Fishkin, James S. *The Dialogue of Justice: Toward a Self-reflective Society.*

The author's idea of a "self-reflective" society is presented as an answer to the problem of political legitimacy. The hope is that a sufficiently robust theory of the legitimacy of a political system will obviate the need for a systematic theory of the justice of the decisions made within that system. Justice of the system's outputs will be a matter of their being outputs of a legitimate system, a purely procedural brand of justice. If this sounds permissive, James Fishkin argues instructively that it is not. It would probably require not only the usual strong political liberties but also pervasive social change in order to ensure each citizen's effective use of the political liberties.

The approach resembles Rawls's attention to the "fair value" of political liberties, along with their priority over other questions of distributive justice. Rawlsian liberalism, too, would call for deep changes in the basic structure of society, tending in the direction of greater social equality in countless respects. Fishkin rejects Rawls's theory of "justice as fairness," however, as he rejects any attempt at a "systematic" theory of justice. Fishkin's larger argument against all varieties of systematic theory of justice cannot be considered in this short review. Consider his argument against one category of theory, in which principles of justice are derived from some actual or hypothetical choice situation. Rawls's theory involves a hypothetical choice situation in which the motivations of the parties to the choice are refined so as to give the conclusion its moral significance. Fishkin also considers hypothetical/brute (unrefined), actual/refined, and actual/brute choice situations.

The problem for any theory that lets brute unrefined motivations play a determining role is that these may be the result of indoctrination rather than being autonomously formed by each individual. Indocinated preferences remove much of the moral authority of any resulting choice, especially if that choice is to be touted as somehow impartial among citizens. The problem, Fishkin says, with any account based on hypothetical rather than actual choices is that there are numerous accounts of impartial hypothetical choices all of which have an equally good claim to produce impartial choices, but many of which result in very different choices. Fishkin argues that there is no way to choose among these very different conclusions (compare Rawls and Harsanyi) without being arbitrary, and he calls this the *jurisdictional* problem.

The category that remains among the choice or contract models of justice attends to actual choices by citizens, but only where their motivations are suitably refined rather than brute. Fishkin's proposal in this category is what he calls a self-reflective society. Since his reason for rejecting theories which attend to brute motivations was that these might be subject to manipulation and indoctrination, that is the sort of refinement he imposes on the motivations of citizens whose actual choices will constitute justice. Justice is whatever is chosen in a political system whose operations are characterized by effective unmanipulated debate among the citizens. Notice that justice is not whatever *would be* so chosen; that would be a hypothetical model, which he rejects.

This reveals a puzzling feature of the argument. The move from hypothetical choices to actual choices was driven by the intractable controversy among numerous conceptions of impartiality that inform the construction of
any hypothetical choice situation. But for any account based on actual but suitably refined choices, we can imagine a counterpart which differs only by being hypothetical. The hypothetical counterpart to Fishkin's account would say justice is whatever would be (rather than is) chosen by a self-reflective society. The hypothetical account would be importantly different since it would, in principle, allow for the justice of some decisions made in non-self-reflective societies. The question is not, for the moment, whether this is an advantage. The question is why Fishkin thinks a theory avoids the supposedly intractable controversies about impartiality just by changing the "would be" to an "is." If there are several possible accounts based on actual choices, there is the danger that disputes about which one properly captures the idea of impartiality, or of unmanipulated debate, will be just as intractable as the disputes among hypothetical accounts.

Fishkin's interest in actual choice shifts the emphasis from outcome to procedure, and in particular to actual procedures of public political deliberation and social choice. Political choices get their legitimacy by having been chosen democratically after full, equal, unmanipulated deliberation by the citizens. It is important to ask, What is legitimating about this? Fishkin's answer appears to teeter unstably between several options.

