers, 2018), like the Citizens Initiative Review in Oregon (Chambers, 2018) and the British Columbia Citizens Assembly (Warren and Pearse, 2008), as well as iterative and not necessarily binding referendums (Chambers, 2018) and places of ‘everyday talk’ (Mansbridge, 1999; Gastil and Levine, 2005; Anderson, 2010: 89). Future technological developments may improve the capacity of democracies to grant equal presence.

**Concluding remarks**

Democracy entails a commitment to political equality, yet this fundamental concept is contested in view of a debate over which terms of political participation are fair, which is in itself associated with the persistence and reproduction of substantive inequalities. With this paper, I set out to answer the following question: can democratic societies ever agree on basic procedural norms knowing that there are diverse conceptions of political equality linked to different perceptions of substantive equality? At first glance, this task seems impossible because the dispute over equality entails antithetical and often incompatible positions on what a fair process is, which are derived from diverse valuations of how unfair social conditions and outcomes are reproduced and how they can be truly rectified in the context of democratic decision-making. Calls for affirmative action point to patterns of discrimination and inequalities and question the meaning of political equality, while its opponents reject affirmative action as reverse discrimination. Formal equality is criticized for reproducing substantive inequalities at the expense of disadvantaged groups, but most systems accept it as the standard norm. This dispute over the meaning of political equality can challenge democracy’s claim of legitimacy built upon the notion of political equality insofar as political societies cannot settle on decision-making rules everyone could accept as genuinely substantiating political equality.

Still, rethinking over the meaning of equality opens a window for political reform and a pathway to democratic legitimation. Not only do we need inclusive processes of deliberation to reach decisions regarding policy, but we also need inclusive deliberative processes for reflecting on baseline democratic procedures in the first place. Deliberative democrats call this process ‘meta-deliberation’. Constitutional amendments already entail elements of such a process, but the problem is that, when fundamental conceptions of political equality clash, it is difficult to agree on the procedural terms to guide the meta-deliberative process too.



Considering how problematic for democracies this disagreement on procedural fairness can be, I suggest that democracies must embrace this debate by offering a meaningful and inclusive form of meta-deliberation to continually rebuild and renew their legitimation claim through the potential reform of baseline procedural rules. I observe that different positions on political equality reflect distinct and potentially evolving individual experiences of social and political life against various asymmetrical relations and unequal structures. I argue that democracies can renew their claim of legitimacy by offering a meta-deliberative process that will accommodate this diversity and its evolution meaningfully, by fostering learning, reflection and reform. This process must be governed by the principle of equal presence of all citizens. A process of progressive constitutional deliberation will be inclusive if it ensures that all perspectives on political equality, including group-centred ones, will be present for discussion and consideration, and it will be meaningful if the process can reconsider transformations of institutions, ideas and preferences at the constitutional level and do so periodically, in continual rounds of constitutional revision in view of newly emergent outcomes and more recently formed experiences.



Democratic-decision making is bound to leave remainders for further discussions and reform, but when these disagreements go as far as potentially challenging democracy’s foundations of legitimacy, something must be done. It is only by acknowledging these fundamental disagreements and allowing all views to be expressed in a consequential way that democracies can address the legitimacy problem these disputes could pose, even if the underlying disagreements persevere. Legitimacy is not a status of a given definition which democracies should supposedly accomplish, but it is a claim which democracies must continuously make and renew. Rather than looking at legitimacy as derived from a foundational consensus, the paper regards legitimation as a process whereby a legitimacy claim is reconsidered and rebuilt through an inclusive process of constitutional meta-deliberation fostering a continuous rethinking about democracy’s defects and potential.

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**Endnotes**

1. For a coverage of this dispute, see Cohen and Sterba (2003). Kymlicka defines affirmative action as allocating special rights to individuals by virtue of their membership in a disadvantaged group (Kymlicka 1993: 24).Anderson defines it as ‘any policy that aims to increase the participation of a disadvantaged social group in mainstream institutions, either through “outreach” (targeting the group for publicity and invitations to participate) or “preference” (using group membership as criteria for selecting participants)’ (2010: 135). See also Lippert-Rasmussen for an extensive discussion of the concept (2020: 12). [↑](#endnote-ref-1)
2. This objection can be summarized in the following example: a male, working class, low-income blue-collar white worker from a poor background protesting the special treatment which quotas offer to an upper-middle class woman from a minority group who may have already benefited from her family’s affluence and network. There are, however, various other ways of enacting affirmative action, for instance, adopting deliberation procedures that prevent sexual harassing language or prevent men from interrupting women from talking. [↑](#endnote-ref-2)
3. Participants in the deliberative process must endorse liberal democracy as a matter of principle. In a constitutional process, ideas and political forces that are anti-democratic can be excluded from the debate and prohibited by constitutional norms, as in the case of the Nazi party in Germany. [↑](#endnote-ref-3)
4. I draw on the definition of deliberation as a dialogue involving discussion, reflection and revision, ‘aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants (Chambers, 2003: 309). [↑](#endnote-ref-4)
5. Moreover, ‘Who qualifies as a member of the community or a citizen?’ is by itself a topic for deliberation, which can be raised by collective action by those excluded, such as immigrants, and/or can be raised on behalf of the excluded, most likely, but not exclusively, by organizations representing immigrant communities, by recently naturalized citizens and by citizens who are the immigrants’ family and friends. [↑](#endnote-ref-5)