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Thinking About Deliberative Democracy With Rawls and Talisse

Joshua Anderson

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Introduction

In a democratic society, the people are both the authors and subjects of the law, but what that means varies from democratic theory to democratic theory. For deliberative democrats, or proponents of deliberative democracy, the authority to give law and the reason to accept the law as legitimate and binding is partially grounded in the deliberation of the people.[1] Worded another way, if a democratic society is to have coercive authority over the people under its jurisdiction, then for the deliberative democrat that coercive power is constrained, or justified, by the deliberative activities of those same people.[2] Different deliberative theorists vary in their understanding of those deliberative activities.[3] This article does not seek to present or defend a particular deliberative theory; rather the approach is meta-theoretical: to identify some positive features of deliberative democratic theories. The best way to identify these features is by analyzing the inadequacies of particular deliberative theories.

To begin the discussion, John Rawls' idea of public reason will be presented as a foil to contrast with Robert Talisse's recent pragmatist inquiry approach to deliberative democracy.[4] Part I will present some important

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[1] *See, e.g.*, Amy Gutmann & Dennis Thompson, Why Deliberative Democracy? 3 (2004) (explaining that deliberative democracy's "most important characteristic, then, is its reason-giving requirement") [hereinafter Gutmann & Thompson].

[2] *See*, *e.g.*, John Rawls, *The Idea of Public Reason*, *in* Deliberative Democracy: Essays on Reason and Politics 93 (James Bohman & William Rehg eds., 1997).

[3] *See infra* Part I.

[4] *See infra* Part I.

insights and some shortcomings of Rawls' theory.[5] Part II will then present Talisse's inquiry account of deliberative democracy; focusing on how Talisse accommodates what is right about Rawls' theory–yet avoids some of its weaknesses.[6] Part III continues the ideas in Part II, but with a focus on the limitations of Talisse's pragmatist inquiry. Finally, Part IV demonstrates what an adequate deliberative theory might look like while discovering how Rawls's and Talisse's theories seem inadequate.[7]

I.   RAWLS AND THE IDEA OF PUBLIC REASON

Because of the abundance of literature concerning Rawls' theory of public reason, this article focuses only on giving a rough sketch of some of its key features; showing some strengths and fundamental weaknesses of his theory. The discussion of Rawls is used here as a heuristic device both to highlight the strengths of Talisse's account and to help discover some desirable features–which a good deliberative theory should take seriously.

One of the most important aspects of Rawls' theory, is that he identifies the central problem of democracy.[8] According to Rawls, a fundamental feature of modern democratic societies is the existence of pluralism.[9] The idea is that, as a matter of fact, there will be "a plurality of conflicting reasonable comprehensive doctrines, religious, philosophical, and moral, [which] is the normal result of its culture of free institutions."[10] Pluralism is not merely a historical accident. Pluralism arises as a natural result of the institutions of modern democratic societies and is therefore a permanent feature.[11]

The existence of pluralism is especially problematic for deliberative democracy. If people in a democratic society are going to be vulnerable to the coercive power of the society, then they need to view the use of coercive power as legitimate in some sense. In republican terms, people in a

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[5] *See infra* Part I.

[6] *See infra* Part II. While I take Talisse to be an improvement on Rawls, there are still some crucial problems that Talisse does not solve.

[7] Although suggesting an adequate deliberative theory is beyond the scope of this article, some important ways in which deliberative democratic theory might progress will be suggested.

[8] *See generally* John Rawls, *The Idea of Public Reason Revisited*, 64 U. OF CHI. L. REV. 765 (1997) [hereinafter Rawls, *The Idea of Public Reason Revisited*].

[9] *Id.* at 765.

[10] *Id.* at 766.

[11] John Rawls, *The Idea of an Overlapping Consensus*, 7 OXFORD J. OF LEGAL STUD. 1, 4 (1987) [hereinafter Rawls, *The Idea of an Overlapping Consensus*].

democratic society need to see the use of coercive power as non-arbitrary interference with their lives.[12] If people are to be subject to the coercive power of society, then they must have some reason to think that the coercive power is being used legitimately. Moreover, in a democracy, the people are the ones who authorize the use of coercive power; and in a deliberative democracy the deliberation of the people grounds the use of that coercive power, and justifies accepting the use of coercive power as legitimate.[13]

If all that is true, then the problem presented to the deliberative democrat is that (in at least some cases) many people will have good reason not to accept—or no good reason to accept—society's use of coercive power. If the justification for the legitimate use of coercive power requires members of the society to see the use of that power as reasonable—and since many members of the society will fundamentally disagree about what counts as a good reason—then at least in some, and perhaps many, cases the use of coercive power will not be seen as legitimate. After all, pluralism is permanent and implies that at least some comprehensive doctrines will be mutually exclusive. The implication is that if a society is deemed illegitimate by some of its members, then at best the society would be unstable, and at worst unjust.

Rawls attempts to solve this problem with the idea of public reason.[14] For Rawls, there may be widespread disagreement at the level of comprehensive doctrines—i.e., broadly shared worldviews that include beliefs and values regarding morality, politics, religion as well as personal and political beliefs about how a society ought to operate.[15] This is because of the existence of pluralism, which allows for "overlapping consensus"[16] of reasons among all reasonable doctrines—which can be used to justify the society's use of coercive power. Rawls points to public reason as the overlapping consensus.[17]

This article discusses two problematic features of Rawls's understanding of public reason: (1) public reason is too restrictive both in

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[12] *See, e.g.*, PHILIP PETTIT, REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT (Oxford University Press 1997).

[13] *See* GUTMANN & THOMPSON, *supra* note 1, at 3.

[14] *See generally* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[15] *See* Paul Voice, *Comprehensive Doctrine*, *in* THE CAMBRIDGE RAWLS LEXICON 126 (Jon Mandle & David A. Reidy eds., Cambridge Univ. Press 2014).

[16] Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11, at 1.

[17] *Id.*

about what is deliberated, and what reasons can be used in deliberation; and (2) the reason for accepting the constraints of public reason is too contingent, lacking the normative weight to properly motivate citizens to accept those constraints. Whether Rawls has adequate responses to address these concerns or whether they are ultimately problematic extends beyond the scope of this article. However, if another deliberative theory does not face these problems, then that theory would be preferable to Rawls'.

As to the first issue that the idea of public reason is too restrictive, Rawls explicitly states that the content of public reason—i.e., the issues about which citizens deliberate—is limited to discussions of constitutional essentials and the basic structure of society.[18] Further, deliberating citizens are supposed to limit themselves to only offering reasons that they "reasonably think that other citizens might also reasonably accept those reasons."[19]

Restricting public deliberation to constitutional essentials and questions about the basic structure of society is problematic because much of society's coercive power involves political actions and policies that do not relate directly to the basic structure or constitutional essentials. Importantly, "principles governing social and economic inequalities" seem to fall outside the constitutional essentials and basic structure.[20] Now, one might say that these issues would be resolved by a well-structured constitution and society. Even so, public deliberation should occur at some point down-stream from how the constitution is set up if the political actions of society are to be seen as legitimate or justified.

