

**Stout's unconstrained discourse: Does reason-giving apply across the board?**

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**ABSTRACT:**

If considerable scholarly attention has, to this point, focused on the content permitted in Jeffrey Stout's pragmatist-expressivist account of political discourse and justification as reason-giving, set out in 2004's *Democracy and Tradition*, little enough has been said on the scope which he envisions therefor. Can time-consuming and intensely individual reason-giving shape institutional and governmental discourse in the same way as it does face-to-face encounters, associational life and broad-based organizing? While one can concede that unconstrained discourse and appeal to an individual standpoint are appropriate to building consensus and legitimacy in the latter forms, as 2010's *Blessed are the Organized* purports to show, one may nonetheless harbour doubts whether public officials could likewise engage in earnest personal narration and exchange of individual perspectives. For, despite the limited number of participants, it remains an open question whether such discourse represents either an appropriate or a practicable way of proceeding in such settings. Indeed, Stout's own questions, in his 2010 book, as to the efficacy of grassroots groups and broad-based organizing at the state, national or international level, may leave one with the impression that there exists a gap between the individual and associational context and the institutional and governmental. This leaves us with two questions going forwards about unconstrained discourse and the individual standpoint. First, are these different settings sufficiently similar such that Stout's version of political discourse displaces liberal public reason in institutional and governmental settings? Otherwise, does the former merely complement the latter, contrary to Stout's assertions? Second, from a systemic point of view, is Stout's version of public discourse deliberatively net-positive? In other words, as formulated, can it make an important contribution to the balance of the overall deliberative system? If these questions do not admit of an unqualified yes or no, there is reason to suspect that Stout's account cannot be implemented equally at all levels of political discourse. In the end, we will argue that unconstrained discourse and the individual standpoint, while salutary, are incomplete in themselves and are best suited to a complementary role in institutional and governmental settings as, at most, one tactic among others.

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## **0. Introduction**

In this paper, we take up the question whether and to what extent Stout's unconstrained discourse can be generalized to all levels of discourse and operationalized in institutional and governmental settings as well as the individual and associational. This initial question can be broken down into two further questions. First, are these different settings sufficiently similar such that Stout's version of political discourse displaces Rawlsian public reason or other conventional views of deliberation in institutional and governmental settings? Second, from a systemic point of view, is Stout's version of public discourse deliberatively net-positive?

Finding a satisfactory answer to this question will require us to proceed in four steps. First, it will be useful to review the basic outline of unconstrained discourse and the theoretical stakes in favouring unconstrained over constrained discourse. Next, we should recall the institutional or associational forms, notably broad-based citizens' organizations (hereafter BCOs), wherein unconstrained discourse might be best practiced. Discursive and institutional forms in mind, we will then be able to question how well unconstrained discourse might be practiced more broadly in the micro- and macro-deliberative spheres, with particular attention paid to the traditional liberal institutions of the legislature, executive and judiciary. Thereafter our attention will turn to whether, evaluated epistemically, ethically, and democratically, BCOs practicing unconstrained discourse provide deliberative inputs and outputs likely to generate positive net-deliberative outcomes for the system. Throughout, it will be our intention to bring Stout's discourse ethics and the deliberative democratic approach into dialogue with one another by pointing out their similarities as well as reasons for their failure to connect.

### **1. Unconstrained discourse**

What kind of discursive strategy is Stout's unconstrained discourse? As the term is not Stout's, it may be first to consider what represents a discursive constraint before shifting to the author's reasons for casting off such constraints and laying out his own strategy in detail.

In general, the author focuses on *ex ante* constraints on what a person might say and the way in which she says it. More fully, he is suspicious of attempts by theorists, moderators or participants to impose conditions either on the form or content of discussion such that it generates one or more of a set of desired outcomes, e.g. consensus, rationality, legitimacy, etc., conditions to which moderators and parties should assent before engaging in discourse. This suspicion stems, at a theoretical level, from epistemological concerns over justification and reasonableness and ethical concerns over freedom and solidarity. At a practical level, his suspicion takes the form of worries over whether constrained discourse sets back democratic inclusiveness and hinders quality of outcomes. At this juncture, we should say a little more on the kinds of conditions which theorists, moderators or participants might impose.

Stout (2004) treats two approaches to public discourse: contractarian and communitarian. With these, the author identifies prototypical thinkers: Rawls for the contractarian; MacIntyre and Hauerwas for the communitarian. Though opposed on the content of good public discourse, contractarian and communitarian thinkers share a commitment to imposing a framework on public discourse such that it generates one or more of a set of desired outcomes. For Rawls, desired outcomes notably include consensus, fairness and legitimacy; for MacIntyre and Hauerwas, the emphasis is instead on coherence, integrity and rationality. With an eye to those outcomes, Rawls requires agreement on a conception of justice, complete with basic notions of person and society and an indexed list of primary goods, to provide a justificatory basis for the ensuing deliberation (Rawls 1971). In contrast, MacIntyre and Hauerwas stipulate agreement on a shared conception of the good, complete with the authority, practices, norms and interpretations of a living tradition of inquiry, which adjudicates interlocutors' claims with respect to the tradition's standards (MacIntyre 1981; Hauerwas 1983).

