On the Circularity of Democratic Justice

Abstract. In this article, I argue that justice and democracy stand in a circular relationship: just outcomes emerge from democratic deliberations, but only if such deliberations meet the standards of justice. I develop my argument by engaging in a critical dialogue with Nancy Fraser. Contending that she fails to deal with the danger that unfair deliberative procedures and inadequate norms of justice may reinforce one another, I show what a satisfactory account of democratic justice would look like. Going beyond Fraser's theory, I maintain that although justice and democracy do form a circular relationship, it is essential to give former greater weight than the latter. I finesse my account by showing what this differential weighting would entail in practice. The result is an account of democratic justice which is significantly different from and a marked improvement on that of Fraser.

Key words. democracy · justice · Nancy Fraser · parity of participation · good enough deliberation

1. Introduction

In this article, I want to explore the relationship between democracy and justice. Since no-one worth talking to is in favour of authoritarianism and injustice, I shall assume that everyone values both these political goods.

Everyone thinks that the people should rule, and that all should get their due. Given the plausibility of this assumption, as well as the importance of democracy and justice, it seems odd that political philosophers have not given more attention to the relationship between these two goods. Some have concentrated on justice. For them, the primary task is to specify a fair distribution of the benefits and burdens of social cooperation. How a political association may effect such a just distribution is not their (primary) concern. Others have concentrated on democracy. For them, the fundamental issue is to determine the proper nature and extent of collective self-rule. Focusing on the specification of fair decision-making procedures, these philosophers generally forswear detailed accounts of justice since they believe that it is for citizens themselves to decide what is just. It is only over the last several years that a number of political philosophers have tried to articulate and justify detailed accounts of the relationship between these two political goods.[1] My aim in this article is to contribute to this small but growing literature by formulating my own account of the relationship between democracy and justice. I shall argue that they stand in a circular relationship: while one requirement of justice is that political arrangements are democratic, it is only in democratic deliberation that the nature of justice can be established.

I develop my own position by engaging in a critical dialogue with Nancy Fraser. While best known for her attempts to combine cultural recognition and economic redistribution,[2] Fraser has recently added a third element of political representation to her account, which she now calls a theory of 'democratic justice'.[3] Thus she argues that 'justice as participatory parity' has

three distinct and mutually irreducible dimensions – cultural, economic and political. With regard to her account specifically of the relationship between democracy and justice, Fraser suggests that they are internally connected, mutually entwined or co-implicated.[4] I think the essence of this account is right. It is for the citizens in a democracy to decide which claims for recognition, redistribution and representation are just; but this is only possible if inclusive deliberation is underpinned by just recognition, redistribution and representation. Having said this, I also think that Fraser's account of democratic justice falls seriously short since it fails to show how it is possible to avoid the dangers of vicious circles. It is not always the case that more justice leads to more democracy, and more democracy to more justice, until democratic justice is fully achieved. In fact, it is quite possible for circles to be vicious rather than virtuous, so that unfair democratic procedures help to reproduce a state of injustice, and such a state of injustice helps to perpetuate unfair democratic procedures. My suggestion will be that by understanding the reasons for Fraser's failure to deal with this problem of vicious circles, it will be possible to appreciate what an adequate account of democratic justice would be like.

This article is organized as follows. Section 2 is mainly exegetical, presenting Fraser's own theory. Section 3 focuses on a problem which must be faced by any circular account of democratic justice. Showing how circles can be vicious as well as virtuous, I argue that Fraser fails to provide a satisfactory solution to this problem. To be specific, I critically analyse and reject her claim that if two particular preconditions – the 'capacity for

reflexivity' and 'counter-public spheres' – are in place, it will be possible to avoid vicious circles. Section 4 builds on this critique in order to go beyond Fraser's theory. I begin by arguing that although democracy and justice do form a circular relationship, it is essential to give latter greater weight than the former. Then I finesse my account by seeking to identify those conditions of justice which should enjoy greater weighting. Section 5 summarizes the results of my investigations, sketching the principal features of an account of democratic justice which is significantly different from and a marked improvement on that of Fraser.

2. Democratic justice

In this section, I explain why Fraser thinks that there are 'deep internal connections between democracy and justice'.[5] First, I show why she rejects two alternative accounts of the relationship between these goods. Next, I demonstrate the importance of the principle of participatory parity for her own account. Finally, I examine her claim that democracy and justice stand in a circular relationship to one another.

In developing her account of democratic justice, Fraser rejects two alternatives. On the one hand, she discards what she calls a 'monological' or even 'Platonic' account, according to which 'latter day philosopher kings' draw up detailed blueprints of the requirements of justice. Such an account, in giving no role to democracy, is 'insensitive to issues of context', overlooks "the fact of pluralism", and 'neglects the importance of democratic legitimacy'.[6] To

focus on this final criticism, the principle of democracy holds that in order to be bound by a law, its addresses must be able to regard themselves as its authors, and this means that it must be the outcome of democratic deliberation.[7] Since it gives no role to democracy, a monological account of justice fails to show that the laws it favours are legitimate. On the other hand, Fraser also rejects an 'empty proceduralism' which, by jettisoning 'substantive content', is guilty of 'self-effacing vacuity'.[8] That is to say, an account of democracy which reduces it to a set of formal procedures fails to provide practical guidance in questions of justice. Rejecting both of these options, Fraser attempts to articulate an account of the relationship between democracy and justice which give both the importance they deserve, and which places them in the correct relationship to one another.