Perhaps one of Rawls's motivations for limiting public reason to the basic structure and constitutional essentials, is that the reasons which can be offered in public deliberation do not seem to deal with more substantive issues. When discussing constitutional essentials, regardless of any particular individual's comprehensive doctrine, it seems that appealing to ideas such as fair and equal treatment under the law or "liberty of conscience"[21] would provide reasons that all, or most, citizens could reasonably accept. However, when discussing who can and cannot get married, for example, appealing to

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[18] *See* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[19] *See id*. at 771.

[20] Rawls, *The Idea of Public Reason*, *supra* note 2, at 107.

[21] Nicholas G. Karambelas, *Where the First Amendment Comes From*, 50 MD. B.J. 4, 10 (2017) (defining liberty of conscience as "the freedom to follow one's religious or ethical beliefs").

biblical authority is only a reason for those who hold that the bible is authoritative, and thus is a reason that is reasonably rejected. Certainly, one could not offer biblical authority as a reason to justify some aspect of the basic structure of society and could offer fair and equal treatment as a reason to justify the society's recognition of non-traditional marriages. However, it appears that Rawls seems to think that there will be more consensus regarding constitutional essentials.[22] For the religious and non-religious alike, fair and equal treatment and similar types of reasons could be seen as sufficient for justifying universal suffrage. However, for many religious people fair and equal treatment would not be sufficient to justify recognizing non-traditional marriage, and any reasons that might be sufficient for deciding the case either way would be reasonably rejected by other citizens.[23] Thus, the restrictions public reason places on public discourse are problematic.

Rawls might be right, but if another theory could allow for deliberation to occur over a greater range of topics, and not lead to countervailing problems, it would certainly be a good thing. If the deliberation of citizens were active at multiple levels of societal policy-making, and if citizens were allowed to offer reasons precluded by Rawls's public reason theory, it seems likely that those same citizens would feel that society's actions were justified. More importantly, if society took at least some of the reasonably rejectable reasons of citizens seriously it is likely that citizens would be more invested in society, which in turn would lead to a more stable society.[24] On Rawls's account, either one offers and accepts the limited use of reasons, or one is completely ignored, creating tension and animosity.[25]

Disallowing certain reasons and restricting deliberation has a tendency to create tension and animosity in society. Thus, from a Rawlsian perspective there needs to be explanation as to why citizens within a polity would even agree to have deliberation restricted in precisely the way Rawls suggests.[26] There are two reasons Rawls offers that would provide citizens

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[22] *See* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[23] *Clarity Regarding Same Sex Marriage*, Capitol Ministries (Jan. 22, 2018), https://capmin. org/wp-content/uploads/2016/11/Clarity-Regarding-Same-Sex-Marriage-Ralph-Drollinger-2018.pdf.

[24] *See generally* THOM BROOKS & FABIAN FREYENHAGEN, THE LEGACY OF JOHN RAWLS (2005) [hereinafter BROOKS & FREYENHAGEN].

[25] *See generally* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[26] *See generally id.* at 766.

reason to adhere to public reason: the idea of overlapping consensus [27] and a duty of civility;[28] each of which will be discussed in turn. However, the problem is that neither of these reasons has the normative weight to sufficiently motivate people to be bound by public reason.

Even though there is a plurality of comprehensive doctrines which citizens can, and do, hold within a free democratic society, Rawls is only concerned with reasonable ones.[29] The reasonable doctrines of citizens will, generally, converge on a political conception of justice that will motivate them to follow public reason. There are at least two problems with the overlapping consensus that call into question whether it is sufficiently normative to be motivational. First, whether comprehensive doctrines overlap in the way necessary for public reason to occur is a purely contingent matter; and therefore lacks the modal strength to be normatively motivational. Second, what counts as a "reasonable doctrine" is either question-begging or does not dissolve the tension that could arise within a pluralistic society where the voices of certain citizens are necessarily excluded.

Regarding the former issue, public reason is supposed to mediate between doctrines that seem to mutually exclude each other's conceptions of the good, the right, and the true.[30] However, if there is such a plurality of doctrines, it is at least possible that the doctrines would not be able to converge on a similar enough conception of justice to encourage the citizens to hold to the strictures of public reason. It might be true that in the actual world there is such an overlapping consensus. However, there is nothing that would guarantee that there would be a consensus, or that if there were such a consensus that it would remain. Further, to suggest that there are certain facts about human nature or psychology that leads one to expect that there will be such a consensus is not a move readily available to Rawls or the Rawlsian.[31] To do so would be to introduce a reasonably rejectable understanding of human nature at a meta-level and to ground the fact that one is not allowed to introduce reasonably rejectable conceptions at the political level. The

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[27] *See* Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11.

[28] Brooks & Freyenhagen, *supra* note 24, at 29.

[29] *See generally* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8; Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11.

[30] *See* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[31] Rawls actually does make such an appeal to human psychology. *See* Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11, at 22.

upshot, however, is that since an overlapping consensus is so contingent and fragile, it does not seem that it could justify the use of public reason in the way Rawls's theory needs.

One move available to Rawls, and in fact the one he makes, is that the overlapping consensus need only be among the reasonable doctrines.[32] Thus, the problematic is dissolved precisely because it is *reasonable* to think that there might be some overlap and convergence among *reasonable* doctrines.[33] However, appealing to the reasonableness of doctrines has problems of its own. If it is a fairly broad notion of what counts as reasonable, then the possible doctrines may not sufficiently overlap, or if they do, there is no guarantee that the consensus will be stable. Yet, if it is a fairly restricted notion of what counts as reasonable, perhaps guaranteeing the overlapping consensus, then there is the potential for alienating a significant enough number of citizens. This would result in a destabilizing effect on society, which would cause Rawls to beg the question in his defense of a liberal polity.[34]

Rawls seems to take the latter alternative. Rawls's overall project is to defend a liberal polity, going so far as to claim that he "believe[s] that in fact any workable conception of justice for a democratic regime must indeed be in an appropriate sense liberal."[35] Yet it seems inappropriate for Rawls to have grounded a liberal political conception of justice on the fact that reasonable doctrines will converge on such a conception. As a reasonable doctrine is one that has a political conception of justice which is broadly liberal. Rawls explains what a reasonable doctrine is:

> When political liberalism speaks of a reasonable overlapping consensus of comprehensive doctrines, it means that all of these doctrines, both religious and nonreligious, support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity. Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic rights and liberties for all citizens,

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[32] *See* BROOKS & FREYENHAGEN, *supra* note 24.

[33] *See* Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11.

[34] *Cf.* Matteo Bonnati, *Political Liberalism, Free Speech and Public Reason*, 14 EUROPEAN J. POL. THEORY 180 (2006).

[35] Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11, at 5.

> including liberty of conscience and the freedom of religion. On the other hand, *comprehensive doctrines that cannot support such a democratic society are not reasonable.* [36]

Thus, Rawls has not justified a liberal polity; he has stipulated it.

