

## Deliberation verses outcome: a procedural dilemma for committees

Lloyd J. Carr

Dept. of Philosophy

Rivier University

Website: <http://www.rivier.edu/faculty/lcarr>

### **1. The problem**

Deliberation, not just the opportunity to deliberate, is thought to be one of the core activities of the democratic process.<sup>1</sup> To count as democratic a group, whether it is a legislative body, a jury, a panel of experts, a committee or an informal gathering, cannot have its judgments imposed upon it by some external source, its judgments must result from a process of deliberation among its members (as messy as this process might be). In what follows, we will consider how difficult it is, perhaps even impossible, to achieve the ideal of democratic deliberations under a set of natural conditions that are needed to characterize any group as both engaged in deliberation and keeping to democratic guidelines. While we will focus on the case of a committee, using it as an informal model by which to explore these conditions, the problem will be readily seen as applying to democratic deliberative bodies in general.

Suppose a committee (either standing or ad-hoc) is charged with determining which individuals qualify to receive a given benefit or harm. For example, think of a college committee that must judge which of a group of college students are to be expelled and which given a suspension for violating college rules; or think of a committee within a corporation that must determine which of a number of high school students are to receive college scholarships from the corporation. How would such a committee proceed to carry out its task?

One step would involve the committee forming or accepting a set of criteria by which candidates could be judged to qualify (or not) for the benefit or harm. Another step would involve the committee applying these criteria to the individuals who make up the pool of candidates in order to discover those who satisfy the criteria, and thus qualify for the benefit or harm, and those who don't. But describing these steps this way leaves the process conceptually unclear, for the term "the committee" is ambiguous. It might mean "the members of the committee" who do the forming or accepting, the applying and discovering, for it is the members who, after all, do this work and thereby carry out the task with which the committee is charged. Or "the committee" might mean the aggregate of its members, the single entity (typically represented in the person of its chair) that announces the unified judgments or consensus its members have arrived at concerning their task. To describe our imaginary committee's activity clearly, this ambiguity should be removed.

The revised descriptions of the steps, then, are: (1) the *members* of the committee must come to an agreement or consensus about a set of criteria by which candidates could be judged to qualify (or not) for the benefit or harm. (2) The *members* of the committee must apply the criteria to the individuals

who form the pool of candidates in order to discover those who satisfy the criteria, and then (3) come to an agreement or consensus as to those who qualify to receive the benefit or harm. We can see in these revised descriptions that an important part of the committee's work is to collect the individual members' reasoning into an aggregate or group judgment about the individuals being considered; that is, a *committee judgment* must be formed on the basis of each member's judgment as to which candidates qualify for the benefit or harm.

It is commonplace to use the term "deliberation" to refer to the process of the committee's members forming their individual judgments and then coming to a consensus by aggregating the members' individual judgments. Typically, deliberation will involve some disagreements, some compromising, and some efforts at persuasion on the part of committee members. Ideally, this activity will be reasoning interaction among the members, deliberation being a process of reasoning. In addition, deliberation of necessity will include an acceptable method of combining the individual judgments of the committee members into coherent group judgments concerning the candidates who are to receive the benefit or harm. A widely used example of such a method is the principle of majority rule: the committee's judgment will be the judgment of the majority of its members.

It is likewise common to use the term "outcome" to refer to the committee's official judgments about which candidates qualify (or not) to receive the benefit or harm at issue, in-so-far as these judgments have resulted from the committee's deliberations. Outcomes might be definitive or might have only recommendatory value; they might be provisional (perhaps pending another committee's review) or final. The important point here, however, is that we link outcomes to deliberation; we will think of committee outcomes as having been generated by the process of deliberation taking place among the committee's members.

So far, what has been said will appear familiar and straightforward to anyone who has served on committees or other deliberative bodies, but let's look closer. Consider the following case. Suppose a college committee has three members: the Dean (D), a Faculty member (F), and the Registrar (R). They must decide which graduating seniors are to receive a graduation prize; call this committee the "Prize Committee." The college has well-established criteria for receiving the prize: (1) a graduating senior must have earned at least an overall A- average academic grade; (2) a graduating senior must have written an outstanding senior thesis; (3) a graduating senior must have participated in at least three significant extra-curricular activities. A graduating senior, then, will receive the prize if and only if these three criteria are met (that is: the criteria are both necessary and sufficient conditions for receiving the prize).<sup>2</sup> The Prize Committee unanimously accepts these criteria. This Committee's task, then, is twofold: first, to deliberate (that is: for each graduating senior its members will each use these criteria to discover which should receive the graduation prize, and then combine their separate findings to form a consensus or Committee judgment); second, to produce an outcome (that is: for each graduating senior it will officially recommend awarding or denying the prize). Suppose further that the Prize Committee unanimously agrees procedurally to use majority rule as the method of aggregating the judgments of its members concerning any given candidate into a single Committee judgment about that

candidate. Finally, suppose that each Committee member’s judgment has equal weight when counting the majority.

Our hypothetical Prize Committee clearly displays the characteristics we have come to associate with a democratic deliberative body. First, each member’s judgment contributes equally to the Committee’s judgment concerning any given candidate for the prize (i.e., the equality or “one person, one vote” principle). Next, the Committee’s members individually are free to form any combinations of judgments about a candidate’s satisfying the criteria (i.e., a plurality of judgment profiles is allowed). Last, the Committee’s outcomes will depend only on the process of deliberation among its members concerning the Committee task; the outcomes will not be imposed on the Committee by an external source (i.e., the Committee’s judgment will be formed by majority rule, allowing minority opinion to be counted).

