

“Democracy and the Digital Public Sphere”¹

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II. Democracy and the Public Sphere

Our guiding conception of democracy is drawn on three central ideas:

1. A democratic society, which means a society whose members are understood in the political culture to be free and equal persons. Such persons have a sense of justice, rightness, and reasonableness; an ability to bring their normative powers to bear on social and political issues, both in reflection and in discussion; and a capacity to act on the results of such reflection and discussion. Along with these common normative powers, persons hold divergent conceptions of the good and competing comprehensive doctrines; they have different interests, identities, capacities, social positions, and resources; and they stand in complex relations of cultural, social, and political power.

2. A democratic political regime, with regular elections, rights of participation, and the associative and expressive liberties essential to making participation informed and effective.

3. A deliberative democracy, in which political discussion about fundamentals of policy and politics appeals to reasons—including reasons of justice, fairness, and the common good—that are suited to cooperation among free and equal persons with deep disagreements. Moreover, the authorization to exercise collective power through the democratic political system traces to such argument.²⁶

These three elements together describe the ideal of a political society whose free and equal members use their common reason to argue about the substance of public issues and in which the exercise of power is guided by that use. The animating idea is to marry broad participation by free and equal members with their engagement about the merits of different courses of public action: to combine mass democracy and public reasoning. This deliberative conception imposes more demanding expectations than either minimalist conceptions of democracy, which emphasize electoral competition (Joseph Schumpeter, William Riker, Adam Przeworski, Richard Posner), or fair aggregation conceptions, which emphasize an equal consideration of interests (Robert Dahl). Those conceptions dominate much current discussion about democracy and digital technology, which focuses on electoral threats.²⁷ While agreeing fully about the seriousness of these threats,

¹ The following is the second section of a chapter by Joshua Cohen and Archon Fung which appears in the book *Digital Technology and Democratic Theory* forthcoming in 2021. The bibliography may be found in the full version of this piece, please email susankennedy@fas.harvard.edu to request the full version.

we focus on what we regard as the best remedy: strengthening the communicative conditions of deeper democracy.

To achieve a marriage of participation and reasoning, political engagement cannot be confined to episodes of voting or lobbying, or even the activities of organized groups. Instead, democratic politics—as a discursive exercise of political autonomy—spills into informal, open-ended, fluid, dispersed public discussions of matters of common concern—discussions that are often created, focused, and expanded in scope by texts and other forms of representation, and that in turn shape public opinion, civic activism, and ultimately the exercise of formal political power.²⁸

To bring these broad ideas about democracy closer to our subject, we distinguish two tracks in democratic decision making.²⁹ The first is the informal, dispersed, fluid, and unregulated exploration of issues in an unorganized, informal public sphere. Such exploration shapes public opinion(s) but does not produce authoritative collective decisions. The second is the formal political process, including elections and legislative decision making, as well as the processes and decisions of agencies and courts. In that formal process, ideally conceived, candidates and elected officials deliberate about issues, make authoritative decisions by translating the opinions formed in the informal sphere into legal regulations, and monitor the administrative execution of those decisions.

These two tracks are complementary. Informal communication in the public sphere provides—when it works well—a close-to-the-ground, locally informed, dispersed arena for detecting problems, exploring them and bringing them to public view, suggesting solutions, and debating whether the problems are important and worth addressing. The flow of information and communication enables problems to be identified more easily, and brought dramatically to common, public attention: think #MeToo or mobilization around gun regulation, the Occupy movement, Black Lives Matter, restrictions on abortion, color revolutions, anti-immigrant activism, or the Sunrise climate movement. To be sure, in all these cases, informal public discussion may be shaped by the mobilizing efforts of parties and public officials, thus qualifying the autonomy of the first track. But there also is, arguably, a significant role for more independent discussion and organized action that is neither prompted by nor organized by formal political organizations or agencies, and that also independently identifies needs, problems, and directions for solutions in nontechnical language.

Formal political processes—elections, legislatures, agencies, and courts—constitute the second track. When functional, they provide institutionally regulated ways to deliberate about proposals, evaluate solutions, and make authoritative decisions after due consideration, thus testing proposals that emerge from open-ended public discussion.³⁰ To focus our discussion, we put this second track aside. To be sure, democracy depends on integrating public discussion and opinion formation (track 1) with formal decision making and will/policy formation (track 2). And they are linked in many ways: what public officials say contributes to the shape of public debate and public opinion. But we focus here on the important challenge of creating public discussion among equals in the informal public sphere.