To see how she attempts to do this, It is necessary to appreciate the key role that the principle of 'parity of participation' plays in Fraser's theory. According to this principle, 'justice requires social arrangements that permit all to participate as peers in social life'. By making it possible clearly to specify the necessary conditions of parity in all particular circumstances, Fraser believes that this principle can provide concrete guidance in matters of practical justice. It can do so by identifying the obstacles which need to be removed if parity is to be achieved. As she puts it: 'Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction'.[9] The parity principle is the lynchpin of Fraser's theory since, as we shall see, it both unifies her three dimensions of justice, and helps to provide the link between

her conceptions of justice and democracy. The best way to explain how it can do all of this is to show why it can be regarded as both an 'outcome notion' and a 'process notion'.[10]

As an outcome notion, parity of participation serves as a standard that social arrangements must meet if they are to be regarded as just. In this regard, it is important to appreciate that justice has three distinct and mutually irreducible dimensions. The first, economic dimension of 'redistribution' corresponds to what Fraser calls the 'economic structure' or, less frequently, the 'class structure' of society. In this dimension, 'people can be impeded from full participation by economic structures that deny them the resources they need in order to interact with others as peers'. The second, cultural dimension of 'recognition' corresponds to what she most often calls the 'status order' of society. In this dimension, 'people can … be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing'. The third, political dimension of 'representation' corresponds to what Fraser calls the 'political constitution of society'. In this dimension, the injustice of misrepresentation 'occurs when political boundaries and/or decision rules function to deny some people, wrongly, the possibility of participating on a par with others in social interaction – including, but not only, in political arenas'.[11] Fraser's account brings these three dimensions together by contending that in all of them justice is to be understood as parity of participation.[12]

With reference to the third dimension of justice, it is important to understand that Fraser distinguishes two distinct levels of politics. 'First-order' or 'ordinary-political' justice concerns 'the constitution of … the decision rules by which [the state] structures contestation'. She calls this the level of 'intra-frame representation' since the character of the frame itself is not called into question.[13] In other words, the current boundaries of the political community are taken for granted. At this first level, justice is achieved when the decision rules of that community are formulated so that its members enjoy equal voice. In particular circumstances, this might entail measures such as proportional electoral systems, gender quotas and multicultural rights. 'Second-order' or 'meta-level' justice concerns 'the nature of the state's jurisdiction'. This is the level at which what Fraser call 'the politics of framing' takes place.[14] Here the identity of frame itself is subject to scrutiny as the fairness of the prevailing boundaries are challenged. At this level, justice requires that political boundaries are drawn in such a way that individuals who are significantly affected by political decisions are members of the deliberative community which has the opportunity to shape those decisions.[15]

Thus regarded as an outcome notion, participatory parity can be used to evaluate the justice of social arrangements by asking if members of a political association have the economic resources, cultural status and political voice that they need in order to participate on a par with their fellows. This final requirement of political voice suggests how participatory parity can also function as a process notion. The political preconditions of participatory parity are realized when all those affected by the exercise of power enjoy equal

voice in the procedures of decision-making which regulate that power.[16] Thus participatory parity also provides a 'procedural standard' by which to judge the legitimacy of norms of justice. Such norms are only legitimate 'if they can command the assent of all concerned in fair and open processes of deliberation, in which all can participate as peers'. Here Fraser emphasizes the need for a democratic dialogue in which 'important aspects of justice' are treated 'as matters for collective decision-making'.[17] It is the role of citizens collectively to interpret and apply the principle of parity in order to determine which demands for redistribution, recognition and representation are justified and which are not.

Once the dual character of participatory parity as both outcome and process notion is taken into account, 'the circularity of the relations between justice and democracy'[18] becomes clear. As Fraser puts it,

> On the one hand, what exactly is needed to achieve parity of participation in a given case can only be determined dialogically, through fair democratic deliberation. On the other hand, fair democratic deliberation presupposes that participatory parity already exists.[19]

Regarded as a process notion, participatory parity supplies us with a standard by which we can judge the legitimacy of norms. Just norms are those which emerge from fairly constituted democratic procedures. Regarded as an outcome notion, however, participatory parity supplies us with a standard of

justice by which we can evaluate current social arrangements. So far as the political constitution of society goes, justice requires that such arrangements are democratic. Keeping both of these notions in focus at the same time, we can say that while democratic deliberation determines justice, justice is necessary to ensure that such deliberation is fair.[20]

3. Two preconditions

Although, as I have said, I accept Fraser's general claim that there is a circular relationship between democracy and justice, I shall now argue that her particular account of this relationship fails. In sub-section (a), I contend that there may be vicious circles of democratic justice, in which a lack of democracy and injustice reinforce one another. Then, in sub-sections (b) and (c), I argue that Fraser does not provide a plausible account of how such vicious circles can be avoided or escaped. I shall organize my critique around her discussion of two preconditions which she says are necessary if the boundaries of political communities are to be determined democratically.[21] My argument will be that each as it stands is inadequate, and that even both together are not sufficient to escape vicious circles.