Now imagine that the Prize Committee is considering graduating senior S (call her “Sarah”) for the graduation prize. Let’s suppose that each member sees that S has achieved at least A- overall grade average. Thus, by unanimous agreement the Prize Committee judges S to have satisfied criterion (1). But with respect to criterion (2), D (a former member of the English Department) has strong reservations about S’s senior thesis; it’s good but not outstanding in her eyes. The other two members, however, judge S’s thesis indeed to be outstanding work, but they fail to get D to change her judgment. Nevertheless, by a two-thirds majority S meets criteria (2). There is, likewise, a controversy about S’s satisfying criterion (3); in this case it is R who has misgivings. He believes that only two, but not three, of S’s many extra-curricular activities were significant. The other two Committee members disagree, believing that S easily meets criterion (3). Again, by two-thirds majority the Prize Committee judges S to meet criterion (3). The Prize Committee, then, accepts the college’s criteria for receiving the graduation prize, and by the process of deliberation arrives at the collective judgment that S satisfies all three criteria, but now must announce the outcome: S fails to qualify for a graduation prize. Something has gone wrong. The very conditions that safeguard the Committee as a mini-example of deliberative democracy “at work” seem to lead to an inconsistency.<sup>3</sup> The following table makes this clash between deliberation and outcome clear.

The Prize Committee’s evaluation of S:

	college’s criteria accepted: criterion (1) & criterion(2) & criterion(3) ↔				prize
F:	yes	yes	yes	yes	yes
D:	yes	yes	no	yes	no
R:	yes	yes	yes	no	no
Majority:	yes	yes	yes	yes	no

Deliberation yields a consensus that S satisfies all three criteria for the prize, yet two out of three members must individually conclude that S should not receive the prize. This yields a majority Committee outcome: no prize for S. Yet the Committee accepts the college’s rule: a graduating senior

receives the prize if and only if all three criteria are satisfied. Each Committee member individually deliberates well; each reasons consistently. On the collective level, however, the Committee reasons inconsistently. And yet the Committee's reasoning is just the majority of the individual members' reasoning.

This problem, known in the literature as the "discursive dilemma," is a paradox that is thought to strike at the very heart of deliberative democracy.<sup>4</sup> It can arise in any number of deliberative bodies in which a collective judgment or belief is to be formed on the basis of the judgments or beliefs of "the people." It is thought to reveal a fundamental irrationality in the deliberative democratic process of going from individual to collective reasoning, in the same way that the voting paradox (with which it shares some structural features) is thought to reveal a fundamental violation of preference rationality in certain voting procedures (Brennan 2001, especially section 7). The discursive dilemma has proved remarkably resistant to a variety of attempts to deal with it, each having its own uncomfortable consequences. In what follows, we will review the major attempts to avoid this dilemma, pointing out in each case why the "solution" leads to its own set of unacceptable problems.

## **2. Solutions?**

In diagnosing the problem, it looks like the clash between deliberation and outcome is actually a conflict between two rules: the college's criteria for the prize and the principle of majority rule used to arrive at aggregate judgments from the separate diverse judgments of the Committee's members. Nothing else seems to be at work in generating the dilemma. Assuming this to be correct, there are only two possible ways to try to avoid the problem: (1) the criteria for the prize might be restricted or weakened to the point at which they no longer conflict with majority rule, or (2) majority rule might be restricted or weakened to the point at which it no longer clashes with the original criteria for the prize. If one or the other (or both) can be achieved, then we will have a general strategy by which deliberation and outcome can be brought into consistent mutual accommodation. The question is: will we have to sacrifice too much to achieve this accommodation?

### **2.1 Tinkering with the criteria**

It should be clear that adding more criteria for the prize will not solve the problem. Add a 4<sup>th</sup>, 5<sup>th</sup>, ..., n<sup>th</sup> criterion and whether S satisfies each addition by unanimous agreement or by a majority, the inconsistency involving the original three criteria remains. Enlarging the requirements for the prize only increases the number of ways the dilemma can happen.

Suppose we reduce the number of criteria. Let's start with just one; the college's rule might say: a graduating senior receives the prize if and only if an outstanding senior thesis has been written. In this case, the Committee's outcome judgment about a student receiving the prize must always agree with

the Committee members' deliberations. It is no longer possible for the two to clash, for in this case the result of deliberation is already the outcome. Here we have a solution.

What happens if there are two criteria for receiving the prize? Let's drop (3). Now imagine that with respect to criterion (1) F has a problem with one of S's grades (it might be for a non-academic course) and refuses to count it when calculating S's average academic grade (bringing it in her eyes to below A-), whereas D and R have no problem counting it but can't convince F to change her position. As before, D judges no for criterion (2). The discursive dilemma reappears.

The Prize Committee's evaluation of S:

	college's criteria accepted: criterion (1) & criterion(2) $\longleftrightarrow$			prize
F:	yes	no	yes	no
D:	yes	yes	no	no
R:	yes	yes	yes	yes
Majority:	yes	yes	yes	no

If we now consider the number of criteria the Committee must address when evaluating each candidate to be something like (logically) connected agenda items or questions about which the Committee must reach a "resolution," (List 2006, section IV) it follows that the discursive dilemma is a possible inconsistency for any 3 or more member deliberative body with two or more (logically) connected items on the agenda. Thus, one sure way to avoid the dilemma is to restrict the agenda of any such deliberative body to just one item (equivalently: to one item at a time, yielding a sequence of unconnected committee "meetings"). I think all will agree that this is an untenable solution; it would make it impossible, in the practical sense, for deliberative bodies to contribute to the democratic process in anything but the most minimal way.

Instead of shrinking the number of criteria, let's consider an alternative way of weakening the criteria by which the Committee is to judge which students are to receive the prize. Suppose the college's rule is: a graduating senior receives the prize if and only if (1) the senior has earned at least an overall A- average academic grade, and either (2) has written an outstanding senior thesis or (3) has participated in at least three significant extra-curricular activities. This won't help, however. As in the case of two agenda items, here's what might happen:

The Prize Committee's evaluation of S:

	college's criteria accepted: criterion (1) & [criterion(2) or criterion(3)]				↔	prize
F:	yes	yes	yes	yes		yes
D:	yes	no	yes	yes		no
R:	yes	yes	no	no		no
Majority:	yes	yes	yes	yes		no

Suppose the college, with an eye toward maximum flexibility, forms a disjunctive set of criteria for the graduation prize: a graduating senior receives the prize if and only if either criterion (1) or (2) or (3) has been satisfied. This won't avoid the dilemma either; it reappears in an alternative form.

