Political Judgment for an Agonistic Democracy

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1. The colonization of the economic and political systems by democratic deliberation

With a renewed ambition to salvage Enlightenment's emancipatory promise amidst the rampant social crisis in Europe, the Council of Europe is poised to adopt the Charter on Shared Social Responsibilities (Council of Europe 2011). 'Europe', the authors of the Charter note, 'seeks to secure equal access to fundamental rights, the ideal of universal social protection and a dignified life for all, enabling all individuals to freely develop their personality, retain control over their life, [and] participate in societal choices...' The obstacles to the triumph of social and political justice are identified as those 'major social changes linked to widening inequalities, the loss of jobs resulting from company relocations and technological change in the absence of retraining and product innovation, the rise in employment insecurity for young people, overindebtedness and impoverishment of a growing proportion of households, and ageing of the population', together with the depleted states' capacity to 'fulfill their role of ensuring access to social protection, health care, education, housing and common goods in general' (Ibid., 3).

Democratic deliberations are given here pride of place among the policy tools for tackling the stated deficiencies of justice, as 'shared decision-making based on impartial reasoning' is deemed 'essential in order to guarantee the principles of social, environmental and intergenerational justice' (Ibid., 5). Deliberative policies (which are mentioned 17 times on this 20-page document)[1] are an instrument to 'combat poverty, insecurity, discrimination and widening inequalities in order to further develop and pass on to future generations a universal framework of inalienable and

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1 By comparison, 'equality' is mentioned 3 times in the draft Charter.

indivisible rights and common goods' (Ibid.). Thus, while the document is silent on the social responsibility of public authorities (at national and supra-national level) to provide the socio-economic conditions of justice, it is eloquent in prescribing forms of deliberative politics, emphasizing the need to 'incorporate the negative externalities in economic deliberations' (Ibid.), 'encourage and legitimize new forms of deliberation' (Ibid., 8) and build 'renewed confidence in equitable social progress, on the basis of collective learning processes, deliberative democracy practices and new forms of partnership and multi-stakeholder and multi-level governance' (Ibid., 13). Chapter 2, which prescribes action strategies, names deliberative processes as one of the four envisaged strategies (alongside 'innovation and learning process', 'recognition of stakeholders', and 'forms of governance'—themselves based on deliberative processes). The Charter also makes a proud mention of the Social Cohesion Plan launched by the Council of Europe in 2010, whose purpose is summarized as 'to foster the involvement of citizens and players in defining priorities and responsibilities by means of deliberative democracy' (Ibid., 7).

This document, conceived after broad public consultation at what is regarded to be an international institution with an outstanding democratic legitimacy, gives deliberative judgment a conspicuous centrality. This is suggestive of a significant shift in both democratic theory and policy practice—namely, a shift from the articulation of a distinct policy agenda crafted after a model of justice, with attendant policy measures for implementing it, to focusing on the very process of judgment, and especially deliberative judgment in democratic settings of inclusive dialogues. This faith in the 'mild voice of reason' (Bessette 1994) set in motion by deliberative judgment is commendable. However, unless we provide a robust account of the manner in which democratic deliberations are able to play such an emancipatory role (not least regarding the material conditions of social justice, as the Charter purports), we will have to submit that we might be witnessing the colonization of the political and economic systems by democratic deliberations, in an ironic reversal of Habermas' diagnosis of late modernity's malaise as 'the colonization of the lifeworld by the economic and political systems', a malaise deliberative politics were meant to cure.

In this paper I critically examine the emancipatory potential of deliberative judgment. I begin by identifying three fallacies in authoritative accounts of the emancipatory capacity of such deliberations. I then offer a recasting of the communicative turn in democratic theory in order to specify the conditions under which deliberative judgment can be reasonably expected to have an emancipatory effect. On this basis, I finally clarify the particular policy utility of democratic deliberations.

2. The three conundrums of deliberative emancipation

Let us return to the draft Council of Europe Charter in order to identify the way in which democratic deliberations are expected to alleviate injustice. Deliberations' redeeming power is stated to consist in their capacity to 'reduce inequalities of

power and formulate preferences through reasoning and exchanges of views' (Ibid., 8). Giving equal voice to all affected parties in a process of free reasoning, in which otherwise disadvantaged groups are granted influence through reasoned argument designates the particular emancipatory potential of democratic deliberations—a point of agreement among the various models of deliberative judgment crafted by Jürgen Habermas, Joshua Cohen, Seyla Benhabib, Rainer Forst, John Dryzek, and Iris Young, among the plethora of scholars who have espoused deliberative democracy over the past two decades (as discussed in Knops 2006).