Think of a well-functioning, informal public sphere, then, as a space for a textually (or, more broadly, representationally) mediated, distributed public discussion in which participants are and are treated as free and equal persons. Because of the textual and representational mediators, members can think of themselves—despite their spatial separations and many differences and conflicts—as participants in common public discussions, which combine mass participation of equals with public reasoning. A well-functioning democratic public sphere, then, requires a set of rights and opportunities to ensure equal, substantive communicative freedom:

1. Rights: Each person has rights to basic liberties, including liberties of expression and association. The central meaning of expressive liberty is a strong presumption against viewpoint discrimination, which means a strong presumption against regulating speech for reasons having to do with its perspective. That presumption protects both the expressive interests of speakers and the deliberative interests of audiences and bystanders by enabling access to fundamentally different ideas.³¹ It also secures the independence of public discussion from authoritative regulation.³² The right to expressive liberty, thus understood, is not designed simply to afford protection against censorship of individual speakers; it is also democracy enabling. Protecting speech from viewpoint regulation helps establish the conditions that enable equal citizens to form and express their views and to monitor and hold accountable those who exercise of power. And it gives participants additional reason for judging the results to be legitimate. As an element in the constitution of the public sphere, the Rights aims, as Meiklejohn says about the First Amendment, to secure “the freedom of those activities of thought and communication by which we ‘govern.’ It [the First Amendment] is concerned, not with a private right, but with a public power”—the power of citizens to make political judgments.³³

2. Expression: Each person has good and equal chances to express views on issues of public concern to a public audience. While our Rights condition requires the absence of viewpoint-discriminatory restrictions on expressive liberty, Expression adds substance by requiring fair opportunities to participate in public discussion by communicating views on matters of common concern to audiences beyond friends and personal acquaintances. Expression requires a fair opportunity dependent on motivation and ability, not on command of resources—to reach an audience given reasonable efforts. But the right to a fair opportunity for expression is not a right to have others listen or for one’s views to be taken seriously.

3. Access: Each person has good and equal access to instructive information on matters of public concern that comes from reliable sources.³⁴ Access is not an entitlement to be informed, because becoming informed requires a measure of effort. Instead, access requires that those who make reasonable efforts can acquire information that comes from reliable sources and is instructive. Reliable sources are trustworthy and reasonable to trust, though of course not always accurate. Instructive information is relevant to the issues under

discussion and understandable without specialized training. Like Expression, Access is a requirement for a substantive, fair opportunity: in this case, a fair opportunity again, dependent on motivation and ability, not on command of resources—to acquire instructive information, as an essential requirement for having equal standing as a participant in free public discussion.³⁵

4. Diversity: Each person has good and equal chances to hear a wide range of views on issues of public concern.³⁶ Unlike access, Diversity is not simply about the opportunity to acquire factual information. It is about reasonable access to a range of competing views about public values—justice, fairness, equality, the common good—and the implications of those views for matters of public concern. Access to information about tax incidence and the implications of changes in incidence for growth and distribution is important, for example, but so are chances to hear different and conflicting views about the fairness of the tax incidence and distributional changes. Diversity is valuable both because exposure to disagreement is important for understanding the meaning and justification of one’s own views, even if those views do not change, and because such exposure provides a good environment for forming reasonable and accurate beliefs.³⁷ Diversity thus confers individual benefits—on speakers, listeners, and bystanders—and arguably contributes to the quality of public deliberation.³⁸

5. Communicative Power: Each person has good and equal chances to associate and explore interests and ideas together with others with an eye to arriving at common understandings and advancing common concerns.³⁹ Communicative Power is a capacity for sustained joint (or collective) action, generated through such open-ended discussion, exploration, and mutual understanding. The Communicative Power condition thus helps to give substance to the equal rights of association contained in the rights requirement.

These five conditions together describe a structure of substantive communicative freedom among equals, essential to guiding our guiding conception of democracy. The freedom is communicative, not simply expressive, because the focus is not simply on speakers but also on listeners and bystanders; it is substantive because of the emphasis on fair opportunities as speaker, listener, and collective actor, not simply on rights against censorship. Equal, substantive communicative freedom is about—but not simply about—protecting people from state censorship, or the censorship of powerful private actors. It is also, more affirmatively, about creating conditions and affordances that enable broad participation in public discussion.