The Prize Committee's evaluation of S:

	college's criteria accepted: criterion (1) or criterion(2) or criterion(3)				↔	prize
F:	yes	yes	no	no		yes
D:	yes	no	yes	no		yes
R:	yes	no	no	no		no
Majority:	yes	no	no	no		yes

Without taking the time to develop a plausible narrative about the possible deliberations that could have yielded these majorities, it is clear that by at least a two-thirds majority S is judged to have failed to satisfy any of the criteria for the prize, and yet the Committee's outcome by a two-thirds majority is to award S the prize, all-the-while unanimously accepting the college's rule that the prize is awarded if and only if at least one of the three criteria has been satisfied. This is again a blatant inconsistency, yet no member has reasoned inconsistently.

As a final attempt to avoid the discursive dilemma by restricting the criteria, suppose we require that deliberative bodies function without any criteria; in effect, there are to be no agenda items or questions about which the process of deliberation is to produce judgments. This is a radical suggestion, but perhaps radical means are necessary to avoid the dilemma. How would the Prize Committee members deliberate about which graduating seniors qualify for a prize if there were no criteria to apply? It seems that they couldn't deliberate at all, or rather their discussions couldn't count as a rational process of deliberation. There would literally be no basis for determining who gets the prize; either all graduating seniors would have to be given the prize, or no graduating senior would receive it (and even these couldn't be decided by any standard of qualification). Every possible distribution (or non-distribution) of the prize would be arbitrary and unjustified, not only unprincipled but also subject to violation of basic principles of fairness. Can't deliberative democracy do better than this?

## 2.2 Tinkering with majority rule

What are the options if we leave the set of criteria in place and try to adjust the principle of majority rule? Might the discursive dilemma be avoided without creating unacceptable consequences for either deliberations or the democratic process? There are five possible ways we might pursue this strategy: (1) ban plurality judgments (that is: require unanimity as the sole basis for aggregating individual judgments into a committee consensus); (2) dictatorship (that is: require that the committee's collective judgment be determined by the judgment of just one of the members); (3) allow for expertise (that is: give more weight to the judgments of committee members who have expertise about the agenda item under consideration); (4) limit majority rule only to aggregating the process of deliberation, do not use it to produce outcomes; (5) limit majority rule only to producing outcomes, do not apply it to the process of deliberation.

### 2.2.1 Plurality<sup>5</sup>

Banning plurality in favor of unanimity might initially look promising. The principle of unanimity would eliminate minority judgments, yet deliberation would be preserved as central to the democratic process. The jury verdict in the US criminal trial system is a well-known example of this strategy; in almost all criminal cases the verdict can't be based on the judgments of even a supermajority of jurors, it can only be arrived at by unanimous agreement.<sup>6</sup> (Note, however, that the US Supreme Court operates under majority rule and thus plurality, even when considering criminal matters and even when unanimity is politically desirable.) By requiring unanimity as the only basis for collective judgments, in effect veto power is bestowed on each member of a committee; each member's judgment becomes minimally equal in weight to the combined weight of the contrary judgment held by other members. There can be no outcome unless and until deliberations reach unanimous agreement.

It is obvious that the discursive dilemma cannot arise in deliberative bodies in which unanimity is required; deliberation and outcome must be consistent, for every entry in the table must be either all yes or all no. In this respect, the problem is indeed solved.<sup>7</sup> However, there is (to many) an unacceptable cost to this "victory." Under conditions of unanimity the quality of deliberations tends to degrade to the point where it is no longer a rational process, or else the chance of no outcome at all greatly increases. Either way, the democratic process is severely weakened to the extent that it is made to depend on unanimous outcomes.

If, on the one hand, an outcome must be achieved, the internal pressures committee members exert on each other to achieve unanimity is in danger of exceeding respect for the process of reasoning; veto power encourages minority dissenters to holdout, which in turn motivates majorities to use strategies of intimidation or to escalate coercion in an effort to reach unanimity. To the degree that we think of deliberation as a process of reasoning and rational persuasion, resort to arm twisting, intimidation,

wearing-down, peer pressure and other forms of psychological/emotional coercion in order to achieve unanimity clearly depart from this conception. The danger of this breakdown in deliberation under conditions of unanimity is supported by indirect reference to it in the typical formal instructions-to-jury segment of a criminal trial.<sup>8</sup> The Judge, in so many words, impresses on the jury that their deliberations must be respectful of one another's reasons, that members should think for themselves and not defer to or be swayed by pressure from other members, and that their judgments should stay focused on whether or not the defendant satisfies the "elements" (criteria) of the charge.

On the other hand, if an outcome is not necessary before a committee can be discharged, then requiring unanimity increases the likelihood of no outcome. Deliberations reach an impasse as holdouts dig in, and now the majority lacks motivation to achieve (or coerce) unanimity, escape from the committee task being an option. Result: a "hung jury." We have a striking historical example of this worry. Those charged with plotting to assassinate a US President would ordinarily be given a civilian trial, but in Lincoln's case they were given a military trial. A civilian trial would require a unanimous verdict for guilt, and it was believed at the time that no jury would achieve unanimity because of Lincoln's controversial Presidency. A military trial allowed plurality: a simple majority for a finding of guilt and a 2/3 supermajority for the death sentence. The authorities went with the military trial.<sup>9</sup>

Restricting plurality to unanimity in all deliberative bodies, then, would be (almost?) going from "the frying pan into the fire." Without plurality, the democratic process is greatly weakened in-so-far-as deliberative bodies carry out this process. With plurality, of course, we have the threat of the discursive dilemma, unless we find another way to avoid it.