(a) vicious circles

There is no doubt that in many cases the conditions needed for a virtuous circle to exist do hold, so that democracy and justice do support one another. Yet there are also plenty of cases in which such fortuitous conditions are not

present. There can be circumstances in which less than fully inclusive deliberation leads to less than fully just outcomes, and less than fully just outcomes undermine the possibility of fully inclusive deliberation. In these circumstances, since injustice and a lack of democracy reinforce one another, there may be no possibility of movement toward the complete realization of democratic justice. It could be argued, furthermore, that in practice circles of democratic justice are rather more likely to be vicious than virtuous. As Iris Marion Young puts it: 'In actually existing democracies there tends to be a reinforcing circle between social and economic inequality and political inequality that enables the powerful to use formally democratic processes to perpetuate injustice or preserve privilege'.[22] To put this argument in Fraser's terms, those who possess the resources, status and voice necessary to enjoy parity are in a position to ensure that the outcomes of democratic deliberation are to their own benefit. Thus there can be a circular relationship between justice and democracy in which obstacles to first-order justice and a deficiency in democratic procedures reinforce one another.

Fraser herself acknowledges the possibility that the relationship between democracy and justice may take the form of a vicious rather than virtuous circle:

> Those who suffer from misrepresentation are vulnerable to injustices of status and class. Lacking political voice, they are unable to articulate and defend their interests with respect to distribution and recognition, which in turn exacerbates their misrepresentation. In such cases, the

> result is a vicious circle in which the three orders of injustice reinforce one another, denying some people the chance to participate on a par with others in social life.[23]

Since the poor and despised are unable to play an effective part in democratic deliberation, the outcomes of such deliberation are likely to be skewed against them. Unable to participate on a par with others, these disadvantaged insiders are unable successfully to demand the reforms which would make democratic deliberation an effective vehicle for the achievement of justice. Here Fraser focuses on those I have called disadvantaged insiders, but the same analysis can be extended to excluded outsiders as well.[24] In this case, 'anyone who is structurally excluded from participation in social interaction is *eo ipso* denied the possibility of participating as a peer'.[25] Since these outsiders lack even formal membership of the political community, they have no chance at all of participating in its deliberations.

(b) 'the capacity for reflexivity'

In order to see how Fraser thinks that a viciously circular relationship between a shortfall in democracy and deficiency of justice can be broken, it will be instructive to consider her reply to a question put to her by Kate Nash in a recent interview: 'how can the political community of the all affected, as you put it, be formed out of the political community which is not already that of those who are all affected?'[26] In other words, how can the boundaries of the political community be expanded to include those outsiders who are

significantly affected by the actions of that community? (The corresponding question concerning first-order politics would be: how can a political community in which all have equal voice be formed out of a community in which at present not all members have equal voice?) In her reply, Fraser argues that one precondition necessary in order to determine the boundaries of a political community democratically is 'conceptual'. However, since I cannot see in what sense this precondition is 'conceptual', I shall refer to it instead, using Fraser's own terminology, as 'the capacity for reflexivity'.[27]

The capacity for reflexivity, which is a feature of all human practices, is the ability of participants to take a metaphorical step back from a particular practice in order to subject it to critical examination. At the ordinary-political level, members of a political association engage in the practice of 'raising (first-order) claims for redistribution and recognition'.[28] That is to say, they collectively deliberate about whether the distribution of resources is fair, whether the recognition of status is appropriate – and, I would add, whether the current mode of ordinary-political representation is justified. As a result of such first-order deliberation, reforms may be made which extend parity to currently marginalized members of the political association. In particular circumstances, however, such a debate about justice may also lead members of that association to reflect at the meta-level on the fairness of the debate itself. It is at this point that the capacity for reflexivity is exercised. This capacity enables us to 'take first-order politics as the object of our reflection … The result is a form of meta-politics in which the exclusions of ordinary political practices are exposed and contested'.[29] In other words, members of

a political association may ask whether existing political boundaries are fair, and they may then decide to reform those boundaries if they are adjudged to be obstacles to the achievement of parity.

Thus Fraser's argument is that it is possible to break out of vicious circles of undemocratic injustice if critical reflection on the fairness of current political arrangements leads to reforms which move the political association closer to parity of participation. I want to argue that as it stands, and certainly not on its own, the capacity for reflexivity cannot provide a means of breaking out of vicious circles of undemocratic injustice. To begin with, it should be noted that this precondition gives the responsibility to act to those members of a political association who are already included and enjoy effective voice. Insiders with the necessary resources, status and voice have the capacity for reflexivity, and, if they exercise it, it may be possible for them to move that association closer to the achievement of parity. It is, however, important to note the conditionality and modality of this proposition. *If* members of a political association choose to exercise their capacity for reflexivity, they *may* be able to move that association closer to the achievement of parity of participation. It is important to understand that there is no guarantee that this will happen. In order to see why not, I now want to identify three conditions which must be in place if the capacity of reflexivity is to be capable of helping a political association escape vicious circles of undemocratic injustice.