The conceptual flaws of this account of the emancipatory power of democratic deliberations are of three kinds. The first regards the relation between, on the one hand, the normative standard validating a rule and, on the other, the practice of this validation. The normative ideal of power-free deliberations is to allow, purely counterfactually, a judgment on the acceptability of a given norm: decisions on binding norms and rules are only legitimate 'if they *could* be the object of free and reasoned agreement among equals' (Cohen 1997, 73, italics added).

However, the actual process of reason-giving in the social practice of deliberations can never be completely free of power asymmetries and biases related to participants' particular identities. Even if we accept the principle of deliberative legitimacy (measuring up adopted rules against fictional rules elaborated in ideal conditions of deliberation), this normative stance is of little help in designing social policy unless the social conditions of equality and rationality are in place to enable rational dialogues among free and equal participants. However, if these demanding conditions were effectively already in place, the issue of justice would hardly appear—debates on justice start not in the abstract, but when specific social conditions and practices cause experiences of harm against which claims of injustice are advanced. Were the material conditions of justice practically available, deliberations (as procedures for addressing injustice) would be without an object—as grievances about suffered injustice would not emerge.

Let us call this weakness in the account of the emancipatory potential of deliberations the 'ontological conundrum'. This conundrum consists in the fact that, in deliberative theories of justice, the availability of the empirical conditions of justice (such as equality and mutual respect among participants) serves as (idealizing) presuppositions for the legitimacy of democratic deliberations as a normative ideal—what needs to obtain is presupposed to be already there in the very procedure through which it is to be obtained. Thus, when the ontology of a just society (free of political conflict over the justice of social arrangements) is presupposed in normative accounts of justice, a pernicious circularity emerges that puts into question the political usefulness of such theories of justice and judgment. In other words, if our normative goal is a political reality of justice, free of power inequalities, we cannot afford to introduce such a conflict-free political ontology as a constitutive element of the normative theory. The same goes for assumptions about the cognitive and moral capacities of individuals, as deliberative theory commonly prescribes. Such assumption might sound nice, but as Immanuel Kant

has noted in his political writings, they are unsafe when applied to political matters; as he contends, the just political order must be possible to attain 'even for a race of devils'—the categorical moral imperative (or its equivalents regarding the cognitive capacities of individuals) is out of place in such a venture.[2]

The second fallacy in authoritative accounts of the emancipatory power of democratic deliberations concerns the tension between the norms' public acceptance in a process of inclusive reason-giving and their acceptability as just norms (i.e., norms compliant with a universal notion of Right). Let us name this the 'acceptability conundrum'. This problem has been debated at length, without a solution, by John Rawls and Jürgen Habermas in an exchange they held between 1995 and 1997 about the merits of their respective models of communicative public reason.[3] In essence, while they reproach each other that their continued reliance on ideal conditions (such as the 'original position' in the case of Rawls and the 'ideal speech situation' in the case of Habermas) reduces both the democratic credentials and the practical applicability of their models of deliberative politics, they both concede that lifting all restrictions on deliberations would mean equating, unduly, the acceptability of rules as just with their mere public acceptance as binding. The consensual and inclusive nature of rule making alone cannot guarantee the justice of adopted rules.

This persisting tension between the rules' public acceptance and their normative acceptability points to what I have described as 'the paradox of judgment' that is haunting much of normative political philosophy. The paradox is this: the higher we set our normative standards, the more we lose grip on political reality—at the expense of judgment's critical power; yet, the more we weaken our normative criteria for the sake of enhancing the model's political relevance, the more the model of justice loses its critical power and with it—its political cogency. (Azmanova 2012a). Thus, while the abstract ideal of freedom might easily be discarded as unrealistic because all legitimate power implies repression, getting rid of the notion of freedom leaves us without a gauge to establish what is an acceptable form or level of repression.

In deliberative democratic theory the judgment paradox takes the following shape: in order to enhance the democratic credentials of a theory of justice, we must entrust the deliberating public with the design of binding rules. Yet, as practically everything can come out of democratic deliberations, such an approach leaves us without means for a critical stance on publicly approved norms. We need, therefore, independent validity criteria to ensure that justice be not equated with whatever the people might be pleased to endorse. Thus, theorists of deliberative democracy have sought, be it half-heartedly, a recourse to ideal theory (concerning the cognitive and moral capacities of participants, or describing the procedure of deliberation) in order to secure the justice of adopted rules. With such a move, however, the models

2 Kant makes this methodological observation in his essay 'The Perpetual Peace'. Here Kant discusses peace in terms of lack of the reasons for conflict—thus, his object is political justice. He cautions that, in analyses of political phenomena reliance on assumptions about the moral nature of individuals is out of place.