### 2.2.2 Dictatorship

Dictatorship (requiring that the outcome be determined by the deliberations of just one committee member) looks like a non-starter. For one thing, it would reduce the judgments of other committee members to at best advisory status, in effect shrinking the committee to a single member. For another, it increases the likelihood that the outcome will inherit all the bias, error, and lack of balance to which a single individual's deliberations are typically subject. It would appear, then, that with dictatorship we both lose the democratic process and degrade the quality of deliberation. But let's not be too quick to judge this "solution" negatively. Would it, at least in theory, make the discursive dilemma impossible? Not really, unless it is a very narrow kind of dictatorship.

Imagine an ideal dictator, both wise and benevolent. The worries mentioned above are now eliminated. A wise dictator's reasoning is not subject to error or imbalance; a benevolent dictator would not be self-serving or otherwise biased. What relevant (for our purposes) qualities would an ideal dictator possess? For one, she would be able to consider each agenda item thoroughly, be able to appreciate diverse perspectives or points-of-view, and be able to pull these together into a final wise judgment. In other words, an ideal dictator would be able to deliberate in a way that encompassed and respected the diversity of possible viewpoints that should be brought to bear on the issue under consideration,



integrating this diversity into a single outcome. We might say: An ideal dictator would be “many and one” – both diverse and a unity – in deliberating.

This diversity of viewpoints is a familiar part of our ordinary deliberations; we are often of “two minds” about an issue. For example, imagine someone who must decide whether or not to make a contribution to their public TV station. This person might deliberate: “From a financial perspective, I shouldn’t make a contribution. But from a social point-of-view, I should.” Or imagine a parent who is considering where to send her child: to the public or to a private school. This parent might deliberate: “From the point-of-view of education, my child should go to public school. But if I consider the question of safety, I should put her in a private school.”

This ability to “wear different hats” when judging an issue is clearly desired in an ideal dictator; the alternative would be narrow- or single- or closed-mindedness. But with this ability comes the discursive dilemma, for now the (ideal) dictator deliberates as if she were, internally, a “committee.”<sup>10</sup> Consider the following example: Suppose someone is thinking about whether or not to buy a hybrid car. We will assume dictatorship; that is, no matter how much advice she seeks or feedback she is given by a “committee” of family and friends, the final judgment (the outcome) will be determined solely by her own deliberations. The criteria she will use are these: buy a hybrid car if and only if (1) it is good for the environment, (2) hybrid vehicles are mechanically reliable, and (3) a hybrid is affordable. In deliberating, our ideal dictator will not come to a final judgment in a narrow-minded way, but will consider these “agenda items” from multiple relevant perspectives. Suppose, now, the dictator’s “mechanical self” has no problem with criteria (1) and (3), but is uneasy about current hybrid technology and has doubts that it will prove reliable in the long run. Next, she puts on her “environmental hat” and from this perspective judges that hybrid technology is very good for the environment, that doubts about reliability pale in light of a hybrid’s environmental benefits, and that a hybrid is worth any extra financial sacrifice. Finally, she assumes her “financial persona” and now becomes worried that a hybrid costs too much and would not be a financially responsible purchase given her budget; from this viewpoint, however, a hybrid easily satisfies criteria (1) and (2). In summing up these pros and cons, our dictator in trying to achieve integrity of perspective, will simply see if pros outweigh cons, or vice versa, and go with the judgment having the greater weight of reason in its favor. We get the following table.

Ideal dictator evaluates purchase of a hybrid car:

	(1) Is a hybrid good for the environment?	& (2) Is a hybrid reliable?	& (3) Can I afford it?	↔ Buy a hybrid?
Mechanical “self”:	Yes	No	Yes	No
Environmental “self”:	Yes	Yes	Yes	Yes
Financial “self”:	Yes	Yes	No	No
Summing up:	Yes	Yes	Yes	No

Here we have the discursive dilemma; each “self” is consistent about purchase of a hybrid, but the dictator’s “selves” can’t in this case achieve a consistent integration of perspectives. Our ideal dictator

accepts the plan that she will buy a hybrid car if and only if pros outweigh cons on each “agenda item.” Pros do outweigh cons on each count, and yet cons outweigh pros on the purchase of a hybrid car, yielding a final judgment about the purchase that is inconsistent with her deliberations, given her plan. Something has to give.

In order to judge whether or not to buy a hybrid car, we see that one perspective must dominate. In effect, our ideal dictator must make one (and only one) “self” dictatorial. Which should it be, since they seem to be equally important perspectives? In theory, then, to avoid the discursive dilemma by the strategy of dictatorship, the dictator can’t be ideal but must be single-minded and not “listen to” or be “swayed by” other conflicting perspectives. One “perspective” must rule if deliberation and outcome are not to be inconsistent; for even in a “committee of one” the ability to judge matters from a diversity of viewpoints requires these viewpoints be integrated before a final judgment can be formed, and this opens the way for the dilemma that the option of dictatorship was meant to avoid. But with closed-minded dictatorship we have lost, in theory and in practice, every remnant of deliberative democracy.

### 2.2.3 Expert judgments

A third way majority rule might be modified is to remove the condition that each committee member’s judgment has equal weight.<sup>11</sup> For example, the Prize Committee might assign more weight to F’s judgment when aggregating judgments about S’s academic qualifications, agreeing that F is more qualified to judge academic matters. More value might be assigned to D’s judgment (a former English faculty) when aggregating judgments about S’s senior thesis, agreeing that D is a better judge of thesis writing than either F or R. The Prize Committee might, however, retain equal weight for each individual member’s judgment when aggregating for a Committee judgment about S’s extra-curricular activities, agreeing that each member is equally qualified to judge this agenda item. We’ll leave it open whether these meta-agreements about expertise require unanimity or majority; the result, however, is to change the original democratic nature of the Committee into a deliberative technocracy or meritocracy: the expert’s judgment is to count more than the “average citizen’s” judgment and the equality principle of “one person, one vote” is thereby given up.<sup>12</sup> Be that as it may, would allowing for expertise avoid the discursive dilemma? It would not.

