

Giovanni Boniolo

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SAPERE

The Art of Deliberating

Democracy, Deliberation and the Life Sciences
between History and Theory

 Springer

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To all those who have never had a
book dedicated to them

Introduction

I have no memory whatsoever of when I began to speak, although I know my parents strove for that to occur and eventually achieved it, given that I've been able to speak ever since. Nor do I remember anyone at school or university who taught me how to think and reason. I just knew I had to find my own way through all that, although I do not really know whether I have fully understood these acts, even now. Of course, I was taught a number of things, some of which turned out to be useful, while others were entirely pointless. However, I never attended a course on how to reason, how to argue in a discussion with one or more participants, how to intervene in a public setting or how to join a table at which decisions about policies are taken. I have never seen such a course advertised among the varied curricula I have come across. Since I do not think I am a rare bird, it is plausible to conclude that many have had this same experience and, perhaps, we should also conclude that many believe that the capacity to speak is equivalent to the capacity to think and to reason. Unfortunately, this is not exactly the case. Thinking and reasoning requires a level of expertise that I have never found to be widespread, despite the fact that this very expertise is needed in daily life. We are constantly required to evaluate what occurs around us, to decide whether or not to vote and for whom and to take decisions, which will impact on our own future as well as on the future of the community we live in. Everyday we are required to think and to reason.

Democracy: "We live in a democracy", or so they say. Many have attempted to depict democracy through maxims of differing degrees of sarcasm:

- The tragedy of the modern democracies is that they have not yet succeeded in realizing democracy (Jacques Maritain).
- The tendency of democracies is, in all things, to mediocrity (James Fenimore Cooper).
- The difference between a democracy and a dictatorship is that in a democracy you vote first and take orders later; in a dictatorship you don't have to waste your time voting (Charles Bukowsky).
- Democracy is the bread with which the few, who lead cliques named 'parties', feed the many after convincing these to be the real owners of power, whereas the many just foot the bill for the privileges and vices of the few (Zoran Itati).
- Democracy is also a form of religion. It is the worship of jackals by jackasses (Henry Louis Mencken).
- Democracy means simply the bludgeoning of the people by the people for the people (Oscar Wilde).

- Democracy is supposed to give you the feeling of choice (Gore Vidal).
- When we are all guilty—that will be democracy (Albert Camus).

A list of similar sarcastic maxims on democracy could go on almost endlessly. Yet democracy allows, at least to a certain extent, for what Demosthenes found to be the main difference between Sparta and Athens: “In Athens, you can praise Sparta, but in Sparta you cannot praise Athens”; and this goes together with the following “In Athens, you can criticise Athens, whereas in Sparta you cannot criticise Sparta”.

Yet there is something unsatisfactory here; indeed, there is something rotten in many contemporary democracies. I am not a catastrophist or an antidemocratic, nonetheless, there is hardly a different way of judging the fact that most of the leading class of our democracies is unable to get rid of the moral abjection and the political incapacity that envelops it. Who has chosen it? Who decides, and on which basis?

‘Hypocrisy’: a Greek word for ‘playing a role or pretending’. Many play a role and pretend; some prefer to do it while standing up, some even standing up on a podium. There are those who instead kneel, or even crawl when playing a role and pretending – like Baron Paul Henri Thiry d’Holbach detailed in his valuable work *Essai sur l’art de ramper, à l’usage des courtisans (Essay on the art of climbing. To be used by courtiers)*–. Sometimes, I enjoy directing sarcasm towards this conduct. ‘Sarcasm’ is derived (through Latin) from the Greek language and it means ‘to bite one’s lips’ in anger and gnashing of teeth, which, in turn, is related to ‘stripping away someone’s flesh’.

Sometimes you smile in hypocrites’ faces, while biting them with a well-chosen comment from your lips. Sometimes there is no better option. Perhaps as a vain form of revenge, you can, at least, sink your teeth into their flesh. English actor Leonard Rossiter was possibly right in arguing that sarcasm is *The Lowest Form of Wit*, as he entitled his 1981 booklet. However, sometimes (though not always) you are obliged to content yourself with sarcasm. Probably some prefer to be content with rotten forms of democracy, or even to consciously strive to make them worse. Others, especially if they have no choice, prefer sarcasm and – why not? –join the Sarcasm Society (www.sarcasmsociety.com). In this way, at least, they do not harm other people, their children or grandchildren.

