Procedural Justice in Young's Inclusive Deliberative Democracy

Ben Eggleston

In her book *Inclusion and Democracy*, Iris Marion Young offers a defense of a certain conception of deliberative democracy. What makes her conception of deliberative democracy distinctive is the prominent role played in it by the idea of inclusion: according to Young, most conceptions of deliberative democracy are not adequately attentive to the need for political institutions to be set up in such a way as to "encourage the particular perspectives of relatively marginalized or disadvantaged social groups to receive specific expression" (p. 8).[1] Such inclusiveness in political institutions, Young maintains, is a requirement of justice, just as deliberative democracy itself is. Indeed in her view, the most just political institutions are institutions of inclusive deliberative democracy (to which I shall refer as IIDDs). My aim in this paper is to explore a contradiction that arises in Young's account of the justice of IIDDs and to weigh the relative merits of two ways in which this contradiction can be resolved.

Young's account of the justice of IIDDs presupposes a particular conception of justice that Young briefly sketches. This conception of justice rests on two other values: self-development and self-determination. Explaining the first of these, Young writes the following:

> I interpret the value of self-development along lines similar to the values Amartya Sen calls equality as capabilities. Just social institutions provide conditions for all persons to learn and use satisfying and expansive skills in socially recognized settings, and enable them to plan and communicate with others or express their feelings and perspectives on social life in contexts where others can listen. (pp. 31–32)

Self-development, Young writes, is conceptually related to oppression, in that oppression can be understood as "institutional constraint on self-development" (p. 31). As for the second element of her conception of justice,

> Self-determination . . . consists in being able to participate in determining one's action and the condition of one's action; its contrary is domination. Persons live within structures of domination if other persons or groups can determine without reciprocation the conditions of their action, either directly or by virtue of the structural consequences of their actions. (p. 32)

She concludes that she "define[s] social justice, then, as the institutional con-
ditions for promoting self-development and the self-determination of a
society's members" (p. 33). It can also be understood, presumably, as the
absence of oppression and domination. But I will leave a more precise spec-
ification of Young's conception of justice for another occasion, because I am
concerned here with a structural issue that arises more or less independently
of any aspect of the exact content of this conception of justice.

The structural issue I have in mind is, as I said above, a contradiction that
arises in Young's account of the justice of IIDDs—specifically, in regard to
exactly *how* IIDDs are just (assuming, as I do throughout this paper, that they
are just). By way of background, recall Rawls's discussion of procedural
justice. As Rawls explains in *A Theory of Justice*, just institutions, practices, pro-
cedures, and so on—a class of things including (let us assume) IIDDs—can
instantiate any one of three different kinds of procedural justice.[2] First, they
may be cases of *perfect* procedural justice: institutions or practices or proce-
dures that are perfectly reliable at delivering a just outcome, where there is
an independent criterion for what counts as a just outcome. For example, if
there is a cake to be divided, and an equal distribution is assumed to be the
just one, then (given certain assumptions) a perfectly reliable procedure for
delivering the just outcome is to have the person cutting the cake also be the
person who gets stuck with the last piece of it. Second, a just procedure may
be a case of *imperfect* procedural justice. This is similar to perfect procedural
justice in that there is an independent criterion for what counts as a just
outcome, but dissimilar in that there is no known perfectly reliable (or even
nearly perfectly reliable) procedure for delivering that outcome. For example,
in a criminal trial, there is an independent criterion for what counts as a just
outcome—that the guilty be convicted and the innocent acquitted—but only
imperfectly reliable rules of evidence, argument, jury deliberation, etc., for
delivering that outcome. Third, a just procedure may be a case of *pure* pro-
cedural justice. Unlike perfect and imperfect procedural justice, pure proce-
dural justice is present when there is no independent criterion for what counts
as a just outcome. Instead, the procedure itself is regarded as just (for non-
outcome-based reasons, obviously), and as long as the procedure functions
properly, whatever outcome results is *ipso facto* just. For example, if several
people sit down to play poker, then as long as the deck is properly shuffled,
no one cheats, everyone knows that bluffing is allowed, and so on, whatever
happens is just. There is no independent criterion (for example, everyone
evens out in the end, or the smartest player ends up with all the money) that
is used to assess the justice of the outcome.

This tripartite distinction naturally suggests the following question: on
Young's account, is the justice of IIDDs perfect procedural justice, imperfect
procedural justice, or pure procedural justice? There is no evidence that
Young thinks of IIDDs in terms of perfect procedural justice, so we can set
that possibility aside and focus on whether IIDDs are a case of imperfect pro-
cedural justice or a case of pure procedural justice. In other words, on Young's
account, are IIDDs just because they tend to result in outcomes that can be
seen to be just by their conformity to an independently specifiable concep-
tion of justice for outcomes, or are IIDDs just because they are the sorts of

institutions with certain (purely procedural) virtues such that whatever out-
comes result from IIDDs are *ipso facto* just? It is this question to which we
find, in *Inclusion and Democracy*, contradictory answers.