In a word, whatever their differences, both the contractarian and the communitarian “assume that public reasoning can be a rational affair only if widespread agreement is reached at a high

level of abstraction” (Stout 2010a: 314) and so embody “normal discourse” and “rational commensuration” (Stout 2001: 294). That is to say, one ethical vocabulary “dominates discussion in some domain” and “all contributions to a discourse share the same basic ground rules” (*idem.*). As suggested above, Stout’s suspicions about normal discourse and rational commensuration are twofold. Theoretically, Stout pushes back in three ways. Stout (1981) casts doubt on whether the evaluation of truth- or knowledge-claims proceeds with reference to a common or neutral set of standards by which one then measures those claims for justified status (ch. 1). Also, Stout (2004) questions whether it is epistemically reasonable to maintain that persons giving comprehensive beliefs and reasons for a political position be excluded from deliberation as such beliefs and reasons can be responsibly held (ch. 3).<sup>1</sup> Finally, the author holds that we should not require persons to voice reasons other than their own (*idem.*).<sup>2</sup>

Practically, that suspicion takes shape in two distinct worries. On one hand, conditions on deliberation silence those voicing minority opinions or marginal perspectives (*idem.*). If those concerned are unable to voice their real reasons for holding a given position, then these persons have effectively been silenced. Their interlocutors neither show them respect nor have occasion to examine the premises informing their ethical and political conclusions (Stout 2004: 64). On the other, the author further concludes that silencing deprives audiences of relevant and potentially perspective-altering reasons and thereby reduces the quantity and quality of epistemic inputs, a point which Stout (2001) makes historically by pointing to the moral progress despite lacking shared, already agreed upon standards for discourse and evaluation (ch. 1, 2). In short, *ex post* flexibility and efficacy outweigh *ex ante* theoretical constraints.

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<sup>1</sup> A person who holds a belief responsibly or is epistemically entitled thereto has potentially justifying reasons therefor, is aware of these reasons as being such and conforms to her broader epistemic responsibilities (Stout 2004: 71). Stout also differentiates how a person “is justified in believing a claim if he or she is entitled to be committed to it, given his or her discursive context and cognitive conduct” from the way in which a belief or claim is “justified in some discursive context if *everyone* in that context is justified in believing it” (Stout 2004: 99).

<sup>2</sup> This is a requirement which Lafont (2013) has dubbed, with reference to Habermas (2008), “*the right of all democratic citizens to take their own cognitive stance in public deliberation*” (243, emphasis in original).

For all these reasons, the author casts off the constraints of normal discourse and rational commensuration for the “abnormal” (Stout 2001: 294) and “unstructured democratic conversation” (Stout 2004: 179). Put differently, the participant to abnormal discourse should abide by the sole maxim: “cultivate the virtues of democratic speech, love justice, and say what you please” (Stout 2004: 85; Stout 2005a: 384). Concretely speaking, earnest reason-giving takes the lead: participants to public discourse should give their real reasons for a given position, whether those reasons be tied to a political conception of justice or to a comprehensive doctrine, religious, philosophical or moral (Rawls 1996). They should also structure their contributions under whatever form they choose, whether this takes the form of formal argument with premises and conclusions, a series of related or unrelated warrants and claims, anecdote or storytelling, or any combination thereof. More precisely, we might isolate three basic phases: 1.) self-reflection; 2.) reason-giving and self-storytelling; 3.) immanent criticism.

1.) takes shape in Stout’s notions of “reflective self-inventory” (Stout 2001: 302) and the more refined “democratic piety” (Stout 2004: 9). Herein, the person takes stock of the different moral and social sources responsible for the shape of her life at a given moment in time and gives appropriate expression thereto. In that these sources intertwine with the person’s history, they provide her with a horizon of reasons which may justify her position (the state of “being justified”) and which she may use to justify a position on a given matter (the act of “justifying”). In a word, the person’s contribution to public discourse should manifest the different social resources at work in her reasoning.<sup>3</sup>

As to 2.), a key way to expose inventoried epistemological formations such as beliefs, attitudes, reasons and history is the person’s telling her own story and development.<sup>4</sup> Indeed, storytelling enables the audience better to grasp the real horizon of reasons and commitments within which

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<sup>3</sup> For an example of democratic piety at work, see Stout’s (2004) own taking stock (97, 173).

<sup>4</sup> More critically, see Dryzek (2000).

the person is working. Supposing that the person knows the story elements and tells it accurately and non-coercively, the person merits respect as a fellow interlocutor whose beliefs, attitudes, reasons and history are worth examining at greater length. Consequently, reason-giving and self-storytelling may also make the person more amenable to the subsequent exchange of reasons with the audience.

