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Legislative Committees and Deliberative Democracy: the Committee System of the South African Parliament with Specific Reference to the Standing Committee on Public Accounts (SCOPA).

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1. Parliamentary Committees and Democratic Theory

In a democracy the People choose a leader in whom they trust. Then the chosen leader says, "Now shut up and obey me!" People and Party are no longer free to interfere in his business. Later the People can sit in judgment. If the leader has made mistakes - to the "gallows with him!" (HH Gerth and C Wright Mills (1948) 1991, 42)

This study is concerned with the role of Parliamentary Committees in relation to both democratic representation and the Executive branch of government with a particular focus on one such committee in the South African Parliament, the Standing Committee on Public Accounts Committee (SCOPA). In this connection, attention is drawn to the shift that has occurred in the way SCOPA itself functions and to how this shift internal to SCOPA interacts with political interventions and tendencies external to the Committee, with serious implications for the quality of democratic political life in South Africa. The Committee's investigation into the notorious Arms Deal entered into by the South African Government is pivotal here. Does the Committee's endorsement of its Report by majority vote mean that the Committee discharged its constitutional responsibility to work for transparent and accountable government? In order to answer this question it is necessary to consider both this investigation itself (and the Report it resulted in) as well as the principles of democratic theory, especially since contesting conceptions of these principles are obviously at work in arguments over SCOPA's performance in the Arms Deal investigation. Both lines of enquiry are explored in the body of this thesis.

The Joint Investigating Team (JIT) Report is examined in close detail in Chapters 5, 6 and 7 and this is crucial to the overall argument of the thesis, which is that although SCOPA endorsed this Report, this does not endow the Report in question with legitimacy. This is because the Report itself did not even cross the threshold of "reasonable adequacy" – that it received the endorsement of a majority of the members of the Committee is not, it is argued, sufficient to endow it with democratic legitimacy. And these conditions of deliberation must be satisfied in terms of the argument developed here. And this condition was not satisfied because the flaws in the JIT Report disqualify

the SCOPA decision, render it "non-deliberative." This, we argue, prevents it from fulfilling its wider role *vis-à-vis* the democratic sovereignty of the South African people. It is this role and its requirements that are examined in the theoretical contribution made by this thesis. Here the so-called "watchdog" role of a Parliamentary Committee like SCOPA is shown to be internal to and constitutive of the democratic formation of the Popular Will: it is argued, in other words, that such committees do not play the role of a mere optional supplement to a democracy that exists as such in any case. This is done by developing the "deliberative" implications of the notion of the Popular Will itself and showing the role of Parliamentary Committees *vis-à-vis* this deliberative dimension upon which democracy itself, it is argued, ultimately depends.

This, then, is the study of how, by intervening in the functioning of institutions such as Parliamentary Committees, a democratically elected government does not merely impede the free circulation of information and political knowledge, but fundamentally obstructs the exercise and realization of Popular Sovereignty, democracy itself. This is important because, as the case of the South African Parliamentary Committee SCOPA shows, such interventions, which effectively override the independence of Parliamentary Committees, are often justified *via* the invocation of the Will of the People. The Government is, after all, understood (in democratic theory) as a representation of the Will of the People, as its legitimate stand-in: in what way, then can the affirmation of its will constitute a frustration of the Popular Will? Does not the very notion of a representative democracy entail that the democratically elected Government legitimately enjoys such powers? We examine the South African Parliamentary Committee system, focusing on SCOPA in particular, and show how the latter succumbed to pressure from the Government in its treatment of the Arms Deal. We develop, at the same time, a theoretical argument concerning the nature of Popular Sovereignty. In capsule, we argue that the People is present (on the political stage) *via* representation in *several institutional sites including Parliamentary Committees.* These are no less important to the expression and realisation of the Popular Will than institutions like voting, elections, the National Assembly and the Executive. In the absence of the fullest possible deployment of the apparatus of investigation under the command of Parliamentary Committees, the People is deprived of access to a perception of itself, to a mode of self-consciousness, without which it seems inappropriate to talk of Popular Sovereignty. When the proper functioning of Parliamentary Committees is frustrated by government interference, it is thus not only a matter of *individual rights* being denied - although it is this too – *but primarily, from the*

perspective developed here, a matter of the Popular Will entering into contradiction with itself.

We propose, therefore, a theory of Popular Sovereignty as irreducibly *plural*, not *monist:* plural both with respect to its *institutional sites* as well as the *modality* of its exercise. In its own specific way, then, the Judiciary too "represents" the Will of the People. As far as Parliamentary Committees are concerned, their role *vis-à-vis* democracy, is to enable the People to acquire a perception of itself, of how "it," *qua* represented in the Executive branch, is carrying out its Will. And this perception must be as accurate as possible, i.e., it must rigorously respect the appropriate rules of evidence. Unless this condition is satisfied, what we have is a democratically constituted People, deprived of a crucial cognitive feedback loop, and not capable of overseeing how much of its Will is being actualised by the Executive to which it has been entrusted. It may, within the logic of pluralist theory only be legitimate for the People to monitor itself: but our point is that only a *pluralist* theory, of Popular Sovereignty can achieve this kind of "reflexivity" without having to allow "the monitored" to monitor itself.