3 The exchange appeared in the following sequence: Habermas 1995, Rawls 1995, Habermas 1998, Rawls 1997.

of justice and judgment become politically unrealistic and therefore—futile.

The third weakness in the account of the emancipatory power of democratic deliberations concerns the type of emancipation that such deliberations are meant to achieve. Even if deliberations were to be conducted in perfect conditions (approximating Habermas' 'ideal speech situation'), giving equal voice to all affected parties would remedy only injustices related to the unequal distribution of power within the model of wellbeing participants inhabit. However, since the procedural conditions of validity concern the elimination of power inequalities, it is far from certain that such deliberations would also be able to address forms of domination related to the very nature of the model of wellbeing—beyond the injustice of inequality and exclusion. I will refer to this weakness as the 'forms of domination conundrum'. Let me explain this more carefully, taking as a point of departure an example.

A gender parity law ensuring a 50 per cent quota for women in politics was promulgated in France in 2001—it obliged all political parties to present an equal number of male and female candidates in elections. The typical justification of the law ran along the logic of equality. As Denise Fuschs, head of the European Women's Lobby put it, 'Human beings are not abstract, they are men or they are women, so having a 50–50 system is a reflection of the way things really are'.[4]

The law is typical of policy measures aiming to remedy the unequal distribution of power between men and women by ensuring their equal access to, and equal positioning within, the political and economic spheres of modern societies. However, the relative success of such strategies targeting inclusion and equality within the model of wellbeing typical of modern capitalist democracies (with its stress on obtaining social status through paid work) has come at a price. Not only has this model of wellbeing remained unquestioned, but, by serving as a telos in women's struggles for emancipation from domesticity, it has gained additional value.[5] In this way, as Nancy Fraser has noted, the struggles for women's access to the labor market has made the feminist movement complicit with the productivist logic of capitalism, giving enhanced legitimacy and impetus to what Luc Boltanski has described as the flexible, 'networked' capitalism of the late twentieth century (Fraser 2009). Struggles for numerical equality among the sexes—be it in the economic or political spheres divert attention away from structural deficiencies inflicting these spheres—the highly elitist nature of recruitment into institutionalized politics in France (as in the earlier example), or the increasing commodification of labour in the case of neoliberal, 'networked' capitalism.

Regulations enforcing gender parity target what I call 'relational domination'—domination resulting from the unequal distribution of power among actors. Injustice, from this perspective, emerges in terms of power asymmetries that allow

4 Quoted in 'French Women Taking Politics into Their Hands', *International Herald Tribune* (Feb. 12, 2001). The European Women's Lobby is an umbrella organization of about three thousand feminist associations.

5 In a similar move, one of the most prominent slogan of the Spanish Indignados (the young Spaniards protesting since the summer of 2011 against the pathological lack of employment) read: 'We are not against the system; the system is against us'.

one group to dominate another, and its remedy would necessitate equalization of power relations. However, relational domination is often but an epiphenomenon of what I have named 'structural domination'—domination to which all social actors are subjected by force of the operative logic of the socio-economic system they inhabit. (Azmanova 2012a, 48). Thus, women who effectively gained access to the labor market were not only subjected to the dynamics of commodification endemic to capitalism, but also reduced the bargaining power of labor by increasing the volume of the labor force (thereby alleviating the threat for obstructing production that labor poses to capital). Thus, while women's exclusion from the labor market is an instance of relational domination, their inclusion would remedy the particular power asymmetry while leaving intact the structural injustice of ever-increasing labor commodification in the context of globally integrated capitalism.

Let me make at this point a meta-theoretical disambiguation. The return of attention I am pleading here to the structural imperatives of the social system does not mean I am taking the side of the system in the tired 'system versus rational action' debate—a position that allegedly leaves no room for agency.[6] To recognize that there are powerful structural factors at work (or systemic logic) is not to argue that actors are prisoners of the iron laws of history. It is rather to help us appreciate the magnitude of the challenge of emancipation.

The political struggle of the Left in the twentieth century has predominantly targeted the relational dimension of domination: intellectually and politically, the critical enterprise was directed against disparities in social status, political voice and access to resources; it has sought to eliminate status hierarchies, economic inequality, and political subordination. When the source of social suffering is detected to be power asymmetries, the equalization of power relations, in order to ensure equal participation in social life, emerges as an appropriate remedy. Emancipation, from this perspective, stands in terms of participatory parity. This is the light in which the emancipatory power of democratic deliberations is usually identified: giving an equal voice to all affected parties in the design of binding for them social norms and political rules would, allegedly, ensure the justice of the socio-political order. However, as the unwitting cooptation of feminist struggles for parity by neoliberal capitalism signals, we cannot be confident that combatting relational domination necessarily entails uprooting structural domination.