We have presented these five elements of a democratic public sphere very abstractly, but they have far-reaching political, social, economic implications. Equal standing in public reasoning requires favorable social background conditions, including limits on socioeconomic inequality and the dependencies associated with it.⁴⁰ Similarly, the conjunction of rights and expression have implications for concentrated private control of communicative opportunities. We return to these

issues later. We note them here only to underscore that the features that define a well-functioning public sphere, though abstract, are not mere formalities.

Even if these rights and opportunities are in place, however, they are insufficient for the marriage of broad participation with public reasoning that defines a well-functioning democratic public sphere. The success of that marriage is doubly dependent on the norms and dispositions of participants in public discussion. Moreover, this dependence is especially strong—for reasons we explore later—in the digital public sphere.

It is dependent, first, because, those norms and dispositions shape the uses that people make of their fundamental rights and opportunities. Thus, participants might be indifferent to public concerns or to the truth of their utterances. They might disregard the essential rights and opportunities of others or be openly hostile to their equal standing. They might be so mistrusting that they lack confidence that others care about getting things right (especially others with whom they disagree). Or they might be so cynical that they deny any need to get things right or to defend their views with public reasons. Second, sustaining a stable structure of rights and opportunities depends on the norms and dispositions of participants.⁴¹ Noxious behavior in the public sphere erodes the rights and opportunities that others enjoy. For example, online harassment reduces expressive opportunities for targets of that harassment. Thus the double dependence: as sources of substantive success in the exercise of communicative freedom and stability of the essential rights and opportunities.

In particular, three dispositions and norms are important both in constituting a well-functioning, democratic public sphere and in sustaining the enabling structure of rights and opportunities. We do not assume that these norms are legally binding (indeed, we assume that they are not legally binding). Rather, we think of them as parts of the political culture required for a well-functioning democratic public sphere:

1. Truth: First, participants in a well-functioning public sphere understand and are disposed to acknowledge the importance of truth, the norm associated with assertion.⁴² That means not deliberately misrepresenting their beliefs, or showing reckless disregard for the truth or falsity of their assertions, or—in cases in which they know that others are relying on their representations, and in particular when the potential costs of that reliance may be large—showing negligence about the truth or falsity of their assertions.⁴³ Respecting a norm of truthfulness of course does not assure getting things right all of the time or even most of the time. Instead, it shows an effort to get things right, with a recognition that, on most important questions, it is difficult to get things right even when everyone is aiming at the truth. Because uncertainty, error, and disagreement are normal features of public discussion, this norm requires a willingness to correct errors in assertion, particularly when one knows that others have relied on those assertions.

2. Common Good: Second, participants have a sense of and are concerned about the common good, on some reasonable understanding of the common good. “Reasonable

understandings” respect the equal standing and equal importance of people entitled to participate in public discussion. A well-functioning public sphere does not depend on a shared view of justice or rightness or the common good. But it does depend on participants who are concerned that their own views on fundamental political questions are guided by a reasonable conception of the common good rather than a conception that rejects the equal standing of others as interlocutors or discounts their interests. Here, the value of equality is expressed not only in the rights and opportunities that define the structure of communicative freedom but also in the conceptions of justice, rightness, and reasonableness that participants bring to public discussion and that frame their contributions.

3. Civility: Third, participants recognize the obligation—founded on the equal standing of persons and a recognition of deep and unresolvable disagreements on fundamentals—to be prepared to justify views by reference to that conception. Thus, participants do not view political argument as simply serving the purpose of affirming group membership and group identity, much less as a rhetorical strategy for exercising power in the service of personal or group advantage. Following Rawls, we call this obligation to justify the duty of civility. Civility, thus understood, is not a matter of politeness or respect for conventional norms nor is it a legal duty. Instead, civility is a matter being prepared to explain to others why the laws and policies that we support can be supported by core, democratic values and principles—say, values of liberty, equality, and the general welfare—and being prepared to listen to others and be open to accommodating their reasonable views.⁴⁴ Civility, thus understood, is not about manners. Rather, it expresses a sense of accountability to others as equal participants in public discussion.

These conditions are demanding. We lay them out explicitly in order to consider how the existence of a digitally mediated public sphere—in which search, news aggregation, and social media provide important informational and communicative infrastructure—bears on these conditions of a well-functioning democratic public sphere.