When it is proposed that government be *"transparent,"* this means, on the approach to democracy and Popular Sovereignty developed here, that the People be *transparent to itself,* i.e., that whatever any organ of government does in the name of the People and the Popular Will, must be tracked and made known by those institutions specifically charged with this function. This cannot be entrusted to the Executive branch because *it* is under scrutiny – and yet it must be undertaken by institutions representative of the People if the structures of democracy are to be respected. Thus a pluralistic theory of democracy or Popular Sovereignty is required if the People is to monitor itself without those under scrutiny being themselves charged with this function.

Parliamentary Committees like SCOPA, must be encouraged in their investigative practices to conform to rules and principles impermeable to the influence of the democratic Government under scrutiny. In the hermeneutics (interpretation) of democratic practice and experience offered here, Parliamentary Committees must provide the People with as comprehensive and accurate a perception as possible of how the Government is construing and implementing the Popular Will, i.e., its will. Without such a perception the People cannot be really said to be exercising sovereignty over itself. If the investigative functions of Parliamentary Committees are influenced by considerations going beyond what is required for the production of empirically reliable reports, then

such Parliamentary Committees are unable to contribute to the constitution of a sovereign People in the manner called for by democracy itself.

This, we argue, is precisely what took place in the case of SCOPA. On the perspective we develop, then, it is not quite right to refer, in this connection, to the "watchdog role" of Parliamentary Committees. The trouble with this metaphor is that it suggests the Popular Will can fully exist independently of the contribution of Parliamentary Committees, which are (only) its "watchdogs?" What we are suggesting is that the People does not acquire an adequate consciousness of itself if Parliamentary Committees fail in their primary investigative function, and, thus, that their contribution is *not* external but *internal* to the very identity of the (democratically constituted) People itself. If committees fail to discharge their primary function - and *agreed rules of evidence and information acquisition* provide the standard of what is required here – the People, on our argument, fails fully to actualise its democratic identity.

Of course, the investigative work of a committee and its decision to accept a report is not the same as reading a thermometer or barometer (see SI Benn and RS Peters 1965). Judging whether an investigation has been adequately carried out clearly allows for more *reasonable disagreement* than it would seem appropriate to talk of in the case of reading the temperature, add to this the fact that what is at stake in the work of a Parliamentary Committee like SCOPA, *viz* the analysis of the financial accounts of Government Departments, has (immediate and long term) political implications and repercussions entirely absent from measurements of how hot it is, and it becomes evident that to *impose* a *consensus decision rule* on committee deliberations and decisions would be inappropriate. When division exists and consensus had to be reached before a decision can be deemed to have been taken, minorities are in a position to wield more influence over decisions than their numeral magnitude warrants. On the other hand, when *consensus* is possible without the majority being forced to "over compromise" with the minority, when a consensual decision reflects the considered and uncoerced choice of all involved, it is to be welcomed for its greater inclusivity and thus legitimacy (than that of a majoritarian decision). But there are inherent problems of judgment involved in defining terms such as "comprehensive" and "rigorous" – and deciding whether a given Parliamentary Committee report satisfies the conditions of application of such terms involves more than a simple calculus. Political identifications are very quick to fill in the gap produced by the intrinsic elasticity of such terms as "comprehensive" and "rigorous" and every effort must be made to prevent the activities of a Parliamentary Committee

being reduced to a matter of securing party advantage. This requires that impartial rules of investigation are obeyed by Parliamentary Committees in their work. If it were to be left up to a majority vote in a Parliamentary Committee to decide the rules of evidence governing the production of facts the entire *raison d'être* of Parliamentary Committees would be short-circuited.