First, members of a political association must have the motivation to exercise their capacity for reflexivity. Why would the politically powerful have

reason to change current political arrangements in a way that would reduce their power? Why, for example, would a group that currently benefits from a majoritarian voting system be motivated to switch to a more proportional system in which they would lose a degree of power? In response to this question, Fraser might reply that if parity of participation is the 'preferred language for conducting democratic political argumentation',[30] then members of the association will be willing to accept the normative case for the reform of the current electoral system. But this response would beg the question. If parity is not already the 'preferred language', then the normative case will not be accepted. In this regard, it is worth quoting Fraser's comment that 'the circularity problem arises for *any* approach that envisions a transition to more just social arrangements via political processes that occur by definition in unjust circumstances'.[31] To suppose that insiders will be motivated to exercise their capacity for reflexivity in pursuance of justice as participatory parity is to assume that in this regard at least circumstances are not unjust. This, I suggest, is simply to wish the problem away.

Second, members of a political association must have the right information available. A vicious circle need not be perpetuated simply as a result of the self-interest of those who are currently advantaged. Those on the inside of the political association may, with the best will in the world, simply not hear those insiders without voice and those on the outside clamouring, with good reason, to be included. The privileged insiders may be in the grip of an interpretive schema which rules out certain groups as possible candidates for inclusion. For instance, for most of the nineteenth

century, most male citizens could see no good reason to enfranchise women. To take another example, an interpretive schema which implicitly assumes that the nation-state is the only possible frame for justice and democracy could keep significantly affected non-members excluded. This is the problem that Fraser herself is currently trying to address in her critique of what she calls the 'Keynesian-Westphalian frame' of justice.[32]

Third, members of a political association must have the means necessary to put their decisions into practice. Even if those on the inside are aware of the just claims of those currently voiceless and excluded, their political association may lack the structures and resources needed to meet those claims. This condition may apply in particular to the issue of resources.[33] For instance, arguments against immigration into a particular political community are sometimes based on the claim that there are insufficient resources even to provide existing members with an acceptable standard of living. While such arguments are often harnessed to serve racist causes, there is nevertheless an important point to be made here about the potential limits to the capacity of a political community to give effective voice to all disadvantaged insiders and all deserving outsiders.

In conjunction, these three conditions are highly demanding. Taken together, they suggest that even if members of a political association do have the capacity for reflexivity, they may not be able or willing to exercise it in the name of democratic justice. Without the right motivation, correct information and adequate means, those insiders with effective political voice may fail to

take the actions necessary to enable the voiceless and excluded to escape the vicious circle in which they find themselves. My conclusion is that while Fraser's invocation of the capacity for reflexivity does identify one means by which vicious circles may be escaped, it offers no guarantees. Indeed, at worst it looks like an exercise in wishful thinking, declaring that there will not be a vicious circle if such a circle does not exist.

(c) 'counter-public spheres'

As I have said, in response to Nash's question about how it is possible for the boundaries of a political community to be expanded in order to include significantly affected outsiders, Fraser identifies two preconditions. She calls the second of these the 'institutional precondition'. However, since it is not clear to me in what sense this precondition is 'institutional', I shall refer to it, using Fraser's own terminology, under the heading of 'counter-public spheres'.[34]

In order to be able to assess Fraser's argument, it is important first of all to understand exactly what she means by the notion of counter-public spheres. Here is her gloss on Jürgen Habermas' conception of the public sphere *simpliciter*:

> It designates a theater in modern societies in which political participation is enacted through the medium of talk. It is the space in which citizens deliberate about their common affairs, hence, an

> institutionalized arena of discursive interaction. This arena is conceptually distinct from the state [and] from the official-economy.[35]

In her recent work, she has extended this analysis by drawing a distinction between 'mainstream public spheres' and 'subaltern counter-publics'.[36] Her suggestion is that, since what she calls 'a society's authorized "means of interpretation and communication"' operate to the advantage of privileged groups, they can articulate their views and interests effectively in 'mainstream public spheres'. By contrast, since those same dominant means of interpretation and communication work to the disadvantage of marginalized and excluded groups, they have had to create their own 'subaltern counter-publics' in order newly to name the injustices from which they suffer. Fraser regards second-wave feminists' development and promulgation of concepts such as "date rape" and "sexual harassment" as exemplary in this regard.[37]

It is now possible to understand what role Fraser thinks that counter-public spheres can play in escaping vicious circles of undemocratic injustice. Here it is necessary to refer to the transnational aspect of her account of democratic justice. Fraser begins by noting a growing gap between 'civil society processes of contestation and state-centred processes of legislation and administration'. According to the 'Westphalian vision', there should be a close correspondence between these two processes, so that a national public articulates its collective opinions in a well-functioning public sphere, and those opinions then exert an appropriate and effective influence over the actions of the state.[38] However, in our increasingly post-Westphalian world, a gap

between transnational publics and Westphalian states is opening up. According to Fraser, this creates the possibility that 'non-state centred public spheres [will] become spaces for contesting state-centred frames'. Her claim is this: 'It is precisely from such post-Westphalian public spheres, which trespass the boundaries of territorial states, that claims against misframing are now being launched'.[39] In other words, the most effective critiques of the injustice of existing nation-state boundaries are currently coming from publics whose membership transcend such boundaries.[40]