2.) paves the way for 3.), by setting the audience up to unearth the beliefs, attitudes, reasons and history motivating the person to support a given position. Indeed, without the knowledge afforded by listening and respect during 2.), immanent criticism would have no object on which to work. Without materials for examination, no way out of an impasse will emerge for interlocutors. Such examination may take different forms: declaration and conjecture (Rawls 1999: 594); anecdotes and stories; new arguments, claims and warrants (Stout 2005a: 381-2).<sup>5</sup>

This completes our survey of Stout's principled and pragmatic reasons for advocating "unconstrained discourse" over public discourse approaches which set *ex ante* conditions. We shall add that, to his credit, the author recognizes the merits of the contractarian and communitarian approaches and is willing to allow that such strategies might be incorporated as "vague ideals" (Stout 2004: 75). This point may have consequences for transposing unconstrained discourse to the institutional level and making sense thereof in §3.

## **2. Broad-based citizens' organizations (BCOs)**

If there exist different kinds of organizations which could integrate unconstrained discourse, Stout (2010a) limits the scope of his study to BCOs as sites for nurturing democratic citizenship

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<sup>5</sup> At the level of argument, it bears mentioning that Stout emphasizes the practice, either by public philosophers, organizers or interlocutors, of "expressive rationality" (Stout, 2004, pp. 12-14; Brandom 1994). For a person herself may not always be able to take stock of or to draw out what follows from the critical inventory made during the phase of piety and aired out in the phase of reason-giving and storytelling. Accordingly, the person may require a spokesperson, be this a philosopher to work out the inferential commitments underlying the reasons for her political position or a community organizer to extract the issue taking shape therein. Wherefore Stout's view that a vital part of deliberation consists in making explicit and scrutinizing the commitments and norms implicit in public discourse and reasons. This exercise presents the "advantage of putting the formerly implicit material inferential commitment in the explicit form of a claim, which in turn allows it to be challenged or justified inferentially in light of other considerations" and takes on still greater importance "when conflicts arise among different material inferential commitments that we have undertaken" (Stout 2004: 189).

and expanding citizens' reach in the democratic institutional ecosystem. Before examining their role and structure, "broad-based", "citizen" and "organization" require definition.

*a.) Citizen*

On Stout's (2010a) view, citizens bear responsibility for the manner in which a republic, with its characteristic institutions, goes about protecting citizens from domination by a single group or person (10). Whereas citizens carry out their responsibility by making full use of their political rights, a republic meets its obligations when it provides for a threefold recognition. First, the legal system nonarbitrarily recognizes persons as citizens (republic's recognition of citizens). Secondly, the legal system encourages citizens' political rights to impact its structure (citizens' recognition of republic). Lastly, citizens' political rights, secured by the legal system, brings them to recognize those rights' legitimate use by citizens (citizens' recognition of citizens).

*b.) Broad-based*

Citizens' organizations may come in all shapes and sizes, but Stout targets a particular form of collective action. He first distinguishes three different versions thereof: social movements; community organizing; and broad-based organizing (Stout 2010a: 7). Whereas social movements mobilize society around a single issue and community organizing engages a homogenous group in advancing their own interests, broad-based organizing cuts across groups to advance both their interests and the common good of a broader entity (Stout 2010a: 37-8). A grassroots citizens' organization thus resists social fragmentation on the basis of geography or class, education or ethnicity, language or religion. Organizing begins in a particular community defined in such terms, but it casts its nets beyond the limits described by community.

*c.) Organization*

Understanding the organization requires understanding the progression from micro- to macro-organizing and deliberation necessary to preserve its grassroots character. In reality, BCOS make use of a structure wherein a small group of citizens is brought together by organizers from associations like Southwest IAF to define and discuss an issue, with citizen leaders emerging in the process; leaders and citizens pursue, in collaboration with other such groups and grassroots organizations, the issue's resolution. The group of citizens may be a pre-existing one, e.g. a religious organization, parent-teacher association, etc., or may only form following a concerted period of community outreach. Following an issue's resolution, the group ordinarily defines and pursues another issue but turns over leadership.

We should next ask how BCOs inwardly avoid domination and top-down problem definition while maintaining impact. Stout (2010a: 265) details the micro- to macro-deliberative progression: one-on-one, house meeting, power analysis, research committee, core team of indigenous leaders, public rites of commitment, polarization, accountability, depolarization. By design, one-on-one conversations are unconstrained, and the person is free to relate what she wants in the manner which she finds most fitting<sup>6</sup>. For the time being, the organizer brings neither agenda nor gives orientation to the “jumble” from which the story should organically emerge. Hence, the one-on-one meeting serves both to establish emotional stakes and to work out the inferential relations between story, emotion and experience.