A Parliamentary Committee may follow a consensus or a majoritarian decision rule when it comes to the approval of a report; however the fact that there might be some room for legitimate disagreement within committees – and, thus, for recourse to majority voting – does not mean that reports do not have to satisfy certain *minimal standards* before legitimate disagreement can emerge. There is, in other words, a *limit* or *threshold point* of adequacy, which needs to be satisfied before voting can be meaningful. In the case of SCOPA, although the Arms Deal Report in question was endorsed by a majority vote in the Committee, the investigation itself fell palpably short of the threshold of minimal adequacy. Although it is clearly preferable for *consensus* to be reached in matters of such importance as national accounts - because genuine consensus confers *enhanced legitimacy* - it has nonetheless to be acknowledged that, given the pervasive nature of political antagonism and conflict in modern democracies such as South Africa, this might not always be possible. Where consensus prevails in a Parliamentary Committee this is to be welcomed because it signals that the report in question enjoys a particularly robust legitimacy and that the Parliamentary Committee has properly discharged its function of providing the People with an accurate and reliable perception of what is being done in its name. To the great credit of SCOPA, consensus was reached on all issues during the first five years of its existences. Investigation into the Arms Deal resulted, however, in a deep fracture emerging within the Committee. It is our contention that this was *not* a reasonable disagreement because the JIT Report that divided SCOPA *never came near* to being "comprehensive" and "rigorous." The pressure of political advantage gained sway over forensic accuracy long before the Report was put to the vote, but it governed the vote too as the Report ought not to have been endorsed. The upshot being that SCOPA failed in its duty to provide the People with knowledge of what the Executive branch had done in its name, failed in its duty to provide the People with an adequate self-consciousness.

In order to elucidate further how the functioning of committees is related to the decision rule issue, we examine, in what follows, the specifically *deliberative* conception of democracy. Parliamentary Committees are interesting in terms of democratic theory

because they are, by nature, i.e., intrinsically, *deliberative.* We thus examine the literature on deliberation with a view to clarifying the way Parliamentary Committees function. As part of our discussion of the deliberative conception of democracy, we address the issue of whether deliberation is necessarily predicated on an assumption of underlying consensus. We argue that it is not, and that deliberation has a particularly important role to play in majoritarian forms of decision-making. Deliberation may itself never be entirely independent of antagonism but that does not mean it can be reduced to it. This is because, up to a certain point, there cannot be legitimate disagreement over whether adequate deliberation has occurred. Sometimes, so little occurs that disagreement over its adequacy seems entirely inappropriate. This, we argue, is why we cannot endorse the legitimacy of the SCOPA Report in question.

Of course, *some* such disagreements may well be undecidable on the evidence and have to be decided *via* majoritarian forms of decision-making, but this is not the case with respect to the SCOPA decision where the majority endorsement was illegitimate. Even a consensual endorsement may, however, be illegitimate – this would be the case if the report in question did not satisfy the absolutely minimal requirements of evidence and coherence. On the other hand, when these conditions are satisfied *and* the report receives authentic *consensual* endorsement (in addition), its legitimacy is proportionally enhanced. Whereas it may well be true to say of decision-making based on the majoritarian rule that it is unfortunate but not unfair, where uncoerced consensus is possible this is just as fair and far less unfortunate.

The *oversight* function of Parliamentary Committees should not be seen as an "add-on" to "normal" democratic legitimacy: without committees performing this oversight role, the People, sovereign in a democratic system, lacks "self-consciousness," and incapable of monitoring the way in which its Will, the realisation of which has been entrusted to the Executive, is being actualized. Committees enjoy powers of evidence gathering and analysis *not available to the ordinary individual citizen.* Without this "apparatus of investigation" (which is what a Parliamentary Committee is) the democratically constituted People is deprived of a crucial "feedback loop" able to provide information and considered judgment on how the Government is carrying out the mandate of the People. It is the case that an energetic and pluralistic *civil society,* especially with respect to the media sector, can play a role in compensating for either the absence of Parliamentary Committees or a derogation of responsibility on the part of the same committees: but what needs to be emphasised is that civil society institutions can never

be an adequate substitute for Parliamentary Committees. This is because of the formal structure of Parliamentary Committees, which gives them special powers of information acquisition and judgment. What cannot be denied is that Parliamentary Committees are intended by their design and rules of operation to provide as rigorous, comprehensive and honest, i.e., impartial, perception as possible of how the Government is performing as the agency responsible for actualising the Will of the People. This must be the case if Parliamentary Committees are to provide an adequate "self-consciousness" - consciousness of self - for the People. They must have rules of operation that seek to screen out, as far as possible, the influence of sheer political partisanship. Their function is to establish the extent to which the democratically elected Government is actually representing the Popular Will – to give the People an adequate consciousness of what is actually being done in its name.

What is called the "oversight" function of Parliamentary Committees is really thus a "sight" function *simpliciter*. There is a significant extent to which, deprived of the Parliamentary Committee "apparatus of investigation," the People loses its sight. The Parliamentary Committees' "oversight" function is thus integral to, constitutive of, the identity of any reflective People, and a People which is not "reflective" in this sense is surely a People that fall short of what is required of a Democratic subject. Parliamentary Committees are thus *not external* to the full actualisation of the Popular Will, some ornamental secondary appurtenance that at best "enhances" democracy. On the contrary, without committees we can not begin to talk of a democracy, of a government that acts in accordance with the Popular Will, because we can not know if this latter holds or not, i.e., we cannot know whether the Government in question is in fact acting in accordance with the Popular Mandate or not. So the Parliamentary Committee "apparatus of investigation" is at the heart of a democratically constituted People, is, as it were, integral to the *ontology*, the very being, of such a People - no less so than the "People as constituted in the National Assembly." In other words, just as the fact that the People cannot *enunciate* its Will without being represented in the National Assembly renders the existence and function of this latter ontologically constitutive of the People itself, so, too, the Parliamentary Committee's function is part of the very identity of the People - it determines the degree to which the People is deprived of and/or possesses an adequate self-consciousness for self-examination. Collective self-determination, the sovereignty of the democratically constituted People, is largely dependent on its capacities of self-examination and reflection.