It might be that democracy is constitutively prone to over-stating the relational forms of domination and overlook the structural ones. To the extent that equality

6 At its best, this line of critique is displayed in Axel Honneth's discussion of Foucault and Habermas where he observes that Foucault's systems-theoretic analysis of power leads him to view power is an all-embracing and self-perpetuating property of the social system rather than as the product of the struggle among strategic actors. In contrast, he endorses Habermas' concept of communicative interaction among rational agents as a way out of the philosophical-historical dead-end of systems theory (as well as of critical theory infected by Adorno's negativism). (Honneth 1991). Although analyses directed at system/structure vs. rational actor explanations of humanity's predicament have a good propaedeutic value (as introductions to complex analyses), I consider the structure-agency debate to be based on a false dichotomy and therefore not to be of great use analytically.

of citizenship is definitional for democracy, democracy is naturally averse to inequalities—these are constitutively a threat to the social order of democratic societies, especially of liberal democracies whose main pledge is to equality of liberty. Moreover, with the recent advent of deliberative democracy (since the 1980s), 'for contemporary democratic theorists, democracy is largely a matter of deliberation', as John Dryzek (2005, 218) has observed. Having emerged within democratic theory, conceptualizations of deliberative judgment thus inherit the former's exclusive concern with power-equalization, rather than, say, with the political economy of capitalism and the operative logic of profit creation which are sources of structural domination beyond disparities of power.

In what follows, I will propose strategies for addressing the three conundrums in the account of the emancipatory power of democratic deliberations. In other words, we need to account for the emancipatory potency of deliberative judgment (1) without a reliance on ideal theory describing the conditions of deliberation, (2) while solving the tension between the acceptance of thus adopted rules and their acceptability as being just, (3) as well as clarifying the capacity of deliberations to unveil the common structural sources of conflicting grievances of injustice.

3. Solving the ontological conundrum: getting rid of ideal theory

The ontological conundrum consists in the latent existence of a conflict-free political ontology under the guise of idealizing presuppositions (e.g. about the rationality, equality, or authenticity of participants) describing the conditions of validity of adopted norms and rules. While such idealizing presuppositions do effectively secure the normative rigour of a theory of justice, they diminish the theory's political usefulness (the 'paradox of judgment' curse mentioned above)—as all battles over the justice of the shared social order are permeated by power inequalities and valid (and often valuable) differences, the sterile ideal conditions demanded by a normative theory render it politically inapplicable, if not dangerous. As Richard Rorty has put it, abstract foundational principles in ethics look bad because 'they never helped anyone who actually had a difficult problem, and all they could possibly do is just serve to abbreviate a set of moral intuitions' (Rorty 1998, 15).

As a matter of methodological lucidity, therefore, a theory of political judgment should not allow, be it inadvertently, its normative goals to permeate its ontological premises (as is often the case in deliberative theories of democracy).[7] In other words, as welcome as notions of individual autonomy, rationality and equality might be in their role of normative standards, they should be explicitly excluded from the theory's underlying political ontology. We cannot postulate the ontological existence of free and equal individuals as premises in the model of deliberative justification

7 In the case of Habermas, the 'idealising pressupositions' about a conflict-free political reality that are implicit in the 'ideal speech situation' are a logical consequence of the requirement for immanency of critique (itself constitutive for critical theory of Frankfurt School pedigree), which compels Habermas to draw normative criteria from the necessary presuppositions underlying the human practices of (non-strategic) communication oriented towards mutual understanding. I cannot expound further on this here. (See Azmanova 2012a, Ch. 2).

if autonomy and equality are to be desired outcomes of judgment. Solving the ontological conundrum would therefore require abandoning ideal theories of justice in favour of a realistic political ontology. (Or, in a less radical move, combining a minimally deontological notion of justice—for instance, what Rainer Forst has conceptualized as 'the basic right to justification' (Forst 2010 & 2011), with a realist ontology of politics.) Such realist ontology rests on a notion of political dynamics as being activated by conflicts over society's normative order—conflicts that are themselves rooted in individuals' embeddedness in a social reality of inequality and domination.

To avoid a misunderstanding: I am neither refuting the normative validity of 'ideal' theories of justice, nor am I espousing an account of social interactions as exclusively a matter of conflict, rather than cooperation. In tune with Kant's warning against the unsafe nature of idealizing presuppositions (irrespectively of their veracity), I am advocating an espousal of an antagonistic model of politics (Kant's 'race of devils') for methodological reasons—for the sake of avoiding the futile circularity of achieving our normative aspirations simply by means of allowing these aspirations to describe the conditions of achieving them. It is in this sense (as a matter of methodological lucidity, as I noted) that I propose to replace the unsafe idealizing presuppositions about a conflict-free political reality underlying the process of justification, with a realistic ontology of radical, antagonistic conflict, generated by antagonistic social positions within which actors interact and make sense of their world.