I think that the hope which Fraser invests in the critical potential of transnational counter-public spheres is misplaced. While such spheres may be able to articulate well-founded critiques of existing political boundaries, they will be unable to exert effective influence over the bodies that establish and maintain such boundaries. The reason should become clear if we compare her two preconditions. The invocation of the capacity for reflexivity assumes that it is those inside a political community with effective political voice who can reflect on the fairness of their circumstances in order to reach decisions which empower those who are currently excluded and voiceless. In her account of the role of counter-public spheres, however, Fraser asserts that members of existing state-centred public spheres are less likely to generate effective critiques of existing political boundaries than those outsiders who are currently excluded from particular political bodies. But it is precisely because the excluded and voiceless *are* excluded and voiceless that they will be unable to join in a democratic debate about the decision-rules and boundaries of that association. Hence, I would argue, counter-public spheres

are not likely to generate an effective critique of existing political boundaries, nor therefore are they likely to provide a successful means of breaking out of vicious circles of undemocratic injustice.[41]

In fact, Fraser does not appear to disagree with this conclusion. She is very quick to temper her own optimism about the potential role of transnational counter-public spheres: 'For the time being, efforts to democratize the process of frame-setting are confined to contestation in transnational civil society'. As she admits, however,

> Indispensable as this level is, it cannot succeed so long as there exist no formal institutions that can translate transnational public opinion into binding, enforceable decisions. In general, then, the civil-society track of transnational democratic politics needs to be complemented by a formal-institutional track.[42]

Thus Fraser admits that at least at the transnational level, there exists what she calls a '*deficit of political efficacy*'.[43] That is to say, there are no means of enabling transnational public opinion to have an effective influence on existing transnational political institutions. If this pessimistic assessment of current conditions is right, then it undermines Fraser's own claim about the potential of counter-public spheres. Such counter-publics may, for instance, correctly identify the plight of the global poor, and may vigorously campaign on their behalf. However, if they can exert no significant influence on transnational

political bodies, then they can offer the global poor no hope of escape from the vicious circle in which they find themselves.

Should Fraser's second precondition be abandoned at this point? Does it name no more than the hope that at some point in the future loose congeries of transnational social movements and associations will be able to find ways of exerting effective influence over transnational institutions? One part of a complete answer to these questions would involve a detailed empirical assessment of the practical successes of – and the future prospects for – counter-public spheres at the transnational level. Of course, I cannot do this here, and nor do I need to. For my present purposes, Fraser's acknowledgement that there currently exist no established and stable institutional mechanisms by which the opinions generated in transnational counter-public spheres can have an appropriate effect on transnational political bodies is enough to support my conclusion that she has not identified a way in which it may be possible to break out of vicious circles of undemocratic injustice.

4. Beyond Fraser

I have argued that Fraser does not offer a convincing account of how it is possible to escape from a situation in which a lack of democracy and an absence of justice reinforce one another. Since I still want to defend a circular conception of the relationship between democracy and justice, I need to offer an account of democratic justice capable of showing how vicious circles can

be escaped. In this section, therefore, I move beyond Fraser's account in two major steps. First, in sub-section (a), a critique of her account of 'the requirements of justice'[44] leads me to the conclusion that it is necessary to give (certain aspects of) justice more weight than democracy in the relationship between the two. Then, in sub-section (b), a critique of her conception of 'good-enough deliberation'[45] enables me to specify which elements of justice should enjoy greater weighting than others.

(a) 'the requirements of justice'

Up to this point, I have made the assumption that democracy and justice are two equally important goods joined in a completely circular relationship. This means that changes in democratic procedures can have unlimited effects on collective judgements about justice, and changes in such judgements can have unlimited consequences for democratic procedures. It is this assumption which makes virtuous circularity possible: fair democratic procedures can produce more just outcomes, and more just outcomes can produce fairer procedures, and so on (until the complete realization of democratic justice). At the same time, however, it is this assumption which also makes vicious circularity possible: unfair procedures can deepen injustice, and more injustice can lead to more unfair procedures, and so on (so that a state of undemocratic injustice can never be escaped).

Consequently, one way in which it might be possible to solve this problem would be to abandon the assumption that democracy and justice

stand in a fully circular relationship, and to assert instead that certain requirements of justice should act as independent constraints on democratic deliberation. Against the main thrust of her argument, there is one passage in Fraser's work in which she appears to do just this. In the book co-written with Axel Honneth, she recommends a division of labour between 'philosophers' and 'democratic citizens'. While the task of philosophers is to delimit the set of political options which are 'compatible with the requirements of justice', it must be left to citizens themselves to decide collectively between these options.[46] In other words, the role of philosophers is to engage in the conceptual analysis of parity of participation, in order to determine the range of laws, policies and institutions which comply with that standard. It is then for citizens to engage in democratic debate in order to make choices within this range. Thus citizens are always constrained by the principle of parity of participation: they cannot choose options incompatible with it, and they cannot choose the principle itself. In this passage, then, Fraser appears to argue that justice as participatory parity sets absolute limits on the choices that democratic deliberators can make.[47]

I think that this would be the wrong way to try to overcome the problem of vicious circularity. It would do so by putting completely beyond the scope of democratic deliberation those aspects of justice which are necessary to ensure fair and inclusive deliberation (where this is understood in terms of parity of participation). But to do this is to fall back into monological or Platonic ways of thinking about the relationship between justice and democracy. To expand on my reasoning a little further here, Fraser's

position, as I outlined it in the previous paragraph, would mean rejecting the principle of democracy, according to which 'what touches all must be agreed to by all'.[48] What this means is that a norm of justice is legitimate only if all of those bound by it are able to regard themselves as its authors, and this means that it must be agreed to in a process of democratic deliberation. Thus justice as participatory parity should not serve as an independent constraint on democracy since it is only through deliberation that norms of justice acquire legitimacy. As Ian Shapiro puts it, 'enterprises for social improvement' that fail to regard conceptions of democracy and justice as 'individually satisfying and mutually reinforcing' cannot 'garner political legitimacy in the medium term'.[49]