A Parliamentary Committee is thus, just as is the National Assembly, a site where the People is represented and exercises its sovereignty. Parliamentary Committees are one, of several, sites of the expression and realisation of the Popular Will. These sites have different roles and functions in the process of the expression / realisation of the Popular Will. Committees are where, are the means by which, the People acquires an adequate perception of just how its Will is being actualised. This requires that they command official powers of scrutiny into the activities of the Executive, and that they conform to rules (in the drawing up of reports and in judging them) especially designed to reinforce an attitude that "faces up" to the hard facts and subjects them to principles of analysis and judgment also designed to minimise the influence of party partisanship and the associated tendency to present a "domesticated" perception of government activities. So committees comprise a specific institutional site of the presence of the People, here, the "sight" function, the acquisition of self-consciousness, occurs. Popular Sovereignty depends on this, (and the specific institutions involved in its discharge), "sight" function as much as it does on the democratic authority of the National Assembly. Similarly, the Judiciary too, although in one specific sense "independent" of the Popular Will, is also, in another sense, a site of Popular Sovereignty. It is independent in the same sense itself as committees are independent, i.e., *of the reach of the majority in the National Assembly.* But in another sense it may also be said that, ultimately, the People also endorse the independence of the Judiciary, that, in the final instance it too has been *"chosen"* by the People - i.e., the People endorse a system which aims at ensuring that what passes into law and policy reflects its *"considered"* rather than its *"immediate"* or *"impulsive"* judgment. The institution of an independent Judiciary, like Parliamentary Committees, is needed if the People is to be able to reflect, collectively, on how its Will is being interpreted and enacted by the Executive.

We have attempted *supra* to show that Parliamentary Committees fall under the theory of democracy, of Popular Sovereignty, i.e., that this theory entails their proper functioning and the discharge of their *"oversight"* function. The concept of Popular Sovereignty *itself* emphasises the importance of such institutions. Of course, these institutions can also be defended from a position *external* to democratic theory *stricto sensu*. Thus, from a liberal (individualist) point of view, they might be construed as necessary for the protection and defense of individual freedom *against* the purchase of the (collective) People, rather than, as in our discussion above, as *necessary for the proper formation of the Popular Will in the first place.* Be this as it may, the Popular Will thus *exceeds* its immediate expression *via* the National Assembly and the democratically elected Government - it under-girds,

and is represented, in other institutions (like Parliamentary Committees and the Judiciary) too. Once we adopt Ackerman's distinction between an impulsive and a considered decision we have an expanded conception of the Will of the People, one sufficiently commodious to accommodate a *wider range of institutions and forms of decision-making* than a narrow one, centred on the immediate will of the majority party in the National Assembly (BA Ackerman 1979). One implication of this argument is that Popular Sovereignty is either plural, i.e., exercised in a *plurality* of institutional sites and modalities, or it *cannot* be said really to exist at all. This needs to be contrasted with *monist* theories of sovereignty as found, e.g., in both Hobbes and *Rousseau* (T Hobbes 1971, J-J Rousseau 1975). In *Rousseau,* for instance, the People is understood as a single unified substance, immediately transparent to itself, i.e., self-conscious and in absolute mastery of itself - it must, on pain of losing its sovereignty, simultaneously express, interpret, implement and realise its Will *via* only its undivided self. For us on the other hand, even if it is true that on democratic theory only the People can assume the function of reflecting on and monitoring its activity, Popular Sovereignty can only be realised *via* a plurality of institutional sites and modalities. This "dispersion" of sites and modalities is, thus *ab initio* constitutive of the Popular Will. The conception of Parliamentary Committees that we advance here is thus part of a theory of democratic sovereignty as *inherently pluralist.*

Another feature of the conception of Parliamentary Committees we advance here is how it makes use of the conceptual distinction, famously introduced into democratic theory by Bruce Ackerman, between, on the one hand, impulsive and on the other hand, considered, forms of decision and judgment (BA Ackerman 1979), in an effort to make sense of the role of Parliamentary Committees in the logic of democracy. An example of a monist conception is provided by Weber. According to this, the People alienate their sovereignty to a government, which, because democratically elected, is the legitimate interpreter and implementer of the Popular Will. Here Popular Sovereignty is *concentrated* in the Executive branch of government and this is defended on democratic grounds. On this conception, then, the People is "present," i.e., represented, only in this institutional site, rendering *redundant,* from a democratic point of view, institutions such as the Judiciary, Parliamentary Committees and other "democracy supportive" institutions. This is the conceptual point Weber makes in the following well-known passage found in Marianne Weber's biography (of her husband):

> In a democracy the People choose a leader in whom they trust. Then the chosen leader says, "Now shut up and obey me!" People and Party are no longer free to interfere in his business. Later the People can sit in judgment. If the leader has made mistakes - to the "gallows with him!" (HH Gerth and C Wright Mills (1948) 1991, 42).