Let’s suppose that for each criterion for receiving the graduation prize there is a different expert Committee member: for criterion (1) it is F, for (2) it is D, and for (3) it is R. How much weight should the expert member’s judgment have when considering each criterion? If it is made equal to the combined weights of the non-expert members, then there could be too many ties when counting for a majority. For example, under criterion (3), if R judges “yes” when considering a candidate for the prize and this has double weight, and if F and D each say “no,” the result is a tie (1 yes x 2, 2 no). Ties are undesirable, for they do not yield an outcome; they leave us neutral about a candidate’s qualification (or not) for a prize. Thus, the weight given the expert member’s judgment should be either greater than or less than the combined weights of the non-expert judgments. But in either case, as long as the judgments of the

non-expert count at all (and they *must* count for something or we are back with dictatorship), the discursive dilemma remains a threat. Unlike dictatorship, which shrinks the Committee to one member, placing more weight on the expert's judgment (or less weight on the non-expert's judgments) is equivalent to enlarging the Committee by a given number of members whose judgments are the same as the expert's. In effect, this forms a coalition of like-minded members whose judgments coincide, but it does not (and cannot) stop the non-expert's judgments from being counted. For our imaginary 3-member Prize Committee, let's suppose that the expert's judgment is valued 3 points while each non-expert judgment remains at 1 point each (i.e., 1 expert = a 3-member coalition; alternatively, a judgment whose degree of confidence or reliability is 3 times stronger than that of the non-expert). Here is a possible profile of deliberations and outcome.

The Prize Committee's evaluation of S:

	college's criteria accepted:	criterion (1) & criterion(2) & criterion(3)	↔	prize
F:	yes	yes x 3	yes	yes
D:	yes	yes	yes x 3	no
R:	yes	yes	no	yes x 3
Majority:	yes	5/5 yes	4/5 yes	4/5 yes
				2/3 no

By a clear majority S satisfies all three necessary and sufficient conditions for the graduate prize, and by an equally clear majority the Committee's outcome is: no prize for S. Expert weighting has not helped this deliberative body avoid the discursive dilemma, given that the non-expert judgments are counted.

It is worth noting that for conjunctive criteria, expert negative judgments remove the possibility of producing the dilemma, as does expert positive judgments in the case of disjunctive criteria, assuming that the expert weight is greater than the combined weights of the other members.

Even if acknowledging expertise by formally increasing the value of an expert judgment can't do the trick, there are other ways that the deliberative process might benefit. For one, acknowledging expertise should make a non-expert more ready to be persuaded by the deliberations of the expert committee member(s), easing the way in cases where unanimity is required. But even under conditions of plurality, a rational willingness to defer to expert opinion will lower the probability that the discursive dilemma will arise.

But at what cost? As long as the expert's judgment is not merely advisory, as long as it literally counts, giving exceptional value to expertise is to take leave of democratic deliberations and embrace deliberative technocracy/meritocracy. While procedural technocracy/meritocracy may have its virtues, it is considered to be, from the egalitarian perspective of the "one person, one vote" democratic process, unacceptably elitist.

### 2.2.4 Aggregate deliberations, not conclusions

There is a fourth way that majority rule might be adjusted: Do not use it to arrive at committee outcomes, limit it to aggregating deliberations. Then, on the basis of majority deliberations, the criteria automatically yield outcomes. In our initial example of the Prize Committee’s evaluation of S, S gets the graduation prize.

The Prize Committee’s evaluation of S:

	college’s criteria accepted:	criterion (1)	& criterion(2)	& criterion(3)	←→	prize
F:	yes	yes	yes	yes		
D:	yes	yes	no	yes		
R:	yes	yes	yes	no		
Majority:	yes	yes	yes	yes	←→	yes

This solution clearly works; there can be no conflict between deliberation and outcome if on the individual level, each member’s conclusions are not given consideration in arriving at a Committee outcome. The outcome, in effect, is made already a part of and internal to (and not just dependent on) the deliberative process; it has no “life of its own.” The procedure (perhaps administered by the Chair) is in this order: First, for each criterion (going down on the above table) a majority judgment is obtained; second, on this collective level (going across on the bottom of the above table) a Committee outcome is produced by applying the logic encoded in the college’s rule for receiving the prize.

This restriction of majority rule to deliberation is referred to as “premise-based judgment aggregation.”<sup>13</sup> It appeals to those who are reason- or process-oriented. This approach to avoiding the discursive dilemma captures the belief of those who are reason- or process-oriented that democratic deliberations ought to be open and accessible to the public; additionally, that outcomes ought to be justifiable and accountable (say, to those who might have reason to question or doubt or even reject them) by appeal to the deliberations that produced them. For process-oriented individuals, outcomes that result from the wrong reasons or from secret deals closed to public scrutiny or from deliberations that fail basic standards of rationality and fairness, are tainted; they can not and should not count as legitimate. Process-oriented democrats want to know and approve how their sausage was made just as much as they want to enjoy eating their sausage; indeed, for them the latter won’t happen without the former. Acceptable deliberation (public reason), then, is at the very heart of the democratic process for process-oriented democrats; it is understandable that they would endorse avoiding the discursive dilemma by restricting majority rule to aggregating deliberations.

There are serious problems with this solution, however. For one (compare below), it results in committee judgments that can conflict with the alternative, equally justified, outcome-oriented (conclusion-based) restriction of majority rule, and there seems to be no principled way to decide which restriction (if any) we should go with. Worse, deliberations-based majority rule provides the reason and the opportunity for committee members to manipulate the system by intentionally declaring untruthful

(dishonest) judgments (Dietrich and List 2007). Let's consider this second problem (we'll return to the first problem below).

Assume for the moment that all three Committee members judged truthfully (sincerely) in the above table in which, given the criteria, S receives the graduation prize by majority rule on each member's deliberations. Notice that this outcome agrees with only one member's deliberations, namely, F, who judges that S meets all three criteria for the prize, and so should be awarded the prize. F knows how D and R have judged S and so would have no reason to change any of her judgments: changing (1) from "yes" to "no" would do nothing to change the outcome; the majority rule for (1) would remain yes. Changing either (2) or (3) from "yes" to "no" would change the majority for one or the other criterion from yes to no, thereby denying S the prize, which F (truthfully) does not want to do. So, F has no reason, given the opportunity, to switch any judgment.