Even if one were to follow Rawls this far, he has not really solved the problem of pluralism. Pluralism arises not as an aberration but when a democratic free society is functioning as it is supposed to.[37] It is thus possible that many citizens will come to hold non-liberal, and thus unreasonable, comprehensive doctrines, raising the specter of the contingency, tension, and animosity. The only apparent solution would be a *modus vivendi*[38] compromise—something Rawls is at pains to avoid.[39]

Assume that Rawls is right about reasonableness and that there will be a convergence on a political conception of justice that is not problematically contingent or exclusionary. Any reasonable political conception of justice, according to Rawls, satisfies "the criterion of reciprocity," which is understood as a duty of civility.[40] It is this duty which provides the real normative force for citizens to limit their deliberation to the constraints of public reason.[41]

The duty of civility manifests as a willingness to respect other citizens' autonomy and liberty since "we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions."[42] In other words, the duty of civility requires citizens to respect each other as reasonable and rational. When justifying any political action, one attempts to persuade on the basis of mutually agreeable, or reasonable, terms which others could reasonably accept "as free and equal, and not as dominated or manipulated, or under the pressure of an inferior political or social position."[43]

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[36] Rawls, *The Idea of Public Reason Revisited, supra* note 8, at 801 (emphasis added).

[37] *See* Rawls, *The Idea of an Overlapping Consensus, supra* note 11.

[38] *Modus Vivendi*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *modus vivendi* as a Latin phase meaning "mode of life"). In this instance, it means a situation where parties agree to live together peaceably without coming to any particular fixed agreement.

[39] *See* Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11, at 1.

[40] *See, e.g.*, JOHN RAWLS, POLITICAL LIBERALISM (1993).

[41] Rawls, *The Idea of Public Reason Revisited*, *supra* note 8, at 803.

[42] Rawls, *The Idea of Public Reason*, *supra* note 2, at 134.

[43] *Id.* at 132.

Two problems arise for the duty of civility because "[t]his duty, like other political rights and duties, is an intrinsically moral duty."[44] First, it appears that the duty is symmetrical. The limit on the duty of civility is the fact that one should stick to the constraints of public reason "provided that other citizens also accept those terms."[45] Thus, citizens who do not respect the duty of civility are not owed the duty either; and therefore, can be manipulated, dominated, or ignored; leading once again to the destabilizing effect of tension and animosity among the citizenry.

The second problem is that since the duty of civility is simply one moral duty among many, when the duty of civility conflicts with more important duties, one need not be bound to the constraints of public reason.[46] Even assuming that citizens generally accept the duty of civility and value public reason, in very many cases, especially the hard ones, it is not implausible to think that other duties would override the duty of civility,[47] leading to a breakdown of public reason. Even if these conflicts were few and far between, the fact that public reason might not be maintained when dealing with the most important and difficult issues is gravely problematic since it is the really difficult and important issues where public reason was supposed to help.[48]

Three lessons can be learned from the discussion so far. First, any adequate deliberative democratic theory must acknowledge the existence of pluralism and be able to deal with the problems that occur because of it; namely, the destabilizing influence that arises from the conflict and tension inherent when a citizenry holds a diversity of potentially mutually exclusive values. Second, if a political society has coercive power, then in a democratic society the use of that power should, at least, be constrained by *the people*. Therefore, all else held equal, in a deliberative democracy the broader the scope about what can be deliberated, the better. Finally, if citizens are to deliberate, there must be some normative reason that would compel citizens

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[44] Rawls, *The Idea of Public Reason Revisited*, *supra* note 8, at 769.

[45] *Id.* at 770.

[46] *See, e.g.*, Eric Brown, *Rawls and the Duty of Civility*, IWM JUNIOR VISITING FELLOWS CONFERENCES 15 (2003), https://www.iwm.at/wp-content/uploads/jc-15-01.pdf.

[47] Consider a parallel case where one is not bound by a promise when a more important duty—e.g. saving someone's life—interferes.

[48] Micah Lott makes this point forcefully. *See* Micah Lott, *Restraint on Reasons and Reasons for Restraint: A Problem for Rawls' Ideal of Public Reason*, 87 PAC. PHIL. Q. 75 (2006).

to deliberate in general, and to deliberate in the ways required by a particular deliberative theory.

II.   TALISSE AND PRAGMATIST INQUIRY

Turning to Robert Talisse's inquiry account of deliberative democracy to see how he deals with the three features of an ideal deliberative democratic theory identified in the previous section. Talisse suggests that based on epistemic norms, which all reasonable persons hold, we are already committed to a particular form of inquiry.[49] Further, he claims that those same epistemic norms commit us to deliberative democratic politics.[50] Although Talisse has argued for this position in many places,[51] the focus of this note will be on how he has articulated it in his book, *A Pragmatist Philosophy of Democracy*.[52] Importantly, Talisse maintains that his pragmatist defense of democracy can adequately deal with the existence of reasonable pluralism—and is the only one that can.

Talisse's argument is based on his understanding of C. S. Peirce's epistemology.[53] Before getting into his justification of deliberative democracy, it is important to understand Peirce and how Talisse interprets him. Talisse begins by considering Peirce's essay, *The Fixation of Belief*.[54] In *Fixation*, Peirce "catalogue[s] four distinct ways in which we may attempt to assuage doubt and settle belief. Each of these ways is, on Peirce's view, a *method* of inquiry."[55] The four modes of inquiry are: the method of tenacity, the method of authority, the *a priori* method, and the method of science.[56] According to Peirce, only the method of science can actually assuage doubt

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[49] *See, e.g.*, Robert Talisse, *Towards a Peircean Politics of Inquiry*, 40 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC'Y 21 (2004).

[50] *Id.*

[51] *Id.*; *see* Robert Talisse, *Deliberative Democracy Defended: A Response to Posner's Political Realism*, 11 RES PUBLICA 185 (2005); Robert Talisse, *Liberalism, Pluralism and Political Justification*, 13 THE HARVARD REV. OF PHIL. 57 (2005). In *Deliberative Democracy Defended: A Response to Posner's Political Realism*, he refers to his position as Deweyan Democracy which seems ironic since Talisse has famously been quite critical of Deweyans.

[52] ROBERT TALISSE, *Pierce, Inquiry, and Politics, in* A PRAGMATIST PHILOSOPHY OF DEMOCRACY 54 (2007) [hereinafter TALISSE, A PRAGMATIC PHILOSOPHY].

[53] *See* Michael Bacon, *The Politics of Truth: A Critique of Peircean Deliberative Democracy*, 36 PHILOSOPHY AND SOCIAL CRITICISM 2 (2010).

[54] *See* C. S. Peirce, *The Fixation of Belief in* AN ANTHOLOGY OF NINETEENTH-CENTURY AMERICAN SCIENCE WRITING 210 (C.R. Resetarits ed., 2012).

[55] *See* TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 56.