On this Weberian conception, the "oversight" function (as a constitutive component of democracy) only kicks-in every (plus or minus) five years and the Executive (itself condensed in the Leader) is only accountable at the moment of electoral renewal. The problem here is that this purely electoral accountability (once every plus or minus five years) is close to being meaningless given that the People is deprived of the institutional means crucial if it is to be able to produce an accurate and objective (relatively, not absolutely, of course) account of how, in between moments of electoral renewal, the Executive has performed in terms of the mandate it has received from the People. Without the input of "watchdog," "oversight" institutional centres (such as Parliamentary Committees), the People cannot form an adequate judgment *vis-à-vis* the performance of the Executive. At the root of this problem is Weber's reduction of (the identity of) the People, of Popular Sovereignty, to a single, determinate site, *viz* the Executive. Unless the *plural* nature of the expression and realisation of the Popular Will is acknowledged, and itself given robust institutional expression and defence, full democratic subjectivity is denied the People. Instead what reigns is what might be called an *impulsive* plebiscitaranism, combined with executive (leader) absolutism.

Popular Sovereignty is thus a "decentred" web of interconnected practices; it does not have an essence (e.g., the National Assembly) of which all other democratic institutions are just epiphenomenal expressions; rather, democracy just is a web of practices, (including voting for representatives), none of which is by itself necessary and sufficient for democracy itself. "The People" is "equi-present" in all these institutions and practices - they are interconnected and reciprocally conditioned. "The People" has invested these institutions and practices with the representation and realisation of its Will; this, as we have argued, involves Parliamentary Committees being construed as the principal "means of reflection" (AJ Polan 1980) of the Popular Will, in other words, as *co-constitutive* of it. Parliamentary Committees exist to reflect on, and deliberate over, information concerning executive practice - to come to a *judgment* about executive practice: this, it needs to be stressed, is not the same as just expressing political identity or will. In committees as much *impartiality* as possible is necessary: this is so in order to ensure that a report which is as accurate as possible is produced, one which respects the

"sovereignty of evidence" (E Gellner 1989) to the maximum possible extent and which considers, without prejudice, as wide a range of perspectives and arguments *vis-à-vis* the evidence as is possible.

Committees thus very frequently adopt *institutions* designed to counter the pull of party partisanship - especially on the part of the majority party, which is able, *de facto,* to impose its will on the Committee. These include the Committee Chair being a member of a minority party, and striving to satisfy a consensus rule in committee decision-making. These are intended to protect the Committee from being dictated to by the majority party. It is just these *rules of deliberation* that were obviously not followed in the JIT investigation; this ignored, neglected or glossed over, too many gaps and inconsistencies in the evidence. What was called *supra* the "minimum threshold point of adequacy" is then, measured by some bottom-line notion of reasonability - is it reasonable to claim the JIT investigation and the Report it gave rise to was adequate? Our answer is a resounding no! We claim that to any reasonable person it is evident that the answer must be "no." To make our argument as explicit and as clear as we can, we need to emphasise, then, that, for us, reasonable disagreement is *not* possible over the satisfaction (or not) of the "minimum threshold of adequacy;" this is decidable with reference to the "reasonable person;" what is *not* decidable with reference to the "reasonable person" is the question of *degrees* of adequacy.

The ANC position in SCOPA was illegitimate because the Report never reached the "minimum threshold point of adequacy" - its position on this issue is just not acceptable to the reasonable person. Other committee reports, which cross the threshold of minimal adequacy can, however, be the subjects of reasonable disagreement - their degree of adequacy is legitimately open to a dispute, which this time is not decidable with reference to a reasonable person. Thus, in spite of committee chair-holders belonging to a minority party and the consensus decision rule, the space of committee decision-making must be able to accommodate political antagonism - evaluating reports, as we pointed out earlier, is not the same as reading the temperature or the time. Thus, although consensus is *desirable* - as long, of course, as it is authentic, it *must not be imposed* - if it proves impossible the majoritarian rule must kick-in. In other words, in this context, consensus *is desirable but is not a necessary* condition of legitimate decision-making. Thus we do not *assume* the existence of consensus; we do not, in addition, though, deny that (authentic) consensus is preferable to majoritarianism. On what possible democratic grounds could this be denied? And as the early history of SCOPA itself shows, cross-party committee

consensus on public accounts is compatible with disagreement over the basic political project the society concerned ought to seek to realise.