In general, the house meeting reprises the basic elements of the one-on-one meeting, to wit, its emphasis on open discussion, face-to-face contact, storytelling and emotional stakes, but widens the audience as many as twelve community members. Whereas the one-on-one meeting remains largely exploratory, the house meetings take the first, tentative steps towards problem-definition, i.e. an “issue”. From each person's exposing her own particularity emerge thematic

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<sup>6</sup> The unconstrained quality of the agenda marks an important contrast with other forums theorized and operationalized by deliberative democrats. On agenda-setting and legitimacy, see Caluwaerts and Reuchamps (2016). Stout's (2010a) comments on set agendas and predetermined issues are decidedly negative (150-1).



connections which gesture towards the “issue”, “a *contestable matter of concern*, on which the group might consider *taking action*”, a matter “sufficiently well defined to be contestable, but also important and winnable” (Stout 2010a: 157). Being of equal epistemic authority, participants are free to ask one another for clarification, consequences and convincing on any particular argument, reason or conclusion. Moreover, the discussion in house meetings is insulated from the influence of societal stakeholders, e.g. officials, experts, interest groups.

With this, a second round of house meetings inaugurates a division of labor within the BCO and the community being organized. One must conduct a power analysis, establish a research committee, and build a core team. The “core team” comprises “leaders” shoulder-tapped by an “organizer”, that is “a paid employee of the citizens’ organization” (Stout 2010a: 59). The former must earn the entitlement to speak for others and to exercise power on behalf of the BCO. The latter charge themselves with helping leaders to earn that entitlement.

Organizers may do so by identifying those who have already earned an entitlement to deference on certain subjects or by expanding the range of subjects on which the latter may speak with authority (Stout 2010a: 101). Likewise, they may attempt to expand leaders’ authority beyond their immediate group and to put the latter in a position to be held accountable by other leaders and the members whom they would represent. As leaders’ ability to give voice to others’ passions is integral to their role in adjudicating those passions, empathy or “the quality of the emotional connections being forged and the intent of the organizer are therefore essential to the process of earning the authority to lead” (Stout 2010a: 161).

The core team then proceeds with a power analysis “to help [others] see what the existing power relationships of the city consist of, but also to project an image of an alternative set of relationships that they could achieve by collaborating with others in a certain way” (Stout 2010a: 40). For this, one must draw an explicit link between persons’ narrow self-interest, economic or otherwise, and their interest in the common good of avoiding domination.

Accordingly, the power analysis must isolate persons' or groups' understanding of their self-interest. Power relationships concern the capacity of persons or institutions "to produce effects that people would have reason to care about" (Stout 2010a: 55). As a key step, the power analysis will attempt to put a face on what many persons within the community perceive as impersonal forces so that the BCO will later be able to demand accountability.

Stout (2010a) elaborates the notion of accountability via the following equation: "Power minus accountability equals domination" (63). On one hand, for one person to hold another person accountable is to require from the latter a mutual justification composed of reasons to which the former is sensitive. On the other, Stout (2010a) reviews how BCOs build inside accountability in order better to hold outsiders accountable. Only when certain relations obtain between the persons making up the organization can those persons in turn develop those same relations towards others. Their practice is political (concerns human arrangements in case of conflict), social (involves promoting human relationships of certain kinds) and egalitarian (is open to all who are capable of earning accountable authority) (Stout 2010a: 93-4). When Stout speaks of "egalitarian" as the absence of domination, he does not thereby intend a society without authority and hierarchy. Exercising democratic power entails exercising authority over others in the right way, with the right kind of internal structure and hierarchy.

The core team and the research committee can now, with the organization's members, work out a plan of action targeting private and public actors within the community. The author identifies five phases once the plan has been formulated: commitment, polarization, holding accountable, depolarization, reorganize. The first stage involves "public rites of commitment" (Stout 2010a: 265). Through visible and audible participation in a public forum, community members make an open display of commitment to the group's plan of action. By accepting or refusing, officials make an open display of commitment to furthering that plan of action or to opposing it.

Commitment sets the stage for the second phase, polarization, wherein organizers, leaders and community members identify temporary allies and opponents. Within this latter category, one should draw the line “between decent and malicious opponents”, i.e. between the principled and reason-responsive and the strategic and reason-unresponsive (Stout 2010a: 123)<sup>7</sup>. In an electoral context, the organization will advertise which public actors were present in the commitment phase and whether they committed to the organization’s plan of action. In a policymaking context, the organization will advertise which public or private actors were present in the commitment phase and whether they committed to the organization’s plan of action.

With stakes clear, the BCO’s efforts shift to the third stage, accountability. Herein, the situation is resolved, and allies and enemies are held accountable through demonstration, media outreach, etc. In an electoral context, this takes the shape of ally or enemy winning the election. In a policymaking context, the situation’s resolution takes the shape of the ally’s advancing or the enemy’s setting back the organization’s plan of action. If the ally advances the organization’s plan of action, then the organization has succeeded in exercising public representation and accountability. If the enemy (or ally) sets back the organization’s plan of action, then the organization must adjust or abandon the action plan and seek new means for accountability.

The time has arrived for the fourth stage, depolarization, wherein the BCO dissolves the distinction between allies and enemies for both prudential and principled reasons, to leave room for future agreement and to avoid rigidifying polarized political relations. From there, the broad-based citizens’ organization enters the final stage wherein it engages in a new round of one-on-ones and house meetings in order to build up organically to a new issue with, perhaps, new leaders. After several years, it will be necessary inwardly to reorganize the BCOs

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<sup>7</sup> For more on the distinction between “decent” and “malicious”, see Stout (2010b), 533-4.

themselves so as “to reestablish institutional footing in the communities they [are] serving” (Stout 2010a: 128) to retain accountability and one form of democratic legitimacy.