How about D and R; assuming they have judged truthfully, would either have reason to (untruthfully) switch their judgments as a way of shifting the Committee outcome away from recommending S for the prize and bring it in line with their individual judgments? They would. D (truthfully) believes S has failed to meet criterion (2) and so, by the logic of the college's rule for receiving the prize, D rightfully concludes that S does not deserve to receive the prize. But, knowing how F and R have judged, D knows that by majority rule that S will be recommended for the prize, unless D switches her (truthful) "yes" for criterion (3) to a (untruthful) no. Doing so will shift majority rule from yes to no for criterion (3), thereby denying S the prize (which D believes is the right outcome). Thus, D can and no doubt will (be tempted to) thwart the Committee's honest (but in her eyes wrong) outcome by an untruthful manipulation of the process.

The same reasoning applies to R. By truthfully judging "no" for criterion (3), R will conclude that S should not be recommended for the prize. Yet by majority rule, based on truthful deliberations, S gets the prize. So, knowing how F and D have judged, R has a powerful incentive to switch his (truthful) "yes" under criterion (2) to a (untruthful) no, thereby making sure that the Committee outcome is to deny S the prize (which R believes is the right outcome). This incentive to make a dishonest judgment might even appear to R as a "duty" or "obligation" to bring about the right outcome. R might be strongly committed to the educational value of extra-curricular activity and deeply believe that "students such as S" do not deserve the graduation prize; to award it to S would be a "travesty." Rather than resign from the Committee, why wouldn't R remain and take advantage of the opportunity to "do his duty"?

Restricting majority rule to aggregating deliberations, not outcomes, clearly provides both the opportunity and the motivation strategically to manipulate the deliberative process by untruthful (insincere) judgments. This is an especially troubling result, for this solution of the discursive dilemma is strongly favored by precisely those who are process- or reasoning-oriented. A procedure that permits (perhaps even invites) untruthful (dishonest) judgments can only be deeply disappointing to those who believe in open deliberation as one of the foundations of the democratic process.

### 2.2.5 Aggregate conclusions, not deliberations

The final way (from our list of five) that majority rule might be modified in an effort to avoid the discursive dilemma is to limit aggregation by majority rule only to individual members' concluding judgments, do not use it to aggregate deliberations. By this method, the Prize Committee's outcome denies S the graduation prize. The following table, remaining with our initial example, displays this outcome.

The Prize Committee's evaluation of S:

	college's criteria accepted:	criterion (1) & criterion(2) & criterion(3) ↔	prize
F:	yes	[ deliberations ]	yes
D:	yes	[ deliberations ]	no
R:	yes	[ deliberations ]	no
			Majority: no

This solution clearly avoids the dilemma; there can be no conflict between deliberation and outcome if the process of deliberation is no longer a factor that is available for consideration. Note that the procedure (again, perhaps administered by the Chair) is in the reverse order of that used to aggregate deliberations. Here the order is: First, for each member (going across on the table above) an individual final judgment is obtained from each member's deliberations according to the logic of the college's rule for receiving the prize; second, majority rule is used only on these individual judgments (going down on right column of the table above) to produce a Committee outcome.

This restriction of majority rule to each member's summative judgment is referred to as "conclusion-based judgment aggregation."<sup>14</sup> It appeals to those who are outcome- or result-oriented. This strategy captures the belief of those who are outcome-oriented that the deliberative process is a practical means for achieving results. The results of deliberations are what are important; outcomes should be open to the public and available for critical examination, but the deliberations themselves are the private business of the individual committee members. For result-oriented individuals, deliberations typically are highly complex, messy, sometimes nasty interactions, "endless" clashes of values and viewpoints that can't and shouldn't be cleaned up or "rationalized" for any outsider's examination. Members of committees need to deliberate freely and be able to "go at it" to produce outcomes, and this requires that their deliberations be free from scrutiny; they should be kept private. Result-oriented individuals want to enjoy eating their sausage; they are not interested in seeing how their sausage was made. Indeed, for them it is wise to avoid the latter if they are to experience the former. The democratic process is all about achieving outcomes for these practically-minded individuals; it is understandable, then, that they endorse avoiding the discursive dilemma by restricting majority rule to aggregating only individual members' final judgments.

There are two well-know examples of conclusion-only aggregation. In the field of voting theory, the (secret) ballot would be its equivalent. The liberal focus on privacy protection is well-served by the ballot; authorities count the votes to discover the will of the majority, but neither the authorities, nor

other voters nor the public-at-large, are allowed to know how each voter deliberated and then voted. That information is considered no one else's business under ballot rules. Voters have every right to withhold from scrutiny the deliberations (or non-deliberations!) that lead to their votes. Free from the eyes of others, the voter – it is believed – is better positioned to “vote her conscience.” In the (secret) ballot, privacy serves freedom.

The other example of conclusion-only aggregation is found in US criminal trial juries. Jury deliberation privacy is closely guarded. The jury foreperson announces the verdict (for each charge) and the court bailiff polls each juror for his or her final judgment to assure unanimity. There it stops; no one has the legal right, not even the Judge, to require an individual juror, or the jury as a whole, to divulge the process of deliberation (assuming that they could even do such a thing). How could juries produce acceptable verdicts if their deliberations were constrained or inhibited because they are open to public scrutiny or expert evaluation? Deliberation privacy helps assure two things: first, that there is a jury verdict, and second, a verdict that is free to be just. In the case of jury deliberations, privacy serves justice.