[56] *See id.*

and settle belief, because only the method of science is a method of belief refinement while the other forms of inquiry are aimed at belief preservation. The tenacious believer dogmatically clings to his or her beliefs, ignoring all counter evidence; the authoritarian believer defers all judgment to a supposed authority; and the *a priori* believer settles belief through agreement with social convention.[57]

Contrary to many commentators on Peirce, Talisse believes that Peirce is not putting forward the method of science as the correct form of inquiry and then evaluating the other forms of inquiry against it. Rather, Peirce is providing an immanent critique of our epistemic practices and showing that only the method of science satisfies the epistemic norms we already hold. According to Talisse:

> Peirce's argument is that the non-scientific methods fail to satisfy some condition that is *internal* to inquiry, and therefore we *cannot* self-consciously adopt them . . . . Put in another way, Peirce's argument is not so much *recommending* to us the scientific method as he is showing us that—given what we already take inquiry to be, and given what we already understand the point of inquiry to be—we have no choice but to reject all but the scientific method.[58]

Peirce, according to Talisse, begins from the assumption that "we are *reasoning* creatures...[w]e engage instinctively in acts of inferring, deducing, guessing, hypothesizing, and experimenting with a view towards predicting and preparing ourselves for future happenings."[59] In essence, we are naturally inquirers. Peirce's self-understood explicit aim in *Fixation* is to understand the various ways individuals inquire. The various methods of inquiry are not merely "algorithm[s] that an inquirer enacts when confronted with doubt; a method of inquiry entails a wide range of habits and commitments that run beyond the particular beliefs it produces."[60] In fact, the four modes of inquiry should be understood as "epistemic character-types" or "four *kinds of believer*."[61]

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[57] *See id.* at 61.
[58] *Id.* at 59.
[59] *Id.* at 60.
[60] *Id.*
[61] *Id.* at 61.

Therefore, according to Peirce, the tenacious believer's epistemic character is fundamentally dogmatic while the authoritarian and *a priori* believers are deferential. Most importantly these believers are not responsive to reasons. "The *scientific* believer, by contrast, attempts not to preserve existing beliefs, but to discover beliefs that will not occasion doubt. To accomplish this, the scientific believer seeks beliefs that are responsive to reasons, evidence, and argument."[62] In this way, the scientific believer aims at having, in some sense, true beliefs, or beliefs that are truth-apt, and the scientific believer's character is *epistemically responsible*.

Not only are the non-scientific methods of inquiry flawed, but the corresponding character traits are self-undermining. "A belief, in order to be a belief, is such that it is responsive to . . . reasons and evidence. That is a very part of what is to have a belief—a *constitutive norm* of belief"[63] is that a belief is something that one holds for reasons. Talisse suggests that Peirce's purpose in *Fixation* is to point out, on the one hand, that the non-scientific methods violate this constitutive norm, and on the other hand, that no non-scientific believer can self-consciously adopt a non-scientific method.[64] He believes this for two reasons. First, the non-scientific believer, in order to preserve his or her belief, must aim to have true beliefs—i.e., reason-responsive beliefs—about his or her dogmatic and deferential practices. Second, Peirce realized that one seldom, if ever, maintains a belief when one recognizes that "it was produced by means of a method that has no truth-tracking or reason-responsive propensities. . . . [In other words,] non-scientific believers *take themselves* to be scientific inquirers."[65] Thus, non-scientific modes of inquiry entail an epistemic character that is self-deluded. There are certain requirements for being an epistemically responsible agent, which, according to Talisse and Peirce, is what we all take ourselves to be.[66] Only scientific inquirers are self-controlled and self-aware in the way necessary to be epistemically responsible. Therefore, we are already committed to scientific inquiry, and the character traits that are entailed by it.

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[62] *Id.* at 61.

[63] Cheryl Misak, *Making Disagreement Matter: Pragmatism and Deliberative Democracy*, 18 J. OF SPECULATIVE PHIL. 9, 12 (2004).

[64] *See* TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52.

[65] *Id.* at 62.

[66] *See id.* at 54.

There is an important upshot of Peirce's epistemology: a political one.[67] Talisse argues that the same norms which govern inquiry, and the same character traits that make an individual an epistemically responsible agent, entail a commitment to deliberative democracy.[68] There is the obvious fact that individuals do not exist in isolation and that beliefs are influenced by social relations. Thus, "[a]ny method of inquiry which does not aim to settle belief in the community cannot successfully avoid doubt"—precisely the point of inquiry.[69]

A distinguishing characteristic of the method of science is that it alone "recognizes that the truth is 'public' and available to all who inquire properly."[70] The non-scientific methods, by contrast, hold that truth—if it exists—is in some way dependent on "something human and private."[71] The tenacious inquirer holds that truth is dependent on him or herself, and actually seeks to avoid the beliefs of others in fear that they might unseat his or her beliefs.[72] The authoritarian inquirer holds that truth is dependent on a single authority, and the *a priori* inquirer holds that truth is dependent on some group's "feelings and purposes."[73]

Talisse maintains that each form of inquiry aligns with a certain form of political order and social organization, which should be readily apparent from the epistemic characteristics of that form of inquiry and the view of truth that it holds.[74] This method of tenacity is radically anarchic: the individual is the sole locus of concern and the beliefs of each are completely independent; the method of authority commits one to an extreme form of Orwellian authoritarianism;[75] and *a priori* method commits one to a version of epistemic aristocracy and thus to aristocratic rule.[76] Importantly, each of these forms of political organization is self-defeating, or unstable, in the same way that the

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[67] *Id*. at 62. To be clear, Talisse is putting forward a political view that is Peircean, and not that of Peirce.

[68] *Id.* at 52.

[69] *Id.* at 63.

[70] *Id.* at 65.

[71] *Id.* at 63.

[72] *See* Yael Levin Hungerford, Charles Pierce's Conservative Progressivism (June 2016) (unpublished Ph.D. dissertation, Boston College) (on file with Morrissey College of Arts and Sciences, Boston College) (providing a detailed analysis on Pierce's idea of truth).

[73] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 63.

[74] *Id.* at 54.

[75] Imagine a political system similar to the one found in George Orwell's dystopian novel. *See* GEORGE ORWELL, 1984 (Signet Classics 1950).

[76] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 54.

corresponding method of inquiry is: at some point the method breaks down and doubt arises. There is no perfect way for one to avoid all interaction with others and realizing that others hold different views occasions doubt. Thus, anarchy cannot be maintained. No matter how powerful the authoritarian dictator, he or she cannot prevent his or her subjects from being exposed to doubt-inducing reasons. Further, the authoritarian dictator is implicitly committed to Pierce's scientific method to be able to successfully maintain his or her rule. Finally, the same holds true, *mutatis mutandis*,[77] for aristocracy and the *a priori* method.

According to Talisse, these forms of political organization are all incompatible with self-controlled and properly conducted inquiry.[78] Therefore, one cannot be an epistemically responsible agent under these types of political conditions. Further, as Talisse and Pierce have argued scientific inquiry is the only form of inquiry, which is epistemically responsible.[79] Thus, by that very fact, one is committed to the idea that truth is public. Moreover, scientific inquiry is also committed to the idea that "the method of inquiry must, at least potentially, involve the participation of the entire community."[80] Indeed, scientific inquiry commits one to belonging to a community of inquirers, since it is only in community that one's beliefs can be tested and corrected. As Talisse suggests, "[t]he Peircean image of a community of inquiry is inherently democratic."[81]

The idea is that the scientific method requires epistemic agents to be open to correction, constantly willing to revise his or her beliefs in light of new arguments and evidence. In turn, this requires responsible believers to engage in reason-exchange and openness to disagreement and opposing views. The lesson which Talisse, therefore draws is that:

> Accordingly, there are social and political requirements for proper inquiry: Inquirers need access to forums in which inquiry can be engaged; they need to be able to appeal to reliable sources of information and news; they need access to

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[77] *Mutatis Mutandis*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *mutatis mutandis* as a Latin phase meaning "changing what needs to be changed"). The idea is that a similar argument can be made by making the appropriate alterations for the other cases but it does not change the underlying point.