At this point, we face two tasks: asking how Stout envisions the broader deliberative sphere and how he scales up the earnest reason-giving practiced in BCOs to the macro-political sphere. At its shortest, a Stoutian deliberative system would consist of a network of publics and counter-publics interacting within a sector-wide “public of accountability” comprising officials, BCO spokespersons and citizens demanding and giving account, each to each (Stout 2010a: 109-10). A single “counter-public”, i.e. coalition of BCOs, affiliated citizens and allied groups, would be attuned to a single policy-setting “public” comprising private and public actors at the local, subnational, national, regional, transnational or international levels.

Wherefore Stout’s “scaling up” problem<sup>8</sup>. More precisely, it should be asked how he intends to reproduce, at the macropolitical level, the same increase in legitimacy, solidarity and citizen power as face-to-face deliberation in BCOs. At first blush, two paths seem open to the author: 1.) the use of alternative media; 2.) generalizing the use of BCOs. Stout (2010a) shortly rules out 1.) (163). As the author sees 2.), two conditions could hinder the spread and development of BCOs: the danger of being co-opted by economic or partisan interests; the danger of insufficient reach for complex national, regional or international problems. If given too prominent a place in the BCO’s internal deliberations, economic interests may compromise its ability to hold those same interests accountable for wrongdoing. Likewise, if allowed to shape the issues emerging from the BCO’s internal deliberations, partisan interests undermine its bottom-up flow of legitimacy and independent standing within a community. Case in point, Stout (2010a) singles out former US President Barack Obama’s “grassroots” organization,

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<sup>8</sup> We owe the idea of a “scaling up” problem to Niemeyer (2014) who denotes thereby the problematic “task of achieving in ‘mass democracy’ the same effect as deliberation observed in idealised mini-public settings” (178). For doubts as to whether there exists a “scaling up” problem, see Parkinson (2016).

“Organizing for America” (267)<sup>9</sup>. If domination is to be avoided and citizen influence to be maximized, those exercising power, like the head of OFA, must be subject to a macro-political form of checks and balances. It follows therefrom that those exercising power cannot act as checks and balances to that power which they exercise. Indeed, this means that BCOs cannot be brought into the institutional fold by those exercising power, nor can the BCOs’ leaders act simultaneously as leader and official. In short, BCOs as counter-public cannot be part of the establishment as public, even by administering those programs for which they struggle (Stout 2010a: 237-8).

Therefore, BCOs do not afford a complete view of the macro-political sphere nor of democratic governance. If BCOs cannot be generalized to the whole macro-political sphere, perhaps they can still be generalized to a delimited portion thereof. Roughly speaking, Stout could maintain that BCOs should maximize their reach within civil society while standing free of governmental institutions. Achieving maximum depth and breadth exposes, however, BCOs to a dilemma: organizations most likely to exercise collective power effectively are top-down and undemocratic, but organizations most likely to be bottom-up and democratic do not exercise collective power effectively. While this dilemma has nothing conceptually necessary about it, avoiding both horns represents a daunting practical challenge.

To his credit, Stout sketches out how BCOs might thread the needle. Stout (2010a) emphasizes how BCOs and their parent networks, like IAF, ensure inner and outer accountability when he recalls that “[t]o be an IAF group is to be part of a network and thus to be held accountable not only by individuals participating in the group and by other persons, groups, and institutions with which the group interacts in its own community, but also by the representatives of other groups in the IAF network” (132). Though the real exercise of accountability may at times fall

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<sup>9</sup> Following Stout’s (2010a) publication, the organization changed names, and the acronym OFA came to stand for, first, Obama’s 2012 re-election campaign (“Obama for America”) and, second, a successor organization (“Organizing for Action”) following his second inauguration.

short of this ideal depth and breadth, the fact that such organizations are predicated on such exercise alleviates one horn of the dilemma.

Moreover, this fact may also assuage doubts as to the second horn of the dilemma, the effective exercise of collective power. In order to exercise collective power effectively, an organization or network requires a hierarchy and decisionmakers. All while maximizing depth and breadth of accountability, networks like IAF rely on a hierarchy of organizers and supervisors. Under the right conditions, representation and authority may prove to be transitive (Stout 2010a: 132). Put differently, provided that leaders, organizers and network make themselves accountable to members and citizens through opportunities for “default-and-challenge”-style exchanges (Stout 2004: 298) and thereby earn the latter’s consent to represent them, genuine democratic representation and authority may flow from one end of the hierarchy to the other. Although Stout (2010a) urges caution on the hasty application of such transitivity (236), transitive representation and authority will prove vital in transforming the macro-political sphere.