Our argument thus involves a number of distinctions. There are those occasions when it is simply not reasonable to claim adequate deliberation has preceded a decision. In this (first) sense, "adequacy" is here a "*threshold concept"* - the conditions of which just are - or are not - satisfied by the lights of a very broad and thin notion of reasonability. But then, over and above this, there can be reasonable disagreement over the relative status of some report - e.g., just how adequate is it - *on balance* should it be endorsed or not? Reasonable disagreement is always possible around terms like this, and political identifications can always then, intervene when judging such matters. But such legitimate and reasonable disagreement itself presupposes the minimal adequacy of the report under consideration. When this latter is overwhelmingly inadequate, a majoritarian, or even a consensual, decision to endorse it is *illegitimate.* But, in a second sense, as we have seen, a concept like "adequacy" is *also* a *gradational* concept, and its legitimate application thus open to reasonable disagreement.

We have been arguing, more or less implicitly, that democracy is not really democracy if its deliberative dimension is excluded, and that Parliamentary Committees play a crucial role in realizing this deliberative dimension, which is constitutive of democracy. In addition, we have argued that in order to perform this role, Parliamentary Committees must themselves conform to certain deliberative conditions. We need, now, however, directly to address the concept of deliberation, which has been implicitly at work in what we have so far maintained in relation to democracy in Parliamentary Committees. What is meant by deliberation, deliberative democracy and what distinguishes it from "non-deliberative" forms? What are the main criticisms levelled against the concept of deliberative democracy from within democratic theory itself? How well can the notion of deliberation defend itself against these criticisms? What finally, is *the relevance of deliberative form of democracy for Parliamentary Committees* in particular? Does the concept of deliberative democratic decision-making entail a *consensual,* rather than a *majoritarian,* decision rule? What might the role and status of *majoritarian* decision-making be in contexts, i.e., institutional sites, such as Parliamentary Committees, where *deliberation* would, *prima facie* seem to be central to the *raison d'etre* of the institution itself? Can there be any role for the majoritarian decision rule in such contexts, i.e., in Parliamentary Committees? And what does it really mean when a committee employs the *consensus* decision rule when it comes to deciding on the adequacy of a report?

Whatever the case may turn out to be, it needs immediately to be made clear that no matter what the decision-rule adopted by a Parliamentary Committee (consensus or majoritarian), the rules of evidence governing the production of a report must be independent of the decision rule in question - if a Parliamentary Committee were able to decide, by majority *or* consensus, what is - and what is not - to count as proper evidence and reasonable argument, then the original *raison d'etre* of Parliamentary Committees is simply *short-circuited*: their function is to monitor government performance *vis-à-vis* the standard of the Popular Mandate and they can only discharge this function if they *systematically and comprehensively investigate* the matter at hand; if the criterion of an "adequate investigation" can be set by a collective decision (consensus or majoritarian), then the relevant *facts of the matter* are not allowed any *independence* in relation to the Will of the Parliamentary Committee: a rigorous representation of the practice of government is not possible if the "sovereignty of evidence" (E Gellner 1989) is not respected: and doing so entails keeping the criterion of "investigative adequacy" independent of any decisions taken by either consensus or majority. Another way of saying this (presently to be explicated) is to say that the satisfying of the *rules of deliberation* is a necessary, but insufficient, condition of *legitimate* Parliamentary Committee decisions. It is time then, to turn to the concept of *deliberation* and *deliberative* democracy directly.

Deliberative democracy is a "conception of democratic government that secures a central place for reasoned discussion (rational deliberation) in political life" (M Cooke 2000, 947). For Guttmann and Thompson (1996, 1), deliberative democracy provides "a conception of democracy that secures a central place for moral discussion in political life." According to them, what deliberation promises is a concern for "finding terms of co-operation that each citizen can accept," and this is important because contemporary societies are driven by deep conflict and moral disagreement (A Guttmann and D Thompson 1996, 26). Benhabib (1996, 68) presents deliberative democracy as a "model for organising the collective and public exercise of power in the major institutions of a society on the basis that decisions affecting a collectivity can be viewed as the outcome of a procedure of free and reasoned deliberation among individuals considered as moral and political equals." She continues, arguing that "the deliberative model of democracy is a necessary condition for attaining legitimacy and rationality with regard to collective decision-making processes, and that on the model, institutions are arranged so that what is considered in the common interest of all results from processes of collective