Rather than abandoning the idea of circularity by asserting the priority of (certain aspects of) justice over democracy, a better way forward is to abandon the assumption that these two goods are of equal weight, and to accept instead that in the relationship between the two justice should have a greater weighting than democracy. What I mean by this is that it should be more difficult to change the conditions necessary for fair and inclusive democratic deliberation than it is to change other conditions which are not necessary in this regard. This proposal could be institutionalized in a number of ways. For example, a degree of constitutional protection could be given to the norms of justice necessary to guarantee fair and inclusive deliberation so that those norms could only be changed by a super-majority of deliberators. Other norms of justice, not essential to ensure such deliberation, would be subject to determination in ordinary processes of democratic deliberation. I

would argue that this proposal has two major strengths. First, since it imposes no absolute limits on the choices that deliberators can make, it stays true to the idea that justice and democracy are joined in a circular relationship. This means that it does not become an instance of a monological account of justice in which a philosopher decides in isolation what norms of justice are necessary for fair and inclusive democratic deliberation. Second, since this proposal makes it difficult to change the conditions of such deliberation, the danger that a democratic public could choose norms of justice which undermine the fairness and inclusiveness of its own deliberations – so creating a vicious circle of undemocratic injustice – is diminished.

(b) 'good enough deliberation'

In a second step beyond Fraser's theory of democratic justice, I shall now finesse the proposal I have just made by seeking to identify those elements of justice which, since they are necessary to ensure fair and inclusive deliberation, should enjoy greater weighting than others. To bring this task into focus, I want to suggest that it presents us a dilemma. On the one hand, if the necessary conditions of deliberation are set too low, then a democratic public only bound by such conditions would be able to choose clearly unjust options. Shapiro illustrates this possibility well:

> In countries where the basic democratic institutions of popularly elected governments based on universal franchise prevail, wealth may or may not be redistributed in justice-promoting ways, minorities may or may

> not be respected, opportunities may or may not be open to all, and religious dissent may or may not be tolerated. Far from promoting justice, then, democracy can actually undermine it.[50]

On this horn of the dilemma, then, we would not have escaped the problem of vicious circularity. On the other hand, if the conditions of deliberation are set too high, then it could reasonably be argued that the scope for democratic deliberation has been unfairly restricted. This, I suggest, is Fraser's problem when she insists that parity of participation must be '*the principal idiom of public reason*'.[51] To see what I mean, let us suppose *arguendo* that a democratic public wishes to adopt John Rawls' conception of justice as fairness, including the difference principle. Let us further suppose that Rawls' principle is incompatible with Fraser's principle of parity. While the difference principle licences inequalities in the distribution of primary goods if such an unequal distribution benefits the least well-off group, such a distribution is contrary to parity of participation. In this case, when Fraser insists that the parity principle must shape the conditions of deliberation, she would prevent a democratic public from choosing a Rawlsian conception of justice which many political philosophers find perfectly reasonable. On this horn of the dilemma, then, our account of justice too closely resembles the monological theories that Fraser rightly rejects.

It follows that it is necessary to identify conditions of fair and inclusive deliberation which are robust enough to ensure that vicious circles of undemocratic injustice can be avoided or escaped, and which at the same

time are not so robust that the scope of democratic deliberation is excessively limited. One way in which to see what this might entail is to consider Fraser's notion of '*good enough deliberation*'. According to her, deliberation is "good enough" when it is able 'to generate outcomes that reduce disparities, so that the next round of political argument proceeds on terms that are somewhat more fair and can be expected to lead to still better outcomes, and so on'.[52] Here Fraser introduces an interesting and potentially valuable distinction between what might be called the minimal and maximal standards of democratic justice. While the minimal standard is that necessary for good enough deliberation, the maximal standard is reached when the conditions of participatory parity are fully realized. Thus, to rephrase Fraser's proposal in these terms, her claim is that, so long as the minimal standard of democratic justice is in place, then movement toward the maximal standard is possible.

To the best of my knowledge, Fraser has not attempted to identify these minimal standards in any detail. On the rival account of democratic justice which I am proposing here, this would be a vital task. Following Fraser's three dimensional account of justice, it would be necessary to identify the quantity of economic resources, degree of cultural standing, and level of political voice that would enable good enough deliberation to take place. Although I do not have the space here to carry out this task, I can give some indication of what it might involve. With regard to economic resources, the minimal standard could take the form of a minimum wage, while the maximal standard could be a basic income set at a suitably high level. So far as cultural standing is concerned, the minimal standard could be the absence of

disesteem that has a seriously adverse effect on the life-chances of particular sets of individuals. The maximal standard could be an institutionalized pattern of cultural values which ensures that all members of a political association are suitably acknowledged. In the case of political voice, the minimal standard could be what Shapiro describes as 'the basic democratic institutions of popularly elected governments based on universal franchise', while the maximal standard could go beyond these basic institutions by adding, for instance, gender quotas and multicultural rights in order to ensure that all members of a political association have equal voice. In each case, while the appropriate minimal standard is that which ensures that good enough deliberation can take place, there will be a potentially infinite number of maximal standards which particular demoi could seek to realize at particular times.