Not only is the cleansing of power asymmetries, particular identities and cognitive biases from the process of deliberation impossible, it is also undesirable. These partialities and biases are often exactly what is at stake in grievances about injustice.[8] If we put aside interests and partialities as 'biases' to be neutralized by appropriate procedures and principles, the normative theory is bound to render itself politically irrelevant—those biases are part of agents' self-understanding and motivate their entering justice debates in the first place.

The endorsement of a political ontology of radical conflict changes the purpose of the inquiry—we should be able to account for the emancipatory power of deliberative justification from the premises of a non-ideal world in which social dynamics of cooperation-within-conflict trigger the political dynamics of norm-contestation (Azmanova 2012a, Ch1). It is the contestation of the norms stabilizing the conflict-ridden social order that prompts justice debates in the first place.

Here a clarification is in order concerning the relationship between politics, governance, and the proper function of judgment. The political (in French *le politique* rather than *la politique*) originates in conflicts over social practices and norms; politics is the management of such conflicts. In contrast, governance is the

8 As Seyla Benhabib has argued against the Rawlsian move to exclude the 'background culture' from the sphere of public reason's operation, grievances related to background culture (such as identity recognition related to religious belief, gender, ethnicity, sexual orientation) can be urgent issues of justice (Benhabib 2002, 108-112).

realm of (conflict-free) application of norms agreed as binding. Political judgment is the bridge between the realm of the political and the realm of governance as, via a process of norm-construction and norm-validation, judgment puts an end, be it provisionally, to political contestation, thus enabling the transition from politics to governance (Azmanova 2012a, 23).

This transition from the realm of conflict to the realm of rule implementation passes through contestation of the normative order of society in which all concerned parties are mutually involved. This is valid even for societies marked by radical conflicts because, as John Dewey often noted, debates on justice do not start in the abstract—the question of justice only arises in normative conflicts within shared practices, when the norms governing these practices are challenged as being unjust (Dewey 1969). Even deeply divided societies are constituted by social practices in which participants are involved with each other in dynamics of cooperation-within-conflict. The conflict itself is a political engagement within a social relationship. Any contestation of the shared social order entails judgment, on the part of all concerned parties, of the practices and rules that are being contested.[9]

Deliberative judgment, from such a 'realist' point of view, is not a tool for crafting a consensus on just norms but rather a mechanism allowing actors holding antagonistic positions to enter into a dialogical contestation of the existing social order. This contestation is prompted not because of some deontologically postulated right to justification, but because the very mutual entanglement of actors in shared social practices necessitates their engagement in a contestation and defence of the social order they inhabit—thus, the impulse of mutual justification is contained in the fact of radical conflict within shared social practices. (It is in this sense that what Forst has described as the 'right to justification' can be derived as an idealizing presupposition of social practices and attendant political dynamics of conflict).[10] I will come back to this point in order to account for the transition deliberative judgment enables from antagonistic conflict to agonistic pluralism in complex modern democracies.[11]

4. Solving the acceptability conundrum: a negative ideal of justice

The fallacy I named 'the acceptability conundrum' stems from predicating the validity of norms on consensus—consensus that tends to equate the norms' acceptability with their acceptance, thereby eliminating the critical distance towards validated norms. Habermas and Rawls undertake to solve the tension between the factual

9 Radical disruption rarely leads to normative changes exactly because of the lacking mutual engagement among all the parties in a conflict.

10 For such 'sociological' grounding of the right to justification see Azmanova 2012b.

11 I follow here Chantal Mouffe's position that the main task for democracy is to convert antagonism into agonism, enemies into adversaries, fighting into critical engagement. However, while she holds that deliberation is unfit for such a task because it is incapable of processing deep difference, in my account deliberative judgment can be one such transformative mechanism (of antagonism into agonism). See Mouffe 1999; 2000a; 2000b.

acceptance of rules and their acceptability (as being just) by stipulating that the consensus in question needs to be achieved under demanding ideal conditions. This solution, however, leads to the 'judgment paradox' discussed above—a heavy load of ideal theory is introduced to secure the acceptability of norms, which renders the model of judgment politically unrealistic and therefore useless.