Many passages point to the imperfect-procedural-justice answer. Early in
the first chapter, Young writes that "the operating conviction of this book" is
"that democratic practice is a means [of] promoting justice" (p. 5) and that
the use of IIDDs "increases the likelihood that democratic decision-making
processes will promote justice" (p. 6). She strikes a similar note in her remark
that "democratic process is the best means for changing conditions of injus-
tice and promoting justice" (p. 17). After reviewing some of the conditions
required for parties to be deliberating in genuine IIDDs, Young claims that if
these conditions are met, "then the results of their discussion is [*sic*] likely to
be the most wise and just" (p. 30). A final telling remark is her statement that
"This book reflects on the conditions of inclusive decision-making that might
help bring about more just and wise political judgements" (p. 31). All these
remarks imply that Young views her conception of justice (the conjunction of
self-development and self-determination) as providing an independent crite-
rion that can be used to assess the justice of outcomes, policies, political judg-
ments, solutions to problems, and so on, once they have been brought about,
made, or enacted by deliberative bodies. This implies that the justification for
IIDDs is in terms of imperfect procedural justice: that IIDDs are just because
they outperform other political institutions at producing just outcomes, poli-
cies, and so on.

In other remarks, however, Young suggests a pure-procedural-justice
interpretation of the justice of IIDDs. First, Young explains that "I mean . . .
to echo the pragmatic theory of rightness expressed in discourse ethics. On
this theory a norm is valid if it is the result of free discussion and agreement
under circumstances of inclusive equality" (p. 30, n. 23). Second, she avers
that "What counts as a just result is what participants would arrive at under
ideal conditions of inclusion, equality, reasonableness, and publicity" (p. 31).
Finally, she writes that "justice is nothing other than what the members of an
ideal inclusive public of equal and reasonable citizens would agree to under
these ideal circumstances" (p. 33). All these remarks imply that the justifica-
tion for IIDDs is in terms of pure procedural justice: that, given the virtues
of IIDDs, then whatever outcomes and policies result from IIDDs are *ipso
facto* just.

Clearly, the justification for IIDDs cannot be *both* in terms of imperfect
procedural justice *and* in terms of pure procedural justice. In the first scenario,
IIDDs inherit their justice from the just outcomes that they promote with
unmatched effectiveness; in the second, they bequeath their inherent, purely
procedural, justice on whatever outcomes they happen to produce. One
cannot maintain both accounts of justification any more than one can main-
tain both that what is right is right because the gods command it and that the
gods command what is right because it is right. As in the *Euthyphro*, so here:
the justificatory force cannot go both ways.

Nor is this just an abstract structural worry. On the contrary, the roots of
this contradiction can also give rise to contradictory verdicts in regard to the
justice of particular outcomes and policies. To see this, suppose that, in a par-

ticular circumstance and in response to a particular problem or issue, some particular IIDD results in a policy of oppression and domination. (We need not suppose that IIDDs regularly lead to such policies; it is sufficient to recognize that such a turn of events is a logical possibility.) Then contradictory verdicts of this policy arise from the two available interpretations of the justice of IIDDs. On the imperfect-procedural-justice interpretation, the justice of the policy would be a function of its satisfaction of Young's stated criterion for justice (i.e., the absence of oppression and domination), and obviously the policy would be deemed unjust. On the pure-procedural-justice interpretation, the justice of the policy would be a function of its having emerged from an IIDD, and obviously the policy in question would be deemed just. (The policy's aspects of oppression and domination might appear to establish that it emerged not from a genuine IIDD, but from a badly designed or malfunctioning one, but they need not, any more than a witless novice's defeat of a seasoned pro in a poker game would require us to conclude that it was fixed.) The contradiction, then, surfaces in this context as well as in the structural one on which I focused earlier.

There are two obvious ways in which this contradiction can be resolved: by dropping the imperfect-procedural-justice justification of IIDDs, or by dropping the pure-procedural-justice one. In my view, the latter resolution is superior to the former one for two reasons. First, the latter resolution would require less revision to the substance of Young's theory than the former one would. Second—and this is a bit more of a judgment call—the latter resolution leaves the resulting theory more coherent than the former one does. To provide some evidence for these claims, I will first look at the costs of dropping the pure-procedural-justice justification of IIDDs, and then I will look at what I regard as the greater costs of dropping the imperfect-procedural-justice one.