[78] *See* TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52.

[79] *See id*. at 54; Pierce, *supra* note 54.

[80] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 65.

[81] *Id.* at 66.

processes by which they can hold their representatives, and their government more generally, accountable; they need the freedom to engage controversial ideas and to speak, write, and express themselves freely. In short, proper inquiry can be practiced only within a democratic political order.[82]

In essence, the Peircean justification of democracy runs along the same lines as the Peircean justification of the scientific method. Therefore, the Peircean justification of democracy proceeds as an immanent critique of the alternative theories. "The claim is that, just as we are all at least implicitly scientific inquirers, we are all at least implicitly democrats simply by virtue of the epistemic commitments that follow from the very phenomenon of belief."[83] Of course, that is not to say that people do not practice non-scientific forms of inquiry, or that people are not anti-democratic. Talisse, and by extension Peirce, are only claiming that we are all *implicitly* committed to scientific inquiry and democracy whether we realize it or not.[84]

Not only do the norms implicit in our epistemic practices commit all epistemic agents, who at least take themselves to be responsible, to democracy, but it commits them to a particular type of democracy, namely a deliberative one. Further:

> [T]he responsible epistemic agent … is committed to a view of citizenship according to which those who simply assert their raw preferences in political debate and in decision contexts are failing at democratic citizenship in the same way the tenacious believer is failing at inquiry. Just as inquirers must attend to reasons, argument, and evidence in forming their beliefs, democratic citizens must engage each other's reasons. In this way, the Peircean view is an *epistemic* view of democracy. . . . [Which] entails a political commitment on the part of individuals to a state that *promotes* proper citizenship. . . . [S]ince proper belief requires reason *exchanging*, one cannot be a responsible epistemic agent in isolation . . . . Hence a *responsible epistemic community* is necessary for there to be *individuals* who are responsible

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[82]*Id.* at 66.

[83] *Id.* at 67.

[84] *See id.* at 54; Pierce, *supra* note 54.

epistemic agents. Moreover . . . the community of proper inquiry must be cultivated and *maintained* by social institutions that encourage the *exercise* of proper epistemic agency.[85]

Pluralism should be addressed before returning to some of the concerns that arise from the form of democracy that Talisse's view entails. According to Talisse, his view is fully consistent with the fact of pluralism.[86] Because being an epistemically responsible agent requires not only engaging others' reasons but actively seeking out and engaging dissenting views, Talisse maintains that pluralism enhances his conception of democracy.[87] In fact, one norm which Talisse believes is implicit in the scientific method is something he calls "*epistemic agonism*, a norm of ongoing engagement with those with whom one disagrees."[88] Further, because the same norms that govern proper inquiry also commend a particular political arraignment, the existence of pluralism requires agonistic politics. "Such a politics differs from many forms of deliberative democracy in that it is *not* immediately aimed at agreement or consensus. Rather, the Peircean conception of democracy envisions an ongoing agonism between competing reasonable claims, a perpetual argument within democracy concerning democracy itself."[89] In this way, not only is the Peircean conception of democracy consistent with pluralism, but, as Talisse suggests, it is actually improved by it.[90]

The strengths of Talisse's account should be readily apparent, but so are some of its weaknesses. In some ways, it is precisely the strengths that are its weaknesses. However, and more importantly, the larger issue is that the entailments which Talisse draws from the norms which govern proper inquiry do not seem to necessarily follow. Thus, this article will acknowledge both the strengths and weaknesses of Talisse's Peircean conception of democracy.

The Peircean conception of democracy, articulated by Talisse, is a substantive conception. It is inherently normative and aims to cultivate

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[85] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 70–71.
[86] .*See generally id.*
[87] *See id.*
[88] *Id.* at 90.
[89] *Id.*
[90] *See id.* at 61.

particular character traits among its citizens, in part, by having institutions that promote and enhance proper epistemic practices.[91] Thus, "the Peircean view might be thought of as an *epistemic perfectionist* conception of democracy, since its substance—and, correspondingly, its view of the formative role of democratic politics—derives exclusively from our epistemic commitments."[92]

Generally, it has been argued that substantive conceptions of democracy are inconsistent with the existence of pluralism.[93] Any substantive conception of democracy entails certain commitments that are reasonably rejectable by epistemically responsible agents. However, Talisse maintains that such criticisms do not apply to all substantive conceptions of democracy.[94]   In particular, the epistemic norms that govern epistemic perfectionism are not reasonably rejectable in the way moral norms or metaphysical understandings of the good can be reasonably rejected. In order to reasonably reject something, one must reject it for reasons, argue against it, or offer evidence. Yet these things are all precisely the norms that are part of epistemic perfectionism. Therefore, epistemic perfectionism as a substantive account of democracy cannot be reasonably rejected.

III.   PROBLEMS FOR PRAGMATIST INQUIRY

In some ways, Talisse has a view similar to Rawls regarding how to deal with the existence of pluralism. Rawls claimed that there would be an overlapping consensus regarding a political conception of justice, for any reasonable doctrine, and it is based on that overlapping consensus that deliberation could begin.[95] What Talisse offers is a more theoretical understanding of overlapping consensus and what counts as a "reasonable doctrine."   If Talisse is right and the norms articulated by epistemic perfectionism are intrinsic to, and constitutive of, what it means to be a

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[91] *See generally id.*

[92] *Id.* at 72.

[93] Talisse himself has argued precisely this, particularly with regard to the Deweyan account of democracy. *See, e.g.*, Robert Talisse, *Can Democracy Be a Way of Life? Deweyan Democracy and the Problem of Pluralism*, 39 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC'Y 1 (2003); Robert Talisse & Scott Aikin, *Still Searching for a Pragmatist Pluralism*, 41 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC'Y 145 (2005) [hereafter Talisse & Aikin, *Still Searching*]; Robert Talisse & Scott Aikin, *Why Pragmatists Cannot Be Pluralists*, 41 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC'Y 101 (2005).

[94] Talisse & Aikin, *Still Searching, supra* note 93.

[95] *See* discussion, *supra* Part I.

believer, then regardless of whatever position one holds regarding justice, or the moral good, one cannot reasonably reject the epistemic norms of proper inquiry.[96] Thus, unlike Rawls, one need not hope that there will be an overlapping consensus, since what it means to be an epistemic agent is precisely the norms that govern democracy and deliberation.

Further, one need not offer reasons that one "reasonably think[s] that other citizens might also reasonably accept those reasons."[97] It is merely the willingness to offer reasons and engage in argument—precisely because epistemic perfectionism does not aim at consensus or agreement. The only way a view could not be considered is if the view is committed to epistemic irresponsibility. Yet if Talisse is right, no view takes itself to be epistemically irresponsible.[98] Therefore, Talisse appears not to be subject to the contingency and potential alienation of citizens that seemed to be problematic for Rawlsian public reason.