The acceptability conundrum could be solved by means of redefining the normative goals of critique. I propose shifting the normative perspective from defining and achieving justice (in the abstract terms of moral universalism) to effectively addressing injustice. From a critical theory perspective[12], addressing injustice is a matter of achieving emancipation from structurally produced oppression in order to liberate human beings from the particular circumstances that enslave them (Horkheimer 2002). Hence, the emancipatory goals of deliberative politics are to be delineated not by the habitual liberal vision of an unencumbered, autonomous self, but in terms of individual and collective emancipation from structurally generated, historically specific conditions of domination, thematized as injustice in actors' grievances of suffering.[13]

The notion of emancipation, thus redefined, entails also a revision of the standard of validity for assessing adopted norms and rules. Rather than postulating the ideals of a just society on which a consensus is deliberatively either produced or achieved (in the various formats of deliberative public reason), the validity of policy measures can be assessed in terms of the extent to which they alleviate suffering—i.e. the extent to which they are an effective response to the social suffering that has sparked the debates of justice.[14]

Within a model of judgment guided by the principle of critical relevance, gender equality provides poor justification to the French law on gender parity in politics—to take the example already used. This is the case because gender is not relevant to the distribution of political office, in the way, for instance, citizenship or age is. However, the law finds stronger justification when its validity is tested on grounds of the alleviation of (social) harm. From this perspective, the proper normative grounds for the French parity law would not be the allegedly 'natural' equal ratio of men to women. The law is justified to the extent that it provides a solution to a situation of historical injustice in French society—namely the systematic marginalization of

12 I have in mind here critical theory of Frankfurt School origin, which is ultimately concerned with the sociostructural dynamics of injustice, that is, dynamics concerning the structural sources of political order.

13 These grievances cannot be taken on their face value; their status is only as an empirical entry point of critique. I cannot address here in detail the dynamics of immanent critique, which I have discussed in Azmanova 2012c.

14 I have named this the 'principle of critical relevance' as it corresponds to the urgent nature of the political from which debates on justice originate. This principle specifies the epistemic basis of validity of norms. It is neither the 'true' and the 'rational' (Habermas) or the 'reasonable' (Rawls) but the 'critically relevant': what divergent evaluative perspectives see as relevant in the critical sense of qualifying as an object of as an object of disagreement. This allows the issue of justice to be approached hermeneutically (i.e., as a question of injustice). The idea of relevance I advance implies a correspondence between the principles that guide practices, on the one hand, and, on the other, specific societal concerns of injustice, concerns that critically (as opposed to instrumentally) motivate these practices. See Azmanova 2012a, 194.

women in the labor market, including in politics.[15] However, the principle of critical relevance would deprive a gender parity law of validity, should such a law be adopted in a context that has not been stained by gender discrimination. Moreover, when deliberative judgment is guided by the principle of critical relevance, it will be led to examine not the numerical inequality between men and women, but the way gender has become relevant to the distribution of political office—namely via a historically specific pattern of exclusion and power asymmetries (relational domination).[16] This questioning of the way claims to justice achieve political relevance would then bring to the light the fact that power inequalities between men and women in the distribution of public office are akin to other forms of relational domination that the law in question obliterates—for instance, the limited access of citizens of North African origin to professional politics in France, despite them constituting a numerically significant minority among French citizens. Thus, while the original grievance of gender discrimination serves as an empirical entry point of critique into dynamics of reasoning that would lead to the discovering of a broader pattern of injustice.

The change in the normative grounds of validity (along the principle of 'critical relevance') goes hand in hand with a change in the epistemic grounds of discursive agreement and disagreement. Here I come to the clarification of the possibility for antagonistic positions to enter into a dialogical contestation of norms. For a normative contestation to be at all possible, the parties to the conflict must be in agreement on what are the relevant issues of disagreement. The possibility for competing claims to justice to enter into dialogue does not imply a prior substantive consensus (as thin as it might be) on valid rules, rather, it implies an overlapping shared understanding of a cognitive nature—a shared understanding of the meaning of disagreement—what Arendt calls a 'consistency of arguing and reasoning'.[17] Due to their involvement in shared social practices (be it from antagonistic positions) actors develop what I have described as 'orientational phronesis'—the practical wisdom that allows them to discern issues as being relevant to public life. On the basis of shared orientational phronesis, the particular objects of judgment that are introduced via the various grievances of injustice appear to participants as significant

15 In 1995, then Prime Minister Alain Juppé dismissed eight of the twelve women ministers he had hired six months earlier. This act drew attention to the status of women in politics, making this a relevant issue for debates on justice. The highly visible gesture of disrespect for women in politics created a public feeling of injustice to which the law, passed in early 2001, was a reaction. It was not an act of the 'discovery' of an authentic situation of numerical equality among men and women.

16 Often the right to be elected preceded the right to vote as the former was granted to women from the ruling upper classes. Among the most ardent opponents of woman suffrage in Spain were two female deputies (Margarita Nelken and Victoria Kent), who argued that giving women the vote would endanger the Second Republic because, they claimed, women in Spain at that time were too ignorant and immature to vote responsibly. This reveals that power asymmetries based on gender masked asymmetries based on class (as women from the upper classes could run for public office).