One possible answer would be to emphasize the fairness of such a procedure. Each person gets an equal chance to reason with other citizens and an equal vote. No one is privileged, and in that respect no one has any basis for complaint. The outcome is fair in the purely procedural sense, and legitimate to that extent. This appeal to procedural fairness is not unlike "pluralist" or competitive conceptions of democratic legitimacy, except that among the things equalized between citizens is the opportunity to reason in a public forum; this was never emphasized by the pluralists, who spoke more of the equal influence over the outcome afford by an equal vote. Still, the deliberative version has the same general model of legitimacy: procedural fairness of the outcomes derives from equal resources and liberties within the procedure.

Another possible account of what makes the decisions of a self-reflective society legitimating would appeal to some capacity or tendency of full unmanipulated discussion to approximate some independent standard of justice or the common good. An account which looks similar to this epistemic conception, but which is importantly different, would appeal to the rationality of decisions produced by voting after full and free public deliberation. It is an appeal to procedural rationality of the outcomes. The crucial difference is that rationality is appealed to as a procedural value rather than as a procedure-independent standard.

Despite an early hint of a procedural fairness model (p. 35), Fishkin seems most often to appeal to the procedural rationality of the decisions of a self-reflective society. He says, "Practices that fulfill our conditions . . . are rational in the sense that they are self-reflective," (p. 143) and "Any shared understandings that survive such [unmanipulated] questioning take on the character of a continuing, rational consensus" (p. 128).

There is, however, also evidence of an epistemic component that is never acknowledged as such by the author and so never explicited or defended. At page 142 he suggests that when the practices of a society are self-reflective, there is less danger of certain factual or cognitive errors, such as mounting a
defense against enemies who are "entirely fictional or hallucinatory." He asks later, "What confidence can we have in any political proposition when critics of it have been silenced?" (p. 157). The waters are muddied then, when he says, "Instead of arguing that liberty of thought and discussion are instrumental to truth, in general, . . . we are arguing that liberty of political culture is necessary if we are to have any confidence in certain particular political 'truths,' and that having confidence in just those particular political 'truths' is part of the solution to the legitimacy problem" (p. 159). Is the contrast he has in mind the one between being instrumental to truth in general versus only being instrumental to particular political truths? Is so, the epistemic component of the theory of legitimacy is undeniable, but never defended. But then why the scare quotes around "truths"? If the truths in question are not genuine truths, but only so-called truths, then what can they have to do with solving the legitimacy problem?

If they are genuine truths, then their status apparently transcends the actual deliberative judgment of the self-reflective society. If they are not procedure-independent in this way, we are owed much more explanation. If they are, we must wonder whether Fishkin's account is as bootstrapping as it aims to be, or whether instead he owes us more details about this procedure-independent standard of justice and how it can pass the demanding test of acceptability to all reasonable citizens.

This instability between appealing to procedurally fair deliberation, procedural rationality, or epistemic tendencies of democratic deliberation is characteristic, I think, of the burgeoning (and in many ways salutary) literature on "deliberative democracy." Without more clarity here, it is impossible to discern much progress toward solving the vexing problem of political legitimacy in a robustly liberal framework.

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Kateb, George. The Inner Ocean: Individualism and Democratic Culture.

George Kateb's The Inner Ocean is a fascinating excursion into democratic theory—specifically, the theory of rights-based individualism—through Kateb's reading of the nineteenth-century American individualists: Emerson, Thoreau, and Whitman. Yet, Kateb's argument goes beyond interpreting these extraordinary and neglected figures in political theory. He makes a passionate and eloquent defense of the individual against the encroachments of state power and authority of all kinds. He points to deficiencies in the communitarian argument against individualism and liberalism, particularly its critique of "individual assertiveness and expressiveness that grow out of rights-based individualism in a representative democracy with capitalist institutions." He offers useful, although critical, insights into Nietzsche's theories of the death of god, the attachment to existence, the moral unjustifiability of life; Heidegger's "spiritual elitism," his argument regarding the "detachment from the social,"