deliberation conducted rationally and fairly among free and equal individuals. The more collective decision-making processes approximate this model the more is the presumption of their legitimacy strengthened." For Benhabib, "participation in such deliberation is governed by the norms of equality and symmetry: all are to have the same chances to initiate speech acts, to question, to interrogate and to open debate; to question the *agenda* of deliberation and to initiate reflexive argument about the rules of the discourse procedure (in which they involved) itself, and the way in which they are applied or carried out" (S Benhabib 1996, 70). As Walzer puts it "deliberative democracy puts a premium on speech, persuasion, and rhetorical skill - and the citizen who makes the most persuasive argument - that is, the argument that actually persuades the largest number of citizens - gets his/her way" (M Walzer 1983, 304). But he adds, "(in) democratic politics, all destinations are temporary. No citizen can ever claim to have persuaded his fellows once and for all" (M Walzer 1983, 310) and "extending the domains of deliberation may be the only democratic way to deal with moral conflict without suppressing it."

Another way of explicating what is involved in the specifically deliberative conception of democracy is *via* a close scrutiny of the concept of equality. The deliberative conception of democratic decision-making does not seek to supplant majoritarianism but *rather to deepen the principle of equality upon which majoritarianism itself relies.* For the majoritarian or "aggregative" approach (see R Dahl, *Democracy and its Critics,* 1989), equality is respected when the arrangements of binding collective decision give *equal consideration to the interests of each person* bound by such decisions; the deliberative perspective takes this "equality of input into collective decisions" as necessary but *insufficient* for *full* democratic equality. *If others are seriously to be considered as equals it is not enough that we just count their interests - if we respect them as moral equals we need in addition to ensure that the reasons we adduce in justifying our choices can also be considered as reasons, i.e., as reasonable, by those who disagree with our choices.* On the deliberative conception, then, we treat one another as equals not merely by according equal consideration to interests - but by offering justifications couched in terms of considerations that can, on the whole, be acknowledged by all concerned as falling within the ambit *of what is reasonable.*

The normal setting for democratic decision-making is one characterized by "the fact of reasonable pluralism" (J Rawls 1993), i.e., by the fact that there exist distinct and incompatible philosophies of life (or "comprehensive doctrines" as Rawls puts it) and *that good faith efforts of practical reason are typically unable to produce convergence on*

any particular such philosophy of life (see J Rawls, on the "burdens of judgment," in *Political Liberalism*, 1993). Under such conditions it will not do merely to advance considerations one takes to be true or compelling, for these will not enjoy this status in other "comprehensive doctrines;" nor will it do to invoke, as justification for one's choice, the fact that a policy is most beneficial to oneself - others, concerned with their advantage, and, at the same time, keen perhaps to find mutually acceptable reasons, will not deem this acceptable. Deliberative democracy requires instead that the basis of collective decisions, *the political values under-girding them* - are acceptable to all those bound by such decisions, *including those who disagree with the details of these latter.* Democratic decision-making, on the deliberative view, rests, then, on institutional arrangements that encourage *"free public reasoning"* among equals, arrangements that, in other words, facilitate the expression, exchange and *careful consideration, of all claims and arguments bearing on the issue under consideration.*

This conception of legitimate collective decision-making is at the antipodes to that of Rousseau (J-J Rousseau 1975) whose eschewal of "the fact of reasonable pluralism" goes hand in hand with his endorsement of an epistemological intuitionism for which the common good is luminously self-evident to all those not contaminated by argumentative exchange (see B Manin 1987). The deliberative conception, on the other hand, stresses that only sustained and inclusive deliberative will produce decisions based on reasons acceptable to all those bound by such decisions, including those who disagree with them. As Manin (B Manin 1987) has shown, even Rawls's argument from the Original Position (see J Rawls, *A Theory of Justice,* 1971) dilutes the proper role of deliberation in determining institutional frameworks and political decisions. This is so because, under the conditions of the Original Position, all individuals have, by definition, the same point of view. Moreover, there is no room for any "internal" individual deliberation either, because, on Rawls's view, his "representative" individual already knows his "preference sets" as well as the structure of constraints to which he is subject. "The process of forming a decision is reduced to calculation." As with Rousseau, the individual is here already supposed to know exactly what he wants, or more precisely, he already possesses the criteria for evaluation that will permit him to appraise all possible alternatives" (B Manin 1987, 192). What is lost here is, thus, the constitutive role of deliberation in decision-making that sets out seriously to respect the equality of individuals.