In what follows, I will tell many stories about real events and people with a touch of sarcasm. Some may not like this, especially the heroes of these stories. It is something like the tip of the spear that Don Quixote, riding his Rocinante, was armed with in his assault against the windmills, which he believed to be monsters. Unfortunately, real monsters are often encountered in everyday life!

Among the several different versions of democracy, I have chosen to deal with deliberative democracy, which focuses on direct citizen participation and engagement. I realise that this is a ‘fashionable’ topic. Many speak about the necessity of engaging “people” in public discussions on issues like environmental and scientific (in particular biomedical) choices, regulations and policies. Although I commence with general considerations about what deliberative democracy could be, I have decided to place special emphasis on the deliberative process in applied biomedical ethics, which has lately attracted much attention

from the mass media and has apparently terrified our contemporary politicians, to whom we give money (their salaries) as a form of self-punishment! Political masochism is truly great and one of the less despicable among the non standard sexual choices.

In the development of my account, I will go through the ancient Greek period and the Middle Ages, as well as the philosophy and history of institutions, ethics and molecular biology moving between concepts in the hope of furnishing an exhaustive framework on deliberation.

This is of course just one lone idea; I would not like to hurt the feelings of those like the aged professor of my first year philosophy course, who reproached me: "How might you, young man, possibly have an idea, if I have never had any throughout my career?" The pages of this book all converge upon one, and only one, idea: it is impossible to have a good deliberative democracy without deliberative expertise. Trivial, isn't it? Of course it is but, unfortunately, hypocrisy touches this issue too when we just pretend to be able to deliberate without really knowing how to do it and just a pinch of proper argumentative training would suffice.

Ethical deliberation on biomedical results, for example, requires just three conditions: sufficient knowledge of biomedicine in order to avoid foolish utterances about the relevant science; sufficient knowledge of ethics (which should be kept carefully separate from the history of moral doctrines) to avoid foolish utterances about the relevant philosophy and sufficient knowledge of argumentation in order to avoid empty speeches.

I will place special emphasis on the need for knowledge as I strongly believe that to possess the sufficient knowledge is, in fact, the only requirement to be fulfilled if we really want moral and political choices to be the expression of active and participative citizenship. What about people lacking such knowledge? Frankly, they should simply stay at home; or come back later, when they are hopefully fully prepared. This is not an ideal-typical view, but rather a harshly pragmatic view. One ought not make decisions about things one is not acquainted with, and one ought not make decisions without knowing how decisions should be made.

I got the impulse to write this book from the pervading sense of frustration at watching fraudulent debates in which mendacious experts on ethics and biomedicine would pretend to reason on issues that are in fact crucial to everyone. I just hope the final outcome of my writing might be beneficial to someone, although I am quite confident that others will find it infuriating, because they will feel directly or indirectly ridiculed. *C'est la vie*. They will just have to deal with it and make a double effort: first, getting all het up about it and, then, cooling off again (unless they prefer to remain angry all their lives).

I propose a view of democracy that may look like it is elitist. However, I do not think it really is, because anyone can join such an alleged elite: it would be enough for one to gain sufficient knowledge in order to understand what is going on and how to take part, thus becoming a "man of honour". 'Honour' is a term that is now unusual in both language and behaviour and that encapsulates concepts like reputation, integrity, respect, morality, trustworthiness, transparency and

accountability which, nowadays, seem to be becoming embellishments for the shrewd people, who – paradoxically enough - fail to think of the consequences their devious behaviour will have on their own offspring.