Notice also that epistemic perfectionism seems to solve some of the other issues that arise for Rawls. Public reason and overlapping consensus seemed to lack the normative weight to encourage and guarantee deliberation. By appealing to the epistemic norms that govern proper inquiry epistemic perfectionism entails at least a *prima facie* obligation to deliberate. Part of what is required to be an epistemically responsible believer is to engage in argument and reason exchange; thus, again if Talisse is right, deliberation is normatively required. Certainly, some citizens within a polity may refuse to deliberate, but that is a practical issue. The normative force behind deliberation is still there.

Finally, public reason limits deliberation to just constitutional essentials and the basic structure of society.[99] Epistemic perfectionism requires that deliberation should be about any judgment, value, position, or policy.[100] In order to be an epistemically responsible agent one is committed to ongoing deliberation about anything truth-apt or reason responsive. Hence,

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[96] *See* discussion, *supra* Part I.

[97] Rawls, *The Idea of Public Reason Revisited, supra* note 8, at 771.

[98] That is not to say that a view might fail to be epistemically responsible and offer bad reasons, or no reasons at all, but to even criticize alternative views one is already engaged in scientific inquiry, and by that very fact is committed to deliberative democracy.

[99] *See* Rawls, *The Idea of Public Reason Revisited*, *supra* note 8.

[100] *See* J. Caleb Clanton & Andrew T. Forcehimes, *Can Peircean Epistemic Perfectionists Bid Farewell to Deweyan Democracy?*, 6 CONTEMPORARY PRAGMATISM 2 (Apr. 21, 2009) [hereinafter Clanton & Forcehimes].

the same will hold for any political judgment or policy. There is no limit on what can or should be deliberated.

Overall, it seems that Talisse's Peircean conception of democracy fairs better than Rawlsian public reason as an account of deliberative democracy. However, there are some concerns that arise about whether it is actually an adequate account of deliberative democratic politics. Three main worries will be considered here regarding epistemic perfectionist deliberative democracy. First, it is unclear whether the epistemic norms function the way that Talisse thinks they do, and whether they are in fact the norms that necessarily govern proper inquiry and epistemic responsibility. Second, it is not clear that, even granting Talisse his epistemic norms, democracy is entailed in the way that he thinks it is. Finally, even if Talisse is right about the epistemic norms that govern proper inquiry, and that those norms entail a deliberative democracy, Talisse's account does not really solve the issue that arises for democracy in light of pluralism. The problem that democracy must address is a question of the legitimate use of the society's coercive power. The existence of pluralism raises the question of whether citizens can accept it as legitimate.

Regarding the first issue of whether the norms he articulates do, in fact, govern epistemic responsibility, Talisse states that "[t]he epistemic commitments that lie at the core of Peircean democracy . . . state a set of principles that are consistent with any well-developed epistemology. That is internalists, externalists, foundationalists, coherentists, and so on . . . . "[101] However, the problem is that this does not seem to be the case. One can imagine a strong externalist epistemological theory, such as reliabilism, that would not endorse the Peircean view. Reliabilism claims that one knows or believes is a psychological process, or was produced by a process that reliably produces true beliefs.[102]

A reliable process does not need to be reason-responsive; it merely needs to be reliable at producing true beliefs, regardless of whether the agent knows that the process is reliable. The crux of Peircean inquiry is reason-responsiveness, and therefore there is a sense in which it can reasonably be rejected because there are ways of knowing that are truth-apt but not reason-responsive. Similarly, some virtue epistemologists hold that tenacity and

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[101] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 96.
[102] ALVIN I. GOLDMAN, *Reliabilism*, ROUTLEDGE ENCYCLOPEDIA OF PHILOSOPHY, https://www.rep.routledge.com/articles/thematic/reliabilism/v-1 (last viewed Jan. 31, 2020).

deference to authority can be epistemic virtues.[103] Since, by definition such "epistemic virtues" are inferior forms of inquiry, the Peircean cannot countenance them. The point is that there are ways of knowing that seem epistemically responsible—or at least not irresponsible—that are anti-Peircean. Thus, Talisse cannot claim that Peircean epistemic perfectionism "identifies and draws upon only those epistemic norms that are *already* implicit within the epistemic practice of all believers."[104]

Ultimately, the problem is that, though Talisse denies it, Peircean epistemic perfectionism is tied to certain philosophical commitments that can be rejected by epistemically responsible agents. For Talisse and Peirce to say that a belief is true is to claim that it is indubitable, or that it would forever withstand further objections. However, there is no reason to think that to claim that something is true is to claim that it is indubitable. On a correspondence theory of truth, a belief is true when it stands in a particular relation to some mind independent "object."[105] On a disquotationalist theory of truth "X" is true, just in case, X.[106] Both of these theories of truth do not require that beliefs be indubitable for them to be true. As another example, some philosophers hold that chicken-sexers[107] *know* the sex of baby chicks, but at the same time their beliefs about the sex of chicks are dubitable, if not dubious.[108] In all these cases, one need not necessarily engage in further Peircean inquiry, or withhold belief, simply because the belief does not satisfy the Peircean requirement that true beliefs "would forever withstand the scrutiny of inquiry . . . ."[109]

Although there is some intuitive force behind the Peircean account which Talisse offers, and it certainly is an epistemically respectable view in its own right, there are alternative epistemologies that are just as respectable

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[103] *See*, e.g., LINDA ZAGZEBSKI, VIRTUES OF THE MIND: AN INQUIRY INTO THE NATURE OF VIRTUE AND THE ETHICAL FOUNDATIONS OF KNOWLEDGE (Cambridge Univ. Press 1998).
[104] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 87.
[105] *See* Edward Zalta, ed., STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2019), https://plato.stanford.edu/archives/fall2016/entries/truth-correspondence/.
[106] *See id.* "Just in case" is technical jargon identifying necessary and sufficient conditions similar to the phrase "if, and only if." In more formal logical notation, this would be indicated by a double-arrow bi-conditional.
[107] These are people whose job it is to identify the sex of baby chicks, and they seem to know the sex of chickens but do not have reasons, or at least good reasons, for holding the beliefs they do about the sex of the chicks. Discussed at length in ROBERT BRANDOM, ARTICULATING REASONS: AN INTRODUCTION TO INFERENTIALISM (2000).
[108] *See id.*
[109] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 97.

that are, at least partially, inconsistent with Peircean inquiry. Thus, there can be epistemically responsible agents that could reject the Peircean view; therefore, Talisse cannot claim that "everyone" is committed to Peircean inquiry and deliberative democracy.