The later Rawls, as is well known, ceased to base his theory on the artificial, rarified - yet inherently individualist and liberal - atmosphere of the Original Position, with its Veil of

Ignorance. He seems to open the way for political deliberation to perform its proper role in collective decision-making but, at the end of the day, encloses the sphere of legitimate deliberation in a narrow definition of public reason and the public sphere (see David Dyzenhaus, in Chantal Mouffe 1999) which results in the evisceration of proper deliberation (C Mouffe 1999; D Dyzenhaus 1999). According to Mouffe, the aim of the theorists who advocate the different versions of the deliberative model is commendable. Against the interest-based conception of democracy, inspired by economics and sceptical about the virtues of political participation, deliberative democrats want to introduce questions of morality and justice into politics, and envisage democratic citizenship in a new way. However, by viewing reason and rational argumentation, rather than interest and aggregation of preferences, as the central issue in politics, they simply replace the economic model with a moral one; this - *albeit* in a different way - also misses the specificity of the political. In their attempt to overcome the limitations of interest group pluralism, deliberative democrats provide, argues Mouffe, a telling illustration of the general point that "[i]n a very systematic fashion liberal thought evades or ignores state and politics and moves instead in a typical, always recurring, polarity of two heterogeneous spheres, namely ethics and economics, intellect and trade, education and property" (Carl Schmitt, in Mouffe 1999).

Mouffe's central claim is, then, that this perspective needs to be taken to task in so far as it is unable to acknowledge the ineradicability of antagonism and the impossibility of a final reconciliation through reason. To recognise the constitutive role of the political in its dimension of conflict / antagonism and acknowledge that the social is always instituted politically through hegemonic configurations, implies abandoning the misconceived ideal of a reconciled democratic society: It is this dimension of antagonism that Mouffe claims is necessarily denied by deliberative democracy. Mouffe maintains that in liberal democratic theory conflict is either reduced to a conflict of interests to be managed through negotiation – as in the model of interest group pluralism - or seen as resolvable through rational deliberation thanks to the adoption of an impartial standpoint, as in the deliberative model. In both cases, what is foreclosed is the properly antagonistic dimension, the dimension that would preclude the possibility of a rational solution. For liberalism, the opponent is not an adversary in the political sense of the term. Rather, as Schmitt points out, it is either a "competitor" or a "debating partner." This is why he declares that liberalism can only oscillate between ethics and economics, and was bound to miss the specificity of the political. But does deliberative democracy have to presuppose a unique standpoint able to reconcile opposing wills into a "higher third"

without loss to any of them? Are identitarian ontological assumptions necessarily implied here? Does deliberation necessarily involve assuming a common reason that will issue in a consensus? Does deliberation have to display such a Hegelian bias? Or is it - as has been argued *supra* - possible for deliberation to accommodate antagonism and conflict? Mouffe needs to realign her understanding of deliberation, consensus and antagonism. This is where her argument goes wrong.

Consensus - as long as it is authentic - is a desirable but not a necessary condition of legitimate democratic decision-making. Deliberative democracy requires of us that we "think in the place of the other" (IM Young 1982) but *not* to the point of self-obliteration - there are no identitarian ontological assumptions involved here. Deliberation concerns *how* decisions are made, its method, in other words, but has no necessary implications with respect to the political *substance* (antagonism / non-antagonism) of democracy. Deliberative democracy might seek consensus, but it does not seek its imposition. The issues confronting a Public Accounts Committee, e.g., how adequate has been the investigation that has gone into the report to be endorsed or rejected, do not permit of any algorithmic solution as we have pointed out *supra*. Notions such as "relative adequacy" are inherently open to different construals and thus consensus *can never be guaranteed.* It is only a desirable, not a necessary, condition of legitimate democratic decision-making. In this sense (i.e., because, if not attainable, it gives way to majoritarian decision-making), it might be termed a *quasi* decision rule in democratic theory.

This is what Mouffe fails to discern, *viz* that for deliberative democracy consensus is *not assumed* - it is sought but not assumed because, if unattainable it falls away and is replaced by a majoritarian decision rule - consensus is thus not imposed. It is *not* the decision rule unequivocally entailed by deliberation, as she claims it is. Instead, it is what we have termed a "*quasi* decision rule" for deliberative democratic theory. An ideal which, when realized - on condition of course that it is genuine and represents the *considered* judgment of all parties - enhances the legitimacy of the decision in question but, when not, does not entail illegitimacy. Under conditions of *considered* division, as we have pointed out *supra*, the only decision rule that respects equality is the majoritarian decision rule. It needs also to be noted that recourse to the majoritarian decision rule *before* deliberation is quite different from a majority decision *after* deliberation. Deliberative democracy does not then, *pace* Mouffe, assume that a common (human) reason can resolve all political antagonisms. For the deliberative democracy we defend, *undecidability* is intrinsic to the terms deployed in political debate and this may or may

not issue in antagonism. The relevant question here is “on what democratic grounds could a freely arrived at consensus be deemed undesirable or even illegitimate?” If such agreement is forthcoming its greater inclusivity (than a majoritarian decision) surely enhances its co-efficient of democracy. If it is not forthcoming, if antagonism prevails - and it should sometimes - then the majoritarian decision rule kicks-in and suffices for legitimate democratic decision-making as long, that is, that the conditions of proper deliberation are satisfied.