One big plus that conclusion-only majority judgments have over deliberations-only aggregation is that the former are not subject to untruthful manipulation. Assume that all three members of the Prize Committee judged truthfully about S in the above table in which S is denied the prize; would any member have reason to switch to an untruthful judgment? Clearly not. F, who believes S deserves the prize, would surely not switch from a “yes” to a (untruthful) “no” judgment. Neither D nor R, who each believes that S has failed to qualify for the prize, would have reason to switch from a no to a (untruthful) yes judgment, for that would change the majority and award S the prize. Untruthful judgments that seek to manipulate the process are not a worry for conclusions-only aggregation (Dietrich and List 2007).

In spite of the absence of reasons to manipulate outcomes by untruthful judgments, there are serious problems with this solution. For one (to take up the first problem raised above concerning deliberations-only aggregation), conclusions-only aggregation results in committee judgments that (can) conflict with those produced by the equally justified alternative restriction of majority rule. In one case, the Prize Committee recommends S for the prize; in the other case, S is denied the graduation prize. Which is it? There seems to be no principled way to decide which restriction of majority rule (if any) the Committee should go with. This situation starts to feel uncomfortably arbitrary and vulnerable. Both process-oriented and result-oriented believers in the democratic process appear to have equally good reasons for their preferred method of limiting majority rule (but we can't combine the “best of both worlds” without the threat of the discursive dilemma, the very problem each is designed to avoid). And, both methods have equally deep problems: untruthful manipulation in the case of deliberations-only majority rule (as we have just seen), and (as we are about to see) unjustified outcomes in the case of conclusions-only majority rule.<sup>15</sup>

Worse than yielding outcomes that conflict with an equally “good” alternative, a deliberative body using conclusions-only aggregation is at a serious loss of words when asked to justify its outcomes. Majority rule, as applied only to individual committee members' final judgments, means that the

committee outcome cannot be rationally justified by appeal to deliberations. Ordinarily we expect individuals and groups that deliberate to be able to justify their positions or recommendations, and to be able to do so on the basis of the reasons that produced them. Exceptions to this expectation are rare. (We accept jury verdicts even though there are no deliberations-based justifications forthcoming because we believe, perhaps optimistically, that jury deliberations, as instructed by the Judge, closely track the evidence and the criteria for guilt.<sup>16</sup> We accept the secret ballot because we believe freedom to vote one's conscience is sometimes a greater value than a vote publically justified by the voter's deliberations.) Recommending conclusions-only aggregation as a general deliberative procedure means that this widely-held rational expectation is deliberately left frustrated; it amounts to a general willingness to accept outcomes that are not anchored in the deliberations that produced them; it says to all deliberative bodies accepting this procedure that they need not be responsive to concerns about the legitimacy of their outcomes relative to the reasoning that produced them. Unjustified judgments, whether from an individual or a collective body, bother reasoning people, even when they agree with them; they are, in a fundamental way, "incomplete."

What type of justification, if not by deliberations, is left to result-oriented committees using conclusions-only majority rule? It can only be pragmatic: Is an outcome produced and can it be acted on and carried out, practically speaking? For the most part, the secret ballot works (even though it consumes time and resources), as does the jury verdict (except for hung juries); both can be pragmatically justified. But how about the Prize Committee (which we have constructed as a model representing democratic deliberative bodies in general)? Imagine that the Committee judgment to deny S the graduation prize is accepted by the college and is carried out. S, who believes that she deserved the prize, asks for the reason why it was denied. Answer: "The Prize Committee has spoken; we must accept its judgment and we have no right to poke into their private deliberations." Such a pronouncement is highly problematic, not to say unacceptable, especially to reason-oriented believers in the democratic process.

### **3. Summary**

The discursive dilemma is not an artifact of an odd way of describing either the process or the outcome of deliberation. It is a genuine inconsistency that can arise in group reasoning under natural conditions widely associated with assuring democratic deliberations: (a) equality, (b) plurality, (c) unrestricted majority rule, and (d) more than one proposed agenda item or resolution or criterion that must be considered in order to arrive at a collective position. This dilemma threatens to invalidate the deliberative democratic process as characterized by these four conditions. Trying to escape by modifying or eliminating one or more of these four bring degrees of unacceptable consequences either for the democratic nature of deliberative bodies or for the quality of deliberation as a rational process. Here is a summary of these results.



Modify criteria or agenda:

<u>strategy</u>	<u>result</u>
1) add more than 2 criteria:	dilemma remains
2) reduce criteria to 1:	dilemma avoided, but completely impractical
3) disjunctive criteria:	dilemma remains
4) no criteria:	dilemma avoided, but deliberations are no longer rational and outcomes are arbitrary
.	

Modify majority rule:

<u>strategy</u>	<u>result</u>
1) eliminate plurality:	dilemma avoided, but increased danger of either degraded deliberations or no outcome
.	
2) dictatorship:	dilemma remains, or completely give up both deliberation and democracy
.	
3) expert judgments:	dilemma remains within elitist (non-democratic) deliberations
.	
4) deliberations-only aggregation:	dilemma avoided, but elicits untruthful manipulation and its outcomes can clash with conclusions-only aggregation outcomes
.	
5) conclusions-only aggregation:	dilemma avoided, but outcomes can't be justified by deliberations and can clash with deliberations-only aggregation
.	

The discursive dilemma is actively being investigated in a number of disciplines (philosophy, political science, economics, law, applied mathematics) primarily with the use of formal models and axiomatic methods.<sup>17</sup> That the deliberative democratic process (sometimes!) seems to work at all encourages continued exploration of the mysterious links between reasoning on an individual and on a collective level, when individual reasoning forms the basis of the collective reasoning.<sup>18</sup>

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### **Notes:**

1. For a recent statement on the centrality of deliberations for democracy and an extensive bibliography see Christiano (2006) "Democracy," in the *Stanford Encyclopedia of Philosophy*. Available at <http://plato.stanford.edu/entries/democracy> (accessed 3/1/2009). See Pettit (2001, section 5) for the centrality of democratic principles for the quality of deliberation.
2. By logical equivalence the college's criteria can be expressed: either not (1) or not (2) or not (3) if and only if no prize. Remarks about criteria in our hypothetical committees apply to any logically equivalent expression of those criteria; that is, the problem we will be examining is not an artifact of the particular logical form in which the criteria are expressed. As is standard, the bi-conditional "if and only if" will be symbolized by " $\leftrightarrow$ ."