17 'If [. . .] we assure ourselves that we still understand each other', writes Arendt, 'we do not mean that together we understand a world common to us all, but that we understand the *consistency* of arguing and reasoning'. (Arendt 1993, 96, italics added).

(noteworthy) issues demanding their judgment. Thus, deliberations proceed as making-sense-in-common, engendering an emergent (in the course of deliberations) shared understanding of what is at stake—a shared perception about what qualifies as a valid grievance. The early stages of deliberations usually establish such a shared matrix of relevance.[18] The tacit articulation of what is critically relevant (noteworthy) is in this sense constitutive of the public sphere; it demarcates it.

Grievances of injustice, from which debates on justice usually originate, are able to become a focus of debates on justice because such grievances put to question what 'public sense' (in Arendt's terms) holds to be of critical relevance for the public engaged in discussions of justice—issues that radically challenge and risk to destabilize the normative order of society and, thus, claim public attention. Typically, this process begins from a specific claim to injustice regarding a society's constitutive rule and proceeds as a generalization of the scope of applicability of that grievance.

Let me illustrate this process of generalization with another example of legal battles in France—those which lead to the adoption of the law on registered partnerships (Pacte Civile de Solidarité) in 1999. Homosexuals' claims to the right to marry triggered a significant debate in France in the late 1990s. The grievance which generated the debate was that denying gay men the right to marry had entailed a symbolic devaluation (through exclusion) of homosexuals, and entailed economic losses for them as they were denied the economic advantages that married couples legally have. These claims focused public attention in an urgent manner as basic, socially constitutive, norms (regarding family life) were being questioned. Within a year the debate changed its terms, as non-married heterosexual couples voiced the grievance that they were also being denied social recognition (of their commitment to each other), as well as economic advantages. The terms of the debate were thus generalized as the claim to injustice found its range of relevance beyond the homosexual/heterosexual dichotomy, thus evolving into the justice claim that any two people who have undertaken a commitment to each other in forming a family (irrespective of sexual profile) should benefit from all of the legal rights that a marriage certificate confers.

It was deliberative judgment (as the case was debated in a series of deliberative forums) that transformed the initially antagonistic positions regarding marriage into an agonistic pluralism of compatible (in their shared understanding of the matter as an issue of justice) views that, in a process of 'making sense in common' converged in their efforts to find a solution to what came to be seen as a general pattern of injustice surpassing the initial grievance that had triggered the debate. The outcome of these debates was not a consensus on a distinct norm vested in the law of registered partnerships; public deliberations' outcome was the articulation of the need to revisit the notion of the family and its legal status, as well as the articulation of the basis on which public authority was to act—namely, not remedying an injustice to homosexual couples, but providing non-exclusive terms of legal protection to

18 Which I have described as a 'phronetic constitution of public reason' (Azmanova 2012a, 157-166).

the family. On the basis of such an agreement, deliberatively generated, the French parliament then adopted the Pacte Civile de Solidarité.[19]

What does that tell us about the nature of public deliberations and their status among the policy instruments used in liberal democracies? Deliberative reasoning about the justice of contested norms of social cooperation does not, and need not, result in a consensus on binding rules. Such reasoning resolves normative disagreement of two types—(1) disagreement over what are relevant policy concerns and (2) what are the valid grounds for public authority's making policy decisions—the right grounds on which public authority can act. It is in this way that deliberative judgment functions as a mechanism transforming the antagonistic positions of conflict (from the sphere of the political) into an agonistic mutual engagement in a dispute over the proper normative grounds for policy action.

5. Solving the 'forms of domination conundrum': agonistic judgment

The 'forms of domination' conundrum concerns the tendency to seek the emancipatory power of deliberative democracy exclusively in terms of power equalization and inclusion. This, as I noted, obscures what I described as 'structural domination'—the actors' subordination to the operative logic of the system, domination to which are subjected also the winners in the relational distribution of power.

From a critical theory perspective, normative criticism is not just a matter of continual contestation of binding norms and political rules for the sake of equality and inclusion, but is above all a matter of disclosing the sociostructural sources of injustice. This means that the emancipatory power of democratic deliberations should be sought also in their capacity to disclose the common structural sources of injustice behind antagonistic claims to justice. Can deliberative agonistic judgment, thus understood effectively disclose to participants the deep structural roots of their seemingly incompatible grievances?[20]

Drawing on empirical research on deliberative polls, I have argued that democratic deliberation can effectively bring to public visibility the structural sources of injustice (Azmanova 2012a, Ch.9). The mechanism of such a deliberative disclosure of structural domination is different from what Habermas has described as 'the better argument' dynamics of justification—a process of mutual reason-giving that generates a consensus on basic rights. Instead, I discern a process of critical justification I call 'rendering account'. How does this work?