Certainly, Talisse could claim that while all that has been suggested is correct, it does not follow that Peircean epistemic perfectionism can be "reasonably" rejected, and there is an obvious way that this is true. However, notice the claim is not that it could be "reasonably" rejected, per se, but that it could be rejected by "epistemically responsible agents" or "in some sense reasonably rejected."[110] The wording here is important. However, it seems that one could claim that one can "reasonably" reject Peircean inquiry in precisely the way that Talisse thinks that one cannot. Talisse's claim was that in order to reasonably reject Peircean inquiry, one is already committed to the epistemic norms it proscribes, such as offering reasons and evidence.[111] The problem is that a successful argument would require the definition of "reasonableness" or what counts as "reasons" to become so vague and broad that it is trivial. Thus, the virtue epistemologist, the reliabilist, and the correspondence-truth theorist have reasons for rejecting Peircean inquiry, namely that it is false. Therefore, it seems odd to say that offering such a reason is consistent with Peircean inquiry.

The second concern with Talisse's view is that even if Talisse is right about the implicit acceptance of Peircean inquiry, it does not seem that the democratic political organization he envisions is entailed by it. Talisse believes that Peircean inquiry entails a deliberative democracy that not only has the more standard:

> [D]emocratic norms and institutions . . . [such as] norms of equality, free speech, freedom of information, open debate, protected dissent, access to decision-making institutions, access to public education, and so on—there must be norms in place of the sort often associated with radical democratic views, such as norms and institutions that promote participation, inclusion, and recognition. Further, there must be institutions of distributive justice to eliminate as far as

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[110] *See generally id.*
[111] *See generally id.*

justice allows the material obstructions to democratic citizenship. [112]

The problem is that there are other forms of political organization that could allow for epistemic perfectionism that are not only not democratic in the way Talisse describes but may not be democratic at all.

The purpose of Peircean inquiry is to arrive at true beliefs about a wide variety of topics.[113] Further, on the Peircean view one can only arrive at true beliefs if one inquires with others in a community and engages views that are different or contrary to one's own. Thus, all that is required for inquiry to succeed is a vibrant public sphere where such discussions can occur. Hence, the only political arrangement that is necessary for inquiry to be successful is one that allows for just this type of public discussion, and it need not be democratic. Consider the Prussia of Fredrick the Great, as viewed by Kant: "Argue, as much as you want and about whatever you want, but *obey*."[114] Such a circumstance is fully consistent with epistemic perfectionism.[115] After all the community of inquiry is able to aim at true beliefs and be epistemically responsible believers, but they need not have any political power at all—democratic or otherwise. Now certainly, such a society might be unstable, and the vibrant public sphere of inquiry might actually have an influence on political decisions and be broadly democratic in that sense. However, the point remains that one can be an epistemic perfectionist of the kind that Talisse and Peirce think we all are, and still not be committed to a democratic political organization in the way that Talisse thinks we are. In other words, the immanent critique of our epistemic beliefs does not carry across to an immanent critique of our politics.

The final issue that arises with Talisse's Peircean account is that even if one grants that Talisse can answer the other worries, he has not solved the problem that pluralism causes for deliberative democracy. The problem of pluralism is a moral problem, not an epistemic one. The question is not whether one should accept democratic politics because only within a democracy can one be epistemically responsible, but whether the coercive use of power which the polity wields is seen as legitimate by its citizens. So,

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[112] *Id.* at 72.

[113] *See* Zalta, *supra* note 105.

[114] Immanuel Kant, "*An Answer to the Question 'What Is Enlightenment?'*" (1784), http://www-personal.k-state.edu/~lyman/english233/Kant-WIE.htm.

[115] *See* Clanton & Forcehimes, *supra* note 100.

even if citizens can deliberate about what policies should be instituted, and deliberate about them within a community of scientific inquirers, there is no reason to think that a policy that is instituted will be acceptable to all the citizens. In fact, if pluralism is true, there is reason to think that it will not be acceptable to all citizens, precisely because the Peircean conception of democracy "is *not* immediately aimed at agreement or consensus" but instead it "envisions an ongoing agonism between competing reasonable claims . . . ."[116] Importantly, what is missing is a decision procedure; a way to close debate is not possible within the Peircean conception of democracy. Thus, Talisse is forced into a dilemma: on one hand, if a democratic polity has a decision procedure and a way to close debate, even if only for the time being, then it is inconsistent with the ongoing agonism that Talisse envisions. The decision that is reached might be reasonably rejectable by some of its citizens—precisely because there is a plurality of reasonable moral, political, and metaphysical positions a citizen can hold, even if all citizens hold the same epistemic views. On the other hand, if a democratic polity continues in its ongoing agonism of competing claims, then the polity will be functionally worthless since no policy, or very few, will ever be instituted. Either way, the polity will be illegitimate: partially illegitimate in the former case, since not all citizens will see the decisions made and instituted as legitimate uses of coercion, and fully illegitimate in the latter case, since it is doubtful that any citizen would find such a polity acceptable.

In essence, Talisse has not addressed pluralism, but side stepped it.[117] Talisse fails to appreciate the full force of pluralism in another way as well. As articulated by Rawls, the existence of pluralism is a *permanent* feature of free societies.[118] In order to avoid making inquiry futile, Talisse has to deny that pluralism is a permanent feature. Epistemic perfectionism aims at beliefs which are true, in the sense of being indubitable.[119] The existence of a plurality of reasonable comprehensive doctrines gives one a reason to think that there is a reason to doubt all, or any, of them. If this were permanently the case, then at least in many circumstances there would be little point in engaging in inquiry since there could be no rational resolution to such a situation. It is only if a rational resolution is at least, in principle, possible that

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[116] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 90.

[117] *See generally id.*

[118] Rawls, *The Idea of an Overlapping Consensus, supra* note 11, at 4.

[119] *See generally* Clanton & Forcehimes, *supra* note 100.

inquiry could, or should occur. Thus, Talisse is actually denying pluralism, reasonable or otherwise. Indeed, he only accepts that people do hold a variety of beliefs and doctrines, and there is an epistemic benefit to this, namely that it encourages inquiry.[120] Talisse is correct to claim that it might be an open question whether a strong and permanent version of pluralism is in fact obtainable, but in order for one to accept the Peircean account Talisse puts forward, one must *assume* that it does not.

IV.   SOME SUGGESTIONS FOR DELIBERATIVE DEMOCRATIC THEORY

Thus far, the discussion has focused on the expository or critical. However, this focus was in service of a larger goal. By looking at the two forms of deliberative democracy discussed here, and highlighting some of their strengths and weaknesses, it is possible to identify some criteria—or at least some good-making features—for an adequate deliberative democratic theory. In this section of the article, some of these possible features will be discussed. To be clear, this note will not put forward an alternative deliberative democratic account. Rather, it will suggest ways that one can evaluate any deliberative democratic theory. It might turn out that no deliberative democratic theory can satisfy all the suggestions that will be made, but any theory which can satisfy more, would appear to be *ceteris paribus* a better theory.[121]

Again, one of the most important things a deliberative democratic theory must be able to do is be able to cope with the existence of pluralism. Further, whether or not pluralism is a permanent feature of a free society, an adequate theory must be able to both provide normative reasons for citizens to deliberate and be able to justify any policies the polity makes to all its citizens, on the assumption that pluralism *is* a permanent feature. As discussed, Rawls fails on both counts, and Talisse seems to do somewhat better, but ultimately fails.