5. Conclusion

In this article, I have sought to defend, at least in outline, an account of the relationship between democracy and justice in which these two political goods stand in a circular relationship to one another: just outcomes emerge from democratic deliberations, but only if such deliberations meet the standards of justice. My account emerged in the course of a critique of Fraser's theory of democratic justice. I was not convinced that the two preconditions she identifies – which I referred to as the capacity of reflexivity and counter-public spheres – would suffice to ensure that vicious circles of undemocratic injustice could be evaded or escaped. Consequently, I proposed that (certain aspects

of) justice should enjoy a greater weighting than democracy, and I suggested that this could involve giving constitutional protection to those aspects of justice necessary for fair and inclusive deliberation. Finally, I sought to show what this might entail in practice. Here I argued that minimal requirements of justice which make good enough deliberation possible should enjoy greater protection than maximal standards which ensure parity of participation. From this perspective, I would argue, Fraser's principle of parity of participation can be regarded as just one of a range of conceptions of justice which would not breach the minimal standard. In this case, it would be up to Fraser, and those who agree with her, to defend her conception of justice as participatory parity in democratic debate. To the extent to which she and her supporters were successful, democratic deliberation would help to move the political association in question closer to the maximal standard at which parity of participation would be achieved.

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[1] Important works include Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004); Keith Dowding, Robert Goodin, and Carole Pateman (eds), *Justice and Democracy* (Cambridge: Cambridge University Press, 2004); Rainer Forst, *Contexts of Justice: Political Philosophy Beyond Liberalism and Communitarianism* (Berkeley, CA: University Of California Press, 2002); Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Boston, MA: MIT Press, 1996); Ian Shapiro, *Democratic Justice* (New Haven, CT: Yale University Press, 1999); Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000);

and Ross Zucker, *Democratic Distributive Justice* (Cambridge: Cambridge University Press, 2003).

[2] Nancy Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a "Postsocialist" Age', *New Left Review*, 212 (1995): 68-93; and Nancy Fraser, Contributions to Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (London: Verso, 2003).

[3] Nancy Fraser, 'Reframing Justice in a Globalizing World', *New Left Review*, 36 (2005): 69-88; and Nancy Fraser, *Reframing Justice: the Spinoza Lectures* (Amsterdam: Van Gorcum, 2005).

[4] Fraser, 'Reframing Justice in a Globalizing World', pp. 85, 87, 88.

[5] ibid., p. 85.

[6] Fraser, Contributions to Nancy Fraser and Axel Honneth, pp. 70-71.

[7] Paraphrasing ibid., p. 44; see also Jürgen Habermas, 'Struggles for Recognition in the Democratic Constitutional State', in Amy Gutmann (ed.) *Multiculturalism: Examining The Politics of Recognition*, (Princeton, NJ: Princeton University Press, 1994), p. 112; and Jürgen Habermas, *Between Facts and Norms*, pp. 120, 123.

[8] Fraser, Contributions to Nancy Fraser and Axel Honneth, pp. 70-71.

[9] Fraser, 'Reframing Justice in a Globalizing World', p. 73.

[10] ibid., p. 87; and see Nancy Fraser, 'Identity, Exclusion, and Critique: A Response to Four Critics', *European Journal of Political Theory*, 6 (2007): 305-38. Fraser also expresses this same contrast as one between the 'substantive' and 'procedural', or 'consequential' and 'procedural', aspects of the parity principle, and between participatory parity as a 'substantive norm' and a 'procedural principle' (ibid., pp. 330-32).

[11] Fraser, 'Reframing Justice in a Globalizing World', pp. 73-74, 76. Here the words 'not only' alert us to the fact that the injustice of misrepresentation can occur not just in a narrowly conceived political sphere, but in the economic and cultural spheres too. Examples might include a lack of workers' democracy in the former (Fraser, Contributions to Nancy Fraser and Axel Honneth, pp. 68-69), and antiracist policies designed by a white political elite in the latter. See Chris Armstrong and Simon Thompson, 'Parity of Participation and the Politics of Status', *European Journal of Political Theory* (forthcoming) for a detailed discussion of the range of social arenas to which the principle of parity might be applied.

[12] In her 'Reframing Justice in a Globalizing World', p. 74n7, Fraser claims that no-one to date has 'conceptualized the political as one of three dimensions of justice'. In fact, I would suggest that Shane O'Neill beat her to it by at least one year. In an article published in 2004, he argued as follows: 'Justice, as the equalization of effective communicative freedom' is 'a project that has radical implications for all modern states in terms of political empowerment, fair distribution and due recognition of particular group identities'. See his 'The Equalization of Effective Communicative Freedom: Democratic Justice in the Constitutional State and Beyond', *Canadian Journal of Law and Jurisprudence*, 17 (2004): 83-99, pp. 84; and see p. 95.

[13] Fraser, 'Reframing Justice in a Globalizing World', pp. 72, 75, 76.

[14] ibid., pp. 72, 75, 80.