With this, Stout (2010a) is ready to elaborate the program which we briefly described above: the development of a counter-public for each public or level of power (256-7). These publics are “counter” in the sense that they do not displace public and private actors but, instead, act as counterweights to the power which the latter exercise. Thus, while counter-publics remain free to put forward and agitate for policies, they do not implement those policies and thereby play a course-correcting rather than governing role. Moreover, the counter-publics are linked between themselves through their participation in networks of different sizes or levels. The building blocks of each network are counter-publics formed at the local level and practicing accountability. Hence, an international counter-public will itself comprise organizers and leaders drawn from regional counter-publics, the latter in turn being drawn from the ranks of national counter-publics, and so on down the line to the local counter-publics. It is indeed the latter that mark the international counter-public as distinct from other international actors, for

local counter-publics define the issues which then percolate up the chain of BCOs and counter-publics. So do we arrive at the creation of a hierarchical network of BCOs and counter-publics which parallels or mirrors the institutional and corporate structures at each level of power.

The author's thesis still draws questions both at an empirical and a theoretical level. Theoretically, two questions come to the fore. First, it should be asked whether Stout's vision of unconstrained discourse affects deliberation as practiced by public officials and governmental actors. Would legislative or executive powers stand to gain from earnest and intimate reason-giving? Second, we should push for a fuller picture of the macro-political sphere and the different functions and roles in a deliberative system.

### **3. Unconstrained discourse and institutions**

An important point from §2 concerns the inability of BCOs to handle the levers of power. While we might grant the author that he is right on this count, it is nonetheless worthwhile to examine the reasons why BCOs are unable to do so. If this might owe on one hand to Stout's suggestion that power corrupts and lack of accountability engenders domination, one might reasonably wonder, on the other hand, whether it owes instead to institutional logic or discourse. More pointedly, are BCOs necessarily excluded from institutional roles because of a lack of fit between their inner discursive logic and that of more conventional institutions?

This question proves vital. If unconstrained discourse is clearly preferable to the contractarian and communitarian approaches, can take on their own strengths and work around their respective weaknesses, then there is *prima facie* reason to explore whether it would be worth pursuing as a total discursive strategy, whether Stout intends so or not. Part of Stout's (2004) approach consists in showing that unconstrained discourse is already the norm for broad stretches of public discourse, i.e. certain arenas within the public sphere are already keyed to the open and open-ended exchange of reasons. Accordingly, he demonstrates that participants

have no need of framing devices for fruitful deliberation since the practices which one observes in one arena are the same as one finds in another.

One could push back on this point by evoking what Rawls (1996) terms the public political culture and the background culture: “political institutions of a constitutional regime and the public traditions of their interpretation” and “churches and universities, learned and scientific societies, and clubs and teams” (13-14). Given their different institutional logics, the public political culture and the background culture each require, for Rawls, a mode of justification appropriate thereto, *pro tanto* and full justification respectively (Rawls 1996: ch. 9). Stout’s (2004) approach to public discourse consists largely in breaking down just this distinction between cultures and extending full justification to citizens’ contribution both to public discourse and voting bearing on questions of basic justice and constitutional essentials. If not identical, the institutional logics proper to each culture overlap to a greater extent than Rawls allows, and presenting them as distinct deprives the other of additional epistemic resources and mixed argumentative strategies which might lead to discursive innovation and moral progress. The question is then to explore whether the two cultures, adopting Rawls’ terminology, overlap completely. More forcefully, does unconstrained discourse apply across the board? For this, we must determine whether it could be consistently pursued by the “political institutions of a constitutional regime”: legislative, executive and judiciary. Although Stout (2004) focuses on making room for the voices of religious citizens and expressly notes that he is “not addressing the distinctive issues surrounding the roles of judge, juror, attorney, or public official” bound by public reason (315), it should be asked why he sets these aside. What would happen were unconstrained discourse transposed into official political settings?

#### *a. Legislative*

The legislature poses a thorny problem for totalizing unconstrained discourse: the problem of representation, the relation between agent and principal, the tension between delegate and



trustee.<sup>10</sup> Though the author does not cite the problem directly, he devotes considerable attention to questions of authority. Of the former, Stout (2010a) distinguishes several species: “political” or officeholders’ entitlement “to exercise the powers of their office”, such as “the issuing of verdicts, rulings, commands, or orders”; “representative” or “the entitlement to speak for, or on behalf of, one or more persons or institutions”; finally, “nonpersonal” or the entitlement of an “entity such as a law, text, or tradition” to deference (306). All authority must be earned, and decision-making power or descriptive authority is to be strictly distinguished from “authority in the normative sense” (Stout 2005b: 733).

Representative authority proves most relevant for present purposes. In principle, legislators would go about earning representative authority in the same way as BCO leaders, organizers and networks, namely, by making themselves accountable to officials, leaders and citizens within the public of accountability through opportunities for default-and-challenge interactions wherein the latter may demand reasons for the former’s choices and counter these with new claims and warrants. Only when the persons to be represented have had the opportunity to demand and counter can the former be said to represent the latter.