Two more things should be said in order to conclude this short introduction. Both things will appear repeatedly in the text. However, I consider them essential for any good deliberation concerning biomedicine (though their scope could be easily extended to other fields as well):

- (1) *A moral prejudice does not amount to an ethical stance!* The latter requires a rational justification, and, differently from the former, it has a value in a public setting. At your home or in the pub, you can maintain all the moral prejudices you like. In the public arena, only ethical stances should be allowed; that is, ethical viewpoints that are supported by a correct argumentation.
- (2) *Isegoria does not imply parrhesia!* *Isegoria* is a Greek term referring to the right of intervening in the public debate. *Parrhesia* is another Greek term. Its negative meaning (though the whole issue will be better addressed starting in chapter one) indicates unmindful speaking. Well, the right of speaking in public should not be conflated with unmindful speaking, namely speaking without offering correct arguments, as often occurs. I wish that all those who justly fight for granting *isegoria* would at the same time be opposed to *parrhesia*. However, this rarely happens. What a pity! Obviously, it is here that the alleged elitism comes in.

First Caveat

Some may object that in the following text sufficient attention is not paid to the emotional aspect inevitably involved in making any decision. This is an interesting observation that I cannot but hold in high regard. However, given the current overabundance of “emotiveness” that emerges every time we pretend to take a decision, some unclouded reason could not be harmful. However, in principle and from the very outset, I am grateful to these criticisms.

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Drinking wine and being happy is my faith.
Mine religion is far off from belief and hate.
I asked the Bride of time about future credit.
Said, ‘just happy hearts as credit I do admit.

(translation by Simon Baghdasarian, source: <http://www.poetry-chaikhana.com/>)

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Chapter 1

Deliberation and Democracy

Where deliberative democracy is discussed and where it is recalled how it has been formulated in the contemporary debate and how this debate has failed to consider who (in particular Aristotle) discussed it previously.

1.1 Deliberation for All

It is not always the most orthodox philosophical approach to look for the meaning or the etymology of a technical term in a dictionary. In fact, the everyday use of that term may largely differ from the technical one. Nevertheless, to look for the origin of ‘deliberation’ might not be such a bad idea. Etymological dictionaries say that *deliberation* comes from the Latin *deliberatio*, that is, from the verb *deliberare*; i.e., *de* (entirely) plus *liberare* (liberate), thus *to free* someone or something *or deliver from*, especially where decisions are concerned. Yet *de-liberare* also has another meaning since it could have come from *de-librare*: to subtract something from a *libra*, i.e. a balance, after having measured its weight. This is the origin of the verb *libro*, *libras*, *libravi*, *libratum*, *librare*, which indicates, by extension, pondering or weighted judgement.

Such an origin is worth keeping in mind. It is not an issue of cultural vanity, which may be serviceable in more or less sophisticated circles, or at conferences where we would like to show off. The origin of this word, instead, allows us to understand that ‘to deliberate’ relates to choosing on the grounds of the various reasons that enable us to ponder the different options that lay on the table. This entails that deliberation is not just the outcome of a process; rather, it is the whole process that eventually leads to the choosing.

It is now time to start.

1.2 The Many Faces of Democracy

It is not at all easy to define, in abstract terms and in a manner that is satisfactory in all circumstances, what democracy is (see Dahl, 1989). According to the etymon (again!), we could claim that democracy is that form of government in which the people (*demos*) handle the power (*kratos*). However, defining an unclear term through terms that are just as unclear like ‘people’ and ‘power’ is not

very exciting if we are aiming at any degree of precision. For the sake of curiosity, we might wonder: Who are the people? Are they all the inhabitants of a nation? Are they just those who possess citizenship? What features qualify an individual as a citizen? Should all citizens be involved in the government or, perhaps, just those within a certain age range? Within what age range? Should only those in good mental and physical health be included? Who defines such mental and physical standards? Supposing we satisfactorily answered these questions of inclusion once and for all, we would still have to deal with the issue of ‘power’. What is power and, more significantly, what are the different powers we are speaking of? Should all powers or just some be considered and, in that case, which of them exactly?