3. Throughout this essay “inconsistent” and “inconsistency” express the standard logical concept: a set of 2 or more judgments is inconsistent if they cannot all be true (i.e., if there is no possible model in which they all come out true). “Inconsistent” is not being used here to mean the broader concept of confused or incoherent except by implication: that is, being inconsistent is one way of being confused and one way of being incoherent.
4. Originally called the “doctrinal paradox” by legal scholars who considered a narrower version arising in a law court of at least three members who must form a legal opinion on the basis of received legal doctrine, the name “discursive dilemma,” its generalized form, and its link to deliberative democracy is due to Pettit (2001). We note that the form of individual and group reasoning threatened by this dilemma is not that presumably taking place in research teams, collective scholarship, or investigative groups. Such groups would not be organized along democratic lines to produce collective results on the basis of individual reasoning, nor would individual-level reasoning be (primarily) deliberation, and so they could not serve as models of deliberative democracy.
5. In our model 3-member Committee, given either “up” or “down” as possible judgments, the plurality condition allows for any possible combination or profile of “yes” and “no” judgments of the individual members about a candidate that is consistent with the criteria. Unanimity is a huge restriction to just two profiles: all “yes” or all “no.”
6. With few exceptions (Louisiana and Oregon) requiring only supermajorities, state criminal trials and all federal criminal trials require unanimous verdicts for guilt. See, for example, “No Unanimous Opinion on Non-Unanimous Jury Verdicts” on the 11/7/2008 discussion site of the American Constitutional Society at William and Mary School of Law at: <http://web.wm.edu/so/acs> (accessed 3/5/2009).
7. In the major analyses of the discursive dilemma, plurality is assumed as one of the conditions under which it can arise. Pettit (2001) offers a typical statement in section 1, List (2006) another in section V.
8. For a representative example, see the “Deliberations” section, which makes this worry explicit, of the *Criminal Final Charge* that the Judge delivers to the jury for criminal trials in the State of New Jersey. <http://www.judiciary.state.nj.us/criminal/charge/non2c003.pdf>
9. For an explanation of this controversial decision, see National Public Radio (NPR), 2/8/2009, “What happened to those who conspired to kill Lincoln”: 200 Years of Abraham Lincoln at: [www.npr.org](http://www.npr.org)
10. Here “committee” might be conceived synchronically: simultaneous, multiple, internal “selves,” each representing a respect in which the issue in question should be considered. Alternatively, “committee” might be thought of diachronically: multiple, sequential, temporal “selves,” each considering the issue from a different single perspective over a period of time. In either case, there will be a need to integrate the judgments of the different “selves” (the different perspectives) into a single outcome judgment.

11. As we explore its potential for avoiding the dilemma, we will let this strategy to do double duty. On the one hand, given our assumption that judgments are bi-valent, (either “yes” or “no” positions), assigning unequal weights for expertise and non-expertise is meant to represent, as it were, coalitions of like-minded members pooling their similar judgments. On the other hand, we might take judgments to be beliefs and, instead of either “yes” or “no,” let expert weights represent different degrees of confidence or strengths of belief (probability of being correct) of the Committee member’s judgments, experts having more confidence (say, ranging from .8 to 1) than non-experts (say, ranging from .5 to .7). Either way, the “one person, one vote” equality principle is being given up. But what is not being given up is the (albeit reduced) power of the non-expert’s judgment to make a difference in the outcome.

12. Here we are ignoring important political distinctions between technocracy (giving positions of power and influence to citizens possessing technical knowledge) and meritocracy (giving positions of power and influence to citizens possessing intellectual merit), and treating both positions as falling under one heading: the greater authority of the expert over the non-expert in a given area of expertise.

13. Pigozzi (2006) offers a clear description of the distinction between the premise-based and the conclusion-based strategy of aggregating beliefs. List (2006) suggests more general categories, seeing deliberations-only aggregation as an instance of (a method of realizing) a “comprehensive deliberative” account, and conclusions-only aggregation as an instance of (a method of realizing) a “minimal liberal” account, the two general categories representing extremes on a continuum of possible positions.

14. See, again, Pigozzi (2006) and List (2006).

15. Given plurality, it is the perceived “forced choice” between the seemingly equally good/bad deliberations-only and conclusions-only aggregation by majority rule that leads Pettit (2001) to name the discursive dilemma a “dilemma” rather than call it a “paradox” in the strict logical sense. In his seminal article, Pettit himself argues, using Condorcet’s jury theorem, that reason should “discipline” the collective level; that is, deliberations-only use of majority rule is the superior way to avoid the dilemma.

16. It is interesting to note that, in the practice of plea-bargaining, the US criminal justice system displays serious misgivings about this belief. Aside from the impracticality of round-the-clock trials, experienced trial attorneys tend to think of jury outcomes in criminal cases as unpredictable, as no better than “toss-ups,” as seemingly random judgments unconnected to the weight of the evidence one way or the other. In contrast to this untrusting and sour opinion of jury verdicts, attorneys tend to look to plea-bargaining as a superior way to achieve criminal justice. Trust in plea-bargaining over jury verdicts, to the degree it is wide-spread and deep, not only lessens jury verdicts as exceptions to the expectation that a judgment ought to be justified (or justifiable) by the reasoning that produced it, it would also be another reason against recommending the use of unanimity as a general way to avoid the discursive dilemma in deliberative bodies.

17. An excellent online resource for indications of current work and for an extensive bibliography is: *Judgment aggregation webpage*, <http://personal/lse.ac.uk/LIST/doctrinalparadox.htm> (accessed 3/20/2009).

18. I am grateful to three colleagues for their help: to Jerry Dolan and Herman Tavani for comments about both content and presentation, and to Carol Rolf for legal information and references.

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