In this way, representatives earn representative authority and “deference with respect to assertions within the game of giving and asking for reasons”, if not “deference with respect to the directives, edicts, or verdicts” which they might then make (Stout 2005b: 734). Certainly, this makes clearer how an agent earns representative authority from the principal, but it leaves untouched the delegate-trustee problem. Nor does it shed light on the discursive means of which the agent might avail herself in pursuing the exercise of political authority.

We suspect that Stout’s reasons for not pursuing the problem of representation any further are twofold. First, if the translation of electoral results into legislative mandates is as fraught with

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<sup>10</sup> For a general overview, see Cunningham (2002): 90-100. For its application in deliberative systems, see Parkinson 2006: 31-35; Bohman 2012; Christiano 2012.

“mystification as Stout (2005b: 717), then the author may have principled reasons to avoid tackling the problem. In short, the problem of representation should be dissolved as a false problem or source of confusion. Second, if representative authority is earned, as Stout suggests, through satisfactory default-and-challenge interaction within a public of accountability, the persons being represented might find reason to assent to the agent’s acting as either delegate or trustee<sup>11</sup>. More simply, so long as the legislator can meet the demands and counters of the persons being represented, then it matters little whether she acted to advance their explicit interests and ends or, instead, to promote interests and ends to which they had not given voice, whether those be to their own good. All in all, it appears that the author has two solid reasons for dismissing the problem out of hand.

This may apply as well to the precise discursive means at the legislator’s disposal. Provided that she makes good on her obligations towards the persons represented through default-and-challenge interaction in the public of accountability and the latter are more or less satisfied, she may determine the precise discursive means which she employs. Undoubtedly, certain discursive means will prove more difficult to justify to the public of accountability. While ethical appeals and story-telling form part of the standard rhetorical toolkit and may sit better with the public of accountability, religious appeals and explicit language may prove more difficult to account for before the same public. Yet it hinges upon the make-up and discursive presuppositions of the public as well as its opportunity for default-and-challenge interaction.

In a word, Stout may find himself in a position whereon the legislator’s discursive means may be effectively constrained without the need for a stringent public reason approach nor overly

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<sup>11</sup> Undoubtedly, a satisfactory default-and-challenge interaction is like a matter of degree. A scale like the following might prove instructive for giving a rough measure of the extent to which such an interaction is satisfactory: 1.) the counter-public has the opportunity to voice its challenge; 2.) the counter-public has 1.) and to give constrained reasons for its challenge; 3.) the counter-public has 1.) to give unconstrained reasons for its challenge; 4.) the public makes a statement in response to the challenge; 5.) the public does 4.) and gives reasons for its position; 6.) the public does 4.) and 5.) and addresses the reasons offered by the counter-public; 7.) the public does 4.), 5.) and 6.) and gives reasons for its position framed in the cognitive context of the counter-public (i.e. engages in immanent criticism); 8.) the counter-public has the opportunity to challenge the statement and reasons therefor with new claims and warrants; and so on as a genuine dialogue develops. We will not run through all the possible permutations as it may be enough to show that, the further the dialogue progresses through the stages, the more satisfactory the default-and-challenge interaction will be, whether it leads to consensus or not. Such is Stout’s perspective in any case.

demanding agreement on a common good. Instead, legislators' choices may be constrained by the virtues of democratic speech and love of justice embodied by the public of accountability (cf. Stout 2004: 85, Stout 2005a: 384-5). This may explain how the author cites the rhetorical excellence of legislators such as William Wilberforce, the 18<sup>th</sup> century Evangelical abolitionist MP (Stout 2017: lecture 4), and US Senator Elizabeth Warren, in her role as one-time chair of the Congressional Oversight Panel for the Troubled Assets Relief Program (TARP) (Stout 2010a: 325-6) without giving inconsistent prescriptions on legislative behaviour or renouncing the unconstrained discourse approach.<sup>12</sup> The legislator may think, speak, vote and act on the basis of her preferences, attitudes and beliefs alone so long as she maintains the right relations to the public of accountability. That said, the more idiosyncratic her preferences, attitudes and beliefs, the more difficult is earning authority before the public of accountability.

In the end, we are in a position to formulate two general rules for earning representative authority on Stout's approach. First, the more diverse the public of accountability, the greater the effective constraint on the legislator's admissible reasons will be. Notably, this may bring the legislative exercise of unconstrained discourse more into line with what Rawlsian public reason, for example, would require all while being more context- and audience-sensitive. Second, there can be no representative authority or normative representation without an associated public of accountability. To put the point as forcefully as possible, consider a legislator who represents a unanimously voting, perfectly homogenous community. We can further imagine that said legislator thinks, speaks, votes and acts in perfect accordance with that community's unanimous preferences. Yet, so long as members of the community do not have the opportunity to engage the legislator in default-and-challenge interactions, the legislator has no representative authority over them and is not normatively representative, however

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<sup>12</sup> This commitment to making room for all reasons, religious or otherwise, having passed the public of accountability receives further treatment in Stout's (2004) critique of Rawls (ch. 3) and his sensible look at church-state relations (Stout 2010a: ch. 16, esp. 202-3). Stout (2017) also treats the idea of ethical religion (esp. lecture 1).

descriptively representative she may be. The combination of these rules allows Stout to formulate a coherent alternative to Rawlsian public reason constraints which nonetheless matches practice and intuition in important ways<sup>13</sup>.