In short, it is quite worthless to speak of democracy in a general and shallow way. We would run the risk of using the term in a superficial fashion, which does not convey any meaning and cannot be used outside pub debates. As we all know, the pub is an excellent place for social gathering; however, the pub has its own communication rules, which may not coincide with those that govern an in-depth discussion. This does not mean that in-depth discussions are impossible at the pub. They are just uncommon. As we all know, pubs, bars and similar places can host writers that write, thinkers that think and serious discussants that seriously discuss, and so on.

In high school, we were taught that, on the one hand, there is *direct democracy*, which, according to the typical hagiographic account, is “that of Athens in the classical age”, in which all citizens directly participated. On the other hand, there is *indirect democracy*, in which individuals delegate (and they pay for this) legislative and executive affairs to a portion of their number – the representatives. Obviously, in this latter case, there are rules that representatives must, or should, follow. Such rules shape the kind of indirect democracy we are considering. In Italy, for example, there should be an indirect, or representative, democracy, in which individuals with certain characteristics – and, therefore, not all those who live within the Italian territory, but only those that possess Italian citizenship and are at least 18 years old – can vote for representatives who constitute the Parliament, which then, in turn, elects the President in accordance with certain rules and so on. However, we must not fail to remember that, for example in Italy, there are forms of direct democracy too, like the ‘referendum’ and ‘popular initiative’. The former allows Italian citizens of appropriate age to directly claim (in a legally binding way) what they think about a certain issue. The latter concerns the possibility for a group of at least 50,000 citizens to submit to the Parliament a draft law to be discussed and possibly approved.

Beyond this initial distinction, we must take an additional one into account, which is most probably not contemplated in the course of high-school studies, that is, the distinction between *aggregative democracy* and *deliberative democracy*. Aggregative democracy is a form of participation in political decisions in which all citizens (of appropriate age) are requested to give their opinion. It can be one of the possible realizations of direct democracy, as well as the mode that characterizes the referendum. However, aggregative democracy is mainly characterized by the fact that citizens are not required to justify their choices. They

are just required to make a choice. The citizen is then asked: “There are options A and B. Make your choice (vote).” Essentially, the notorious Pontius Pilate implemented a form of aggregative democracy when he brought Jesus and Barabbas before the inhabitants of Jerusalem asking whether Jesus or Barabbas should be set free. People could make a choice without justifying it.

Neither Pilate nor anyone else argued in favour of whether Jesus or Barabbas should be set free. People could just make up their minds, if able and willing to do so, and express themselves. In Italy, the situation is similar when there is a call for a referendum. In this case, citizens cannot justify the choice they make. Unfortunately, there is a significant difference. Unlike the people of Jerusalem facing Pilate’s historic choice, Italians can turn on the television and read newspapers, in which a gigantic zoo of dwarfs, *danseuses* and genuine and alleged experts are on display and discuss the matter relevant to the referendum. However, there is an intriguing ruse here. Citizens, who would like to make up their own mind on the vote, are not given the chance or, better, the tools to distinguish the dwarf from the *danseuse* or the genuine expert from the mendacious one. It is a sort of “Guess who I might be and how competent I am”. Thus, it is as if, before letting the public decide between Jesus or Barabbas, Pilate had brought in, as free speakers in support of either party, a couple of courtesans, his wife – Claudia Procula –, a pair of philosophers directly from Greece plus two would-be philosophers very charming in their tunicae with the *subligaculum* – a sort of thong – shining through, an actor and a pair of hard-muscled gladiators. Honestly, I cannot really tell who is truly “democratic” whether it is Pilate, who left the responsibility and the choice entirely to the people of Jerusalem, or the Italian Parliament, which gives anchormen, good-looking girls, who are as pretty as they are incompetent, and less charming, thoughtful, boring would-be thinkers the burden of instructing people in the matter of the referendum. Pilate, however vituperated, let the people decide without pretending to correctly inform them about the subject matter. Of course, *judicium ad populum* (appeal to the people) is not really an advisable method to adopt to take decisions (as it is a rationally irrelevant argument) but, however argumentatively fallacious, Pilate was honest as he did not conceal his total lack of interest in informing people about the Jesus-Barabbas issue impartially and in a communicatively correct way.