To be sure, the costs of dropping the pure-procedural-justice justification of IIDDs are not trivial. First, because of the above-quoted remarks from Young suggesting this justification of IIDDs, some revision of the substance of her theory would be required. Second, it is advantageous for Young, in her effort to justify IIDDs, to be able to claim that the justification for them is in terms of pure procedural justice. For if the justification for them is, rather, in terms of imperfect procedural justice, then the justification of IIDDs depends on the truth of certain empirical claims about the reliability with which IIDDs promote just outcomes. There would always be the possibility that, under certain suppositions about the psychologies of the individuals in some communities or states, and under certain suppositions about how those individuals would interact, IIDDs would not promote just outcomes more effectively than, or even as effectively as, other institutions would. (Perhaps, for example, just outcomes would be more effectively promoted by adopting more of an expertise-focused model of decision making in which power is delegated to an elite group of career policy makers.) It might be replied that such a state of affairs is highly unlikely, but the possibility cannot be entirely foreclosed. So if the justification of IIDDs is in terms of imperfect procedural justice, then their justification is contingent and probabilistic, while if their justification is in terms of pure procedural justice, then their justification is

necessary and certain. So it is not hard to see why Young is inclined to characterize IIDDs as a case of pure procedural justice.

In my view, however, the imperfect-procedural-justice justification of IIDDs is ultimately the better choice for Young, for several reasons. First, even though this approach leaves the justification of IIDDs merely contingent and probabilistic, it is still relatively secure. Young points out that any given instance of IIDDs can be counted on to promote the value of self-development because it "enlarges the lives of active citizens, develops capacities for thought, judgement, and co-operation, and gives people opportunities for glory" (p. 16). She also compellingly establishes the link between IIDDs and the other main component of justice, self-determination (p. 33). Finally, she persuasively argues that IIDDs more reliably lead to just outcomes and policies than non-inclusive institutions do because the inclusiveness of IIDDs enables them to "provide the epistemic conditions for the collective knowledge of which proposals are most likely in fact to promote results that are wise and just" (p. 30). So the justification for IIDDs remains strong, even when that justification is only one of imperfect procedural justice.

Second, the imperfect-procedural-justice justification of IIDDs allows for a more natural interpretation of the role to be played, in Young's theory, by the conception of justice she sketches (self-development and self-determination, the absence of oppression and domination). For if the justification of IIDDs is in terms of pure procedural justice, then Young's conception of justice would appear to be a fifth wheel. One might think that its purpose could be to specify the conditions under which an institution is a genuine IIDD, but that purpose is already being served by other conditions that Young mentions in various passages (see, for example, Young's mention of political equality and reasonableness on p. 17). These conditions are as separate from Young's conception of justice as the conditions that define the original position are from Rawls's conception of justice. Just as (for example) the difference principle is plainly meant to apply to the basic structure of society, not the interactions of the parties in the original position, so likewise Young's conception of justice is plainly meant to apply to real-world outcomes and policies, not the IIDDs that lead to those outcomes and policies. It seems clear, then, that in sketching a conception of justice, Young means to be providing a criterion that can be used to evaluate outcomes and policies and, then, the institutions that lead to them. Obviously this fits the model of imperfect procedural justice, but not that of pure procedural justice.

Third, unlike the pure-procedural-justice justification of IIDDs, the imperfect-procedural-justice one meshes nicely with another prominent element in Young's picture of deliberative democracy: the image of deliberators consciously and openly regarding justice as an ideal to be consulted in the selection of outcomes and policies and, then, adjusting and framing their competing claims so as to live up to this ideal. She writes, for example, that one of the virtues of IIDDs is that they make individuals accountable to one another in such a way as to induce them to "transform their interests and preferences, so that they can be publicly expressed as compatible with justice" (p. 30; see also p. 51). She also writes that within an IIDD an individual is

"obliged to try to persuade others of the justice of his or her claims" (p. 48; see also p. 3 and p. 113). When the justice of IIDDs is understood in terms of imperfect procedural justice, it is entirely understandable that individuals might frame their appeals in such terms, just as one can imagine one juror saying to the others that the defendant ought to be acquitted because the defendant is innocent and justice requires that innocent defendants be acquitted. But if the justice of IIDDs is understood to be of the purely procedural variety, then a deliberator who says that justice requires one policy rather than another is saying nothing more than that the operation of a genuine IIDD would result in the selection of the first policy over the second one. For without any independent criterion of justice by which to assess the policies under discussion, claims about justice are effectively (although perhaps unwittingly) merely predictions about the outcomes of IIDDs. So only the imperfect-procedural-justice interpretation, not the pure-procedural-justice one, makes sense of the possibility of deliberators aspiring to arrive at outcomes and policies that are just.

For these reasons, I think that the imperfect-procedural-justice justification of IIDDs requires less revision of Young's theory, and leaves it more coherent, than the pure-procedural-justice one. Of course, as I mentioned, the imperfect-procedural-justice justification of IIDDs has the shortcoming of leaving the justification of IIDDs contingent and probabilistic. But the costs of dropping this interpretation of the justification of IIDDs in favor of the pure-procedural-justice one seem greater. I conclude, then, that the contradiction in Young's account of the justification of IIDDs is best settled by seeing IIDDs as justified in terms of imperfect procedural justice.

Notes

[1] Parenthetical page references are to Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

[2] John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999). The account of the varieties of procedural justice is on pp. 74–75.