It is exactly because deliberations are invariably marked by participants' social identities that the mutual reason-giving takes place as intersubjective (rather

19 Eventually same-sex marriage became legal in France on 18 May 2013 when the law was promulgated after the Constitutional Council upheld it against the challenge mounted by the conservative UMP party.

20 My account of deliberative judgment's applicability in situations of antagonistic conflict is akin, in spirit, to John Dryzek's (2005, 218). However, while he is concerned with deep-seated identity conflicts, my concern is with what I have described here as structural domination and issues of social justice underlying identity conflicts.

than interpersonal)[21] dynamics of interaction between social subjects, subjects differentially positioned within the structure of social relations, but mutually related through this structure (as are employed and employers related in the dynamics of employment). To the extent that public deliberations involve the full range of socio-cultural diversity in society, they can be regarded as giving expression, in a dialogical form, of the larger dynamics of social interactions taking place in societies. Thus, the only procedural requirement is that of the full representation of society's socio-cultural profile (which in deliberative polls is ensured by random representative sampling). Such representation would enable the disclosure of the full range of social antagonism.

In the modus of 'rendering account', mutual justification proceeds as a process in which claims are directed inwardly, so to speak: participants do not present arguments in defense of their positions, they give account of the reasons for the positions they hold by disclosing their experiences of injustice. Thus, actors disclose the reasons for having reasons, that is, the second-order reasons related to who these actors socially are, reasons related to a person's position in the distribution of social status.

In this way 'rendering account' discloses the link between what Pierre Bourdieu called 'prise de position' and 'position': one's taking a position in a dispute, and one's social position.[22] In this process participants come to realize how their particular social positioning vis-à-vis one another in the structure of social relations is at the root of their disagreement. Ultimately, by disclosing the relational nature of the competing claims to justice, this process is likely to generate an understanding among participants of their mutual entanglement in the socio-structural production of injustice, thus allowing them to gain a view of the larger parameters of structural domination, irrespective of where they might be standing in the stratified distribution of power.

This understanding of agonistic judgment changes the status of democratic deliberations. Their function consists in enabling access to what I called the 'structural' dimension of domination by triggering a disclosure of the social origin of lived experiences of suffering. Due to these dynamics, the public sphere becomes a space for communicative enacting of social conflicts. It is here that antagonistic positions transform into agonistic relations, rooted in the shared awareness of the way agents are similarly subjected to forms of structural domination.

6. Conclusion: on the emancipatory potential of agonistic judgment

I offered a recasting of the communicative turn in democratic theory in which the (counterfactual) reliance on ideal conditions of deliberation is substituted by an account of the very social hermeneutics of justification in the clash of antagonistic

21 Not interactions among individuals as unique persons, but as social subjects (marked by their particular place in the distribution of social competences).
22 He uses this distinction is a number of works. See, for instance, Bourdieu 1979.

positions contesting society's normative order. The emancipatory vocation of democratic deliberations in the modus of 'agonistic judgment' I adumbrated consists in the following: deliberations are to enable a disclosure of the way patterns of relational dominations are rooted in a larger pattern of structural domination, and to give, accordingly, a binding mandate to public authority for policy action against structural domination. Deployed in contemporary debates on justice—from gender inequality (the subordination of women in the workplace) to unsustainable growth (entailing both economic inequalities and ecological degradation)—such deliberations are likely to make it clear that neither proper inclusion of women in the labour market, nor remedial distribution of income, could be cogent solutions to the current social malaise of capitalist democracies.

Seemingly unrelated, and often mutually opposed, grievances of injustice form cognitive connections in the course of public debates—connections shedding a light on their common origin in the operative logic of the social system. It is unlikely that, when the negative externalities of production are included in economic deliberations, as the draft Council of Europe Charter on Shared Social Responsibilities prescribes, this will result in more than an increase in the products' price. However, if grievances of environmental degradation are pitted against those of developing nations' urgent need for economic growth, the very clash of seemingly irreconcilable claims is likely to draw out from the shadows of disagreement the compelling demands of globally integrated capitalism—which not only pillages nature, but defines what a valid need is—e.g. the purported needs of developing nations for urbanization and mass-scale agriculture as propagated by development aid policies.

This account of deliberative judgment is more strongly focused on the practical process of conflicting contestations of the social order, than on delineating the ideal conditions of consensus-building. With this, it has a better chance to satisfy the double imperative for political realism and social criticism.

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