However, in the aggregative case, the endorsed decision is usually binding as regards the whole community independently of whether or not the single individual shares or grasps the rationale, fully understands, or holds personal unexpressed (either good or bad) reasons about such a decision. It should be noted that, in this case, the reasons that lead to the choice are unexpressed, and they are not even required to be assessed critically in a public debate. In fact, any citizen of Jerusalem could have quickly found some reason in favour of or against one of the two men in question before making the Jesus-Barabbas choice. However, no one would have had sufficient time to offer his/her personal reason to public scrutiny, namely, to the collective debate.

One last point is worth considering. It is trivial to recall that in any aggregative-democracy situation, in which nobody is obliged to disclose personal reasons of choice in order to submit them to the public scrutiny, many can chose (or vote) in

bad faith. That is, they could be convinced of the ethical soundness of a given choice but nevertheless they could underwrite a different one, which is “politically” (here this adverb should be taken in its derogatory sense) more convenient to personal interest or to their party’s interest, which in turn entails beneficial effects for them themselves who owe their quality of life to such a party!

After this digression and having looked at aggregative democracy, let us move to *deliberative democracy*. This latter, differently from the former, puts emphasis on the role of the reasons behind a given choice; namely, it stresses the need for and the importance of the offered justifications. In this case, what really matters is not just the final moment of the actual choice, but the relevant process that leads to the choosing, and such a process is always collective, since individuals with diverging positions should rationally dialogue with each other in order to achieve a common result.

This point merits further inspection, since it is of great importance in order to clarify the epistemological context in which deliberation is implemented. In order to grasp it, we can think of a public situation of moral conflict like, for instance, a debate on the ethical tenability of heterologous artificial fertilisation, in which the inserted sperm belongs to a willing donor and not to the official partner. There are ethical theories that try to solve such moral conflict by showing that they are the only theories able to do so, whereas competitor theories are either too faulty or too weak to provide the same result. We could call these *perspective theories*, because they offer a precise perspective from which we can look at the relevant issue. Classic examples of perspective theories are the consequentialist theories (which try to solve the problem of whether it is permissible to make use of sperm from a stranger contingently on the evaluation of the consequences such an action might have) and the deontological theories (which try to achieve the same aim though starting from behavioural principles). Utilitarianism is the eponym of consequentialist theories. Accordingly, the choice is considered as the best in as much as it maximises collective benefits and, at once, minimises collective detriments. Instead, the paradigmatic case of deontological theories is Kantism, which claims that the best choice is that conforming to a potentially universalisable principle; namely, a principle that is applicable to anyone. As we know, there are additional perspective theories like liberalism, in which a choice is made on the basis of how much certain individual rights are met. Another perspective theory is communitarianism, which takes the best choice to be that coherent with the conventions and traditions of the community one belongs to. Thus, a utilitarian may consider heterologous artificial fertilisation as an ethically defensible choice on the basis of the fact that the social benefit it would imply largely outweighs its related detriments. A Kantian could derive such choice from the principle of individual autonomy, which is universalisable, and so on.

These are not the only possible choices. Actually, we can think of them as families, or classes of perspective theories, each having spawned countless variants. This makes it quite complicated to understand in which sense someone may qualify him/herself as utilitarian, Kantian, or liberal. However, it suffices to get hold of (and go through) any compendium of history of moral philosophy to

realize how varied the landscape of perspective theories is, and how much we can delight ourselves in finding the one that best captures our point of view.

Yet, independently of mutual differences, each perspective theory attempts to solve the moral conflict by stressing its own strength and displaying, even through direct conflict, the frailty of others. *Method theories* work differently. These theories, that is, deliberative-like theories, do not propose a specific perspective, but they advance a methodological approach as a means to solving the conflict. Accordingly, the choice is taken without solving the moral conflict via a solution of the conflict among perspective theories; namely, through a solution of the meta-ethical conflict. Reflection upon this point suggests that meta-ethical conflict somehow removes real conflict, since it translates it into a different level, moving it from the particular and empirical level in which it normally resides, to the abstract and conceptual level where distinct ethical accounts live. Method theories, instead, keep the moral conflict at its original level by trying to solve it, if possible, at that level without appealing to any authority drawn from a specific perspective theory. Thus, method theories keep conflict alive insofar as it is solved, or it is proved to be unsolvable either absolutely, or relatively to the given cultural and historical context.