Related to the fact of pluralism is the issue of what is to be done about persistent disagreement. In a free society of whatever size where there are a plurality of doctrines, values and perspectives, the possibility of consensus and agreement is virtually nil. Therefore, in a democratic society there must be appropriate mechanisms in place to come to decisions but that at the same

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[120] TALISSE, A PRAGMATIC PHILOSOPHY, *supra* note 52, at 72.

[121] *Ceteris Paribus*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *ceteris paribus* as a Latin phase meaning "other things being equal").

time leaves the ability to constantly and consistently reevaluate and reconsider any decisions.[122] Otherwise, the society would be completely unacceptable. This will serve two purposes. First, it will allow for the epistemic benefits which Talisse identified by engaging alternative views to reach better decisions. Second, this will make decisions more acceptable to those who disagree with them, since if they realize that they can continue to argue against a decision, and have the possibility of affecting further decisions, then it does not seem that the decision would be illegitimate in the same way that more permanent decisions might be.

Talisse is right about his ongoing agonism but failed to have the mechanisms in place for coming to a decision. Relatedly, Rawls sought to avoid *modus vivendi* situations.[123] An adequate deliberative theory should not necessarily reject such compromises; in fact, if consensus is unlikely, at times negotiation and compromise might be the best option available. However, certain norms need to be accepted by all citizens for agonism to be fruitful. In particular:

> [I]mpetus needs to be given toward the liberalizing of democracy's tradition of tolerance to more effective protection and integration of minority and non-conformist groups, for the protection of the majority itself against illiberalism, bigotry and cultural conceit, and toward the tempering of the quality of patriotism and sub-group loyalties.[124]

In other words, the main virtue of a democratic citizen is not reciprocity, or civility, but tolerance. Tolerance is a weaker norm and thus more likely to be acceptable. Further, even if Talisse is not entirely correct about the relationship between epistemic perfectionism and epistemic responsibility,[125] he does not seem to be entirely wrong either. Tolerance is what is actually

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[122] Perhaps not unlike some of the things Gutmann and Thompson describe. *See* AMY GUTMANN & DENNIS THOMPSON, DEMOCRACY AND DISAGREEMENT: WHY MORAL CONFLICT CANNOT BE AVOIDED IN POLITICS, AND WHAT SHOULD BE DONE ABOUT IT (1996).

[123] Rawls, *The Idea of an Overlapping Consensus*, *supra* note 11, at 1.

[124] Alain Locke, *Pluralism and Intellectual Democracy*, IN THE PHILOSOPHY OF ALAIN LOCKE: HARLEM RENAISSANCE AND BEYOND 51, 61 (Leonard Harris ed., TEMPLE UNIV. PRESS 1989).

[125] *See* Clanton & Forcehimes, *supra* note 100.

required to get his agonism off the ground and seems to be necessary if alternative views will even be considered.

Tolerance, unlike some of the epistemic norms Talisse considers, is also a moral norm and is thus a better response to pluralism, even if epistemic norms might provide a way for motivating why citizens should deliberate at all.[126] Further, if Talisse is right, it is the epistemic norms of responsible believing that entail tolerance, even if they do not entail democracy. This brings up the next feature of a deliberative democratic theory. Deliberative democrats ought to avoid trying to justify democracy as such; instead, democracy should be assumed on grounds of justice. Any political arraignment that does not allow citizens the ability to affect the decisions that affect their lives is *prima facie* unjust. Only democracy allows all citizens this ability; therefore, only democracies are *prima facie* just. In other words, a deliberative democratic theory should justify itself as a superior democratic theory—democracy itself should be taken for granted. In this way, the deliberative democratic is not fighting on two fronts; defending both democracy, in general, and deliberative democracy.

An implication here is integral to democracy and justice is something like an "all affected principle."[127] Anyone affected by a decision or policy should have some say in that decision or policy. Worded differently, there should be some way to shape those decisions and policies that affect one's life. Notice that if the "all affected principle" holds, then in a deliberative democracy there must be multiple fora where debate can occur, and these fora will be at various levels of political influence—national, sub-national, and transnational. Therefore, an adequate deliberative democratic theory must allow for deliberation about a wide range of issues and cannot be bound to deliberation only within certain pre-determined boundaries—both actual and metaphorical.

One final idea that can be gleaned from Talisse is that the epistemic norms he discusses, and epistemic considerations generally,[128] might provide good reasons for citizens to deliberate, despite the fact that those same norms do not necessarily entail democracy. Thus, by putting democracy and justice

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[126] *See* Zalta, *supra* note 105.

[127] *See* Sofia Nasstrom, *The Challenge of the All-Affected People Principle*, 59 POL. STUD. 116 (2011).

[128] *See, e.g.*, Estlund's epistemic account of deliberative democracy. DAVID ESTLUND, DEMOCRATIC AUTHORITY: A PHILOSOPHICAL FRAMEWORK (2008).

first, the deliberative democrat can then argue for the superiority of a deliberative theory over other democratic theories based on epistemic norms and benefits. In this way, the ideal deliberative democratic theory can include both primarily moral norms such as justice and toleration, and more pervasive epistemic norms as justifications for its overall account.

CONCLUSION

This article has been an investigation of deliberative democratic theory. By carefully considering two particular accounts, namely Rawls' and Talisse's, important insights regarding some good-making features of any adequate deliberative theory were made. By highlighting the inadequacies of Rawls' and Talisse's theories, one can come to understand what the broad outlines of a deliberative democratic theory should be. In particular, any adequate deliberative democratic theory must account for at least three things. First, it should be able to address the problem of pluralism, and the response to pluralism must be both moral and epistemic. Second, while being cognizant of the epistemic benefits of deliberation, moral norms need to play an important role, in particular questions of justice. Third, it must be able to motivate deliberation and account for the legitimacy of decisions across a wide range of issues, sites, and scales of deliberation—which entails on the one hand the acceptability of compromise and negotiation, and on the other the creation of institutions on the sub-national, national, and transnational scale.

Although Talisse's justification for a deliberative democracy was not completely successful, there is something to his strategy that other deliberative democrats should take seriously. The use of an immanent critique of our democratic commitments will prove the best way of defending and motivating a *deliberative* democratic theory. This follows from the suggestion made above, that in one's theorizing one should take a "democracy first" attitude. Then, by investigating what *we* take democracy to be, deliberation, discussion, toleration, an "all affected principle" and so forth should naturally follow merely from the idea of democracy itself. If Talisse proved nothing else it was that justifying democracy, as such, will always run into problems. Interestingly, putting democracy first may solve additional problems, or at least suggest solutions. For example, what counts as *reasonable*, *acceptable* or *legitimate* will be explained in reference to what we understand a democracy should be.

Again, the intention is not to defend a particular deliberative theory, rather, to suggest a way forward for deliberative democracy and to offer some criteria by which particular versions of deliberative democracy may be evaluated. Importantly, these criteria were identified through evaluating other theories, and in that way the criteria are not arbitrary. The features put forth are by no means exhaustive, and it may turn out that no deliberative theory will be able to satisfactorily address them all. To the degree that a theory can, it will suggest the superiority of that theory in relation to others.