[15] It should be noted that, in my reading of Fraser's theory in this paragraph, I reject her own claim to have distinguished *three* levels of politics (ibid., pp. 73, 80-81). I do not have space to justify my reading here, but my argument in

brief is that what she calls the third level is simply a form of political practice which she thinks should occur at the second level.

[16] As I shall explain in a moment, it would be more accurate to say that if citizens are to enjoy equal political voice, they will require parity not just in the political sphere, but in the economic and cultural spheres too. See ibid., p. 79n11.

[17] ibid., pp. 86-87.

[18] Fraser, *Reframing Justice*, p. 33.

[19] Fraser, 'Identity, Exclusion, and Critique', p. 331. At an earlier point in the same reply to critics, Fraser suggests that 'if justice implies democracy, the converse is equally true'. On the one hand, 'justice binds only insofar as its addresses can also regard themselves as its authors'; on the other, democracy is only legitimate if there is an absence of 'structural injustice'.

[20] Compare James Bohman's analysis of what he calls the "democratic circle" ('The Democratic Minimum: Is Democracy a Means to Global Justice?', *Ethics and International Affairs*, 19 (2005): 101-16, p. 101).

[21] It could be argued that my analysis places too much emphasis on these two preconditions, since Fraser mentions them only once in an interview. In reply, I would claim that these two preconditions are short-hand for two themes of central importance to Fraser's theory. This is a claim that I shall seek to justify in the discussion that follows.

[22] Young, *Inclusion and Democracy,* p. 17; and see pp. 34-36.

[23] Fraser, 'Reframing Justice in a Globalizing World', p. 79n11. As Bohman remarks: 'Only under ideal conditions would democracy realize justice and rights; in nonideal conditions, democracy might even arguably promote the

continued existence of unjust circumstances' ('The Democratic Minimum', p. 103; and see pp. 114-15).

[24] Fraser describes this distinction as one between those 'excluded' and those 'included but marginalized' or 'included in a subordinate way' ('Identity, Exclusion, and Critique', p. 315). Compare Charles Taylor, 'The Dynamics of Democratic Exclusion', *Journal of Democracy*, 9 (1998): 143-56, on inner and outer exclusion.

[25] Fraser, 'Identity, Exclusion, and Critique', p. 315.

[26] Nancy Fraser, 'The Politics of Framing: An Interview with Nancy Fraser', conducted by Kate Nash and Vikki Bell, *Theory, Culture and Society*, 24 (2007): 73-86, p. 81.

[27] ibid. Compare Bohman's remarks on the 'creative dimension of citizenship' ('The Democratic Minimum', p. 103; and see pp. 106-08).

[28] Fraser, Contributions to Nancy Fraser and Axel Honneth, p. 44.

[29] Fraser, 'The Politics of Framing', p. 25.

[30] Fraser, Contributions to Nancy Fraser and Axel Honneth, p. 43.

[31] Fraser, 'Identity, Exclusion, and Critique', p. 331. See also Bohman, 'The Democratic Minimum', p. 104; and Young, *Inclusion and Democracy*, p. 50. This point can be generalized: any non-utopian political theory must be able to give a plausible account of how a transition from unjust to just conditions can occur. A democratic theory must in addition show how such a transition can take place by democratic means.

[32] Fraser, 'Reframing Justice in a Globalizing World', p. 69.

[33] I say this assuming that there are no inherent limits to the flexibility of institutionalized patterns of cultural values or political constitutions. I do not have space to justify this assumption here.

[34] Fraser, 'The Politics of Framing', p. 34.

[35] Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (London: Routledge, 1997), p. 70.

[36] Fraser, 'Identity, Exclusion, and Critique', p. 327. For her first reference to the notion of subaltern counter-publics, see *Justice Interruptus*, p. 81.

[37] Fraser, 'Identity, Exclusion, and Critique', p. 38.

[38] Fraser, 'The Politics of Framing', p. 82.

[39] Ibid.

[40] Compare Bohman, 'The Democratic Minimum', pp. 115-16; and O'Neill, 'The Equalization of Effective Communicative Freedom', pp. 96-97.

[41] For a more optimistic assessment, see Bohman, 'The Democratic Minimum', p. 115.

[42] Fraser, 'Reframing Justice in a Globalizing World', p. 85n16.

[43] Fraser, 'The Politics of Framing', p. 83

[44] Fraser, Contributions to Nancy Fraser and Axel Honneth, p. 72.

[45] Fraser, *Reframing Justice*, p. 33; and see Fraser, 'Identity, Exclusion, and Critique', p. 332

[46] Fraser, Contributions to Nancy Fraser and Axel Honneth, pp. 71-72; and see pp. 42-44.

[47] This paragraph borrows some phrases from Simon Thompson, *The Political Theory of Recognition: A Critical Introduction* (Cambridge: Polity Press, 2006).

[48] James Tully, 'Introduction', in Alain Gagnon and James Tully (eds) *Multinational Democracies* (Cambridge, Cambridge University Press, 2001), p. 24.

[49] Shapiro, *Democratic Justice*, p. 23.

[50] ibid., p. 18.

[51] Fraser, Contributions to Nancy Fraser and Axel Honneth, p. 43.

[52] Fraser, 'Identity, Exclusion, and Critique', p. 332; and see Fraser, *Reframing Justice*, p. 33. Compare Bohman's idea of a 'democratic mimimum' ('The Democratic Minimum', pp. 101-02, 104).