A last aspect, which is of great relevance and will be taken into consideration several times in this book, is that deliberation does not necessarily lead to conflict resolution. It can often just (though not only) lead to the awareness of the (absolute, or historically and socio-culturally relative) impossibility of solving a conflict. It should be noticed that the (absolute or relative) impossibility is such from the point of view of reason and that any conflict can always be solved through an *argumentum ad baculum* (appeal to force), even if – as we know – this is far from being an example of a good rational mode of argumentation. On the other hand, if we cannot solve a conflict through rational deliberation and we do not want to use coercion, we can still solve it in an aggregative manner by putting it to a vote, which will be more or less binding, depending on the context in which it takes place. Obviously, as soon as we move from deliberation to aggregation, we move from reason as the sole instrument to some form of consensus by vote. This, if we think about it, is merely an edulcoration of the *argumentum ad baculum*. For, in this way the many, the majority, impose their numerical force on the few, the minority.

Hence, the deliberative approach, which implies a method theory, does not remove the moral conflict as perspective theories would, but it keeps it at its proper level and tries to solve it through the use of good reasoning. Of course, this does not prevent participants in the debate from being utilitarian, Kantian, liberal or anything else. What really matters is respect for the proper features (to which we will return in a while) of the deliberative process.

1.3 Deliberation and Representation

Between the 1980s and 1990s the (mainly North-American) community of political philosophers and political scholars started debating the attempt to rethink democracy in order to put citizens' participation and engagement at its centre.

Citizens' participation and engagement were not meant as a passive endeavour as occurs in representative democracies, but rather as an active enterprise, as in deliberative democracy. Among other things, the community looked to classical Athens, especially as depicted by Mogens Herman Hansen (1991), as both an inspiring model and one to be achieved.

It goes without saying that the discovery of *deliberative democracy* was only a reformulation of ideas that were already contemplated in the history of political philosophy. Moreover, adoption of the classical Athens' model was a move towards a rather stereotypical and unreal idea of what deliberative democracy was. Let us put aside, for the time being, the rather mythical representation offered by many authors as regards the classical Athens' democracy. I will tackle this issue extensively in the next chapter. It should suffice to say here that deliberative processes were also anticipated, of course with some differences, in republican Rome and later, in the theorisations of thinkers such as Marsilius of Padua in his 1324 *Defensor pacis*.

Jumping here and there like a flea, which is notoriously one of the animals that jumps the furthest in relation to its size, in this historical overview, I would like to recall the interesting speech given by Edmund Burke at Bristol on the 3rd of November 1774. This is particularly interesting for us not only because it was centred on the refusal of the imperative mandate, but also because it offered a defence of the idea that deliberation is one of the central stages of the parliamentary debate. For, he said:

Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of *parliament*.

Aside from the appropriate detachment of representatives from their electors motivated by the fact that former are elected (and paid) to be at the service of the State and not of their own electors, Burke's view is quite utopian and, to put it euphemistically, a little naïve as he claimed that Parliament is the place most suited to deliberation. If he were right, then deliberation would be at the core of any representative democracy. Actually, it would be really great if Parliament would debate correctly, making use of reason. Unfortunately, we are familiar enough with how discussions are conducted in Parliament to seriously doubt that this could be the case and, therefore, that deliberation could really take place there. Moreover, we should keep in mind that any parliamentary debate cannot but be characterized, among other things, by compromises. Whether such compromises are of a (both politically and morally) low-level or a high-level, they are essential in politics, whereas deliberation does not necessarily require a compromise. On the contrary, in deliberation the absence of any compromise is desirable. A compromise is characterized by the fact that individuals, or groups of individuals, with different initial views eventually converge upon a common solution no one is fully satisfied with, which nonetheless represents the only possible way of reaching an agreement.