*b. Executive*

To a certain extent, executive institutions share the problem of representation for those offices to which persons may be elected. Presumably, the two rules above cross-apply. Indeed, Stout's approving reference to religious or affective addresses from former executives such as US presidents Abraham Lincoln (the Second Inaugural) or Jimmy Carter (the so-called "malaise" address) second this move<sup>14</sup>. The matter becomes more delicate with unelected executive officeholders. Some may include political appointees subject, in theory, to indirect representative authority through either nomination by elected executives or confirmation by legislators. Conceivably, these political appointees could act on the basis of personal preferences, beliefs, attitudes, etc. on the condition that there exist a public of accountability, comprising the officeholders nominating or confirming and the interest groups or civil society organizations exercising public pressure.

Others may instead be members of a bureaucratized public administration who operate independently of political appointees to streamline services, enhance governability or avoid conflict<sup>15</sup>. Such officials are not ordinarily subject to indirect representative authority nor are publics of accountability ready at hand. On one hand, public bureaucrats lack the visibility and name-recognition of elected, nominated or confirmed officeholders. On the other, it may prove difficult for outside groups or persons to ascribe responsibility for a given decision, regulation or action to a specific agency within the public administration<sup>16</sup>. These problems, when

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<sup>13</sup> Conceivably, there may exist another set of constraints which could generate the same outcomes. We leave this question aside for now.

<sup>14</sup> On Lincoln, see Stout (2004): 69-70; Stout (2010a): ch. 5; Stout (2016); Stout (2017): lecture 4. On Carter and passion, see Stout (2010a): 218.

<sup>15</sup> This technocratic logic is in line with either new public management or cooperative governance initiatives (Papadopoulos 2012: 129-35).

<sup>16</sup> For but one recent example, see Miles (2017) on the difficulties of determining which federal office oversaw oil storage tank standards for earthquake-prone Oklahoma.

compounded, inhibit the development of a public of accountability. While Stout (2010a) may aim to establish publics of accountability for each power-holder (258), some will prove more difficult to identify. It follows that members of the public administration would thus find themselves bound to avoid implementing policy on the basis of their personal preferences, beliefs, attitudes, etc. as the public of accountability is lacking. Otherwise, it may well prove more feasible for the public bureaucrat to engage in the earnest exchange of reasons which unconstrained discourse calls for. Yet the impetus will be, on balance, to refrain from decision, regulation or action formed on the basis of personal preferences, beliefs, attitudes, etc.

*c. Judicial*

Legal impartiality of judge, jury or attorney poses another difficulty entirely. If the author underscores the need for an independent legal system to uphold rights against capital and empire (Stout 2010a: 256) and sees therein features shared with a common democratic ethical culture and liberal constitutional order (Stout 2005b: 731), the fact remains that we may have difficulties envisioning what role unconstrained discourse could play in the judiciary. Given the nominal independence and typically unelected status of judge, jury or attorney, Stout's two rules do not cross-apply. In which case, it will be important to consider the extent to which unconstrained discourse might both make sense of current practice and structure future practice.

For simplicity, we shall focus on the judge in order to grasp better the author's solution to his own version of the difficulty of interstitial legal creativity<sup>17</sup>. Rather than tackle whether the judge creates new law or merely applies existing law, Stout is more interested in the questions of what goes into a judgment and, in the case of common law, who holds the judge responsible for using certain concepts and precedents. For the first, Stout (2010a) suggests that, like the executive and legislative, verdicts issued by judges express preferences, interests and passions

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<sup>17</sup> For one well-known formulation of this difficulty, see Hart (1994), p. 272.

favouring certain outcomes over others, which surpass strictly legal reasoning (218). This first point sits ill, however, with the second as there seems no constituted public of accountability to which the judge owes an account, in virtue of the very set-up of judicial institutions.

More strongly, the judge's public of accountability is constitutively incomplete if Papadopoulos' (2012) judicialization thesis holds. Therein, judicialization, or the increasing concentration of discretionary power in the courts, is seen as a counter-power to limit politicians' discretionary power and may resemble, in certain ways, a public of accountability (Papadopoulos 2012: 138). Yet acting as a public of accountability towards other institutions does not substitute for its lack of default-and-challenge interactions. In itself, this puts an end to the question: no unconstrained discourse without a public of accountability<sup>18</sup>.

In the end, we have established a candidate maxim for unconstrained discourse: the person's possible recourse to unconstrained discourse is inversely proportionate to the opportunity for a public of accountability to engage in default-and-challenge interaction. In the absence of such a public, persons should privilege discourse for which there exists common standards. Although the employment of unconstrained discourse throughout the public political culture shows promise in explaining both intuition and practice, two concerns remain. First, it is Stoutian rather than Stout's own. There may be unvoiced, principled reasons for Stout's (2004) avoiding the question of public officials. It may be surmised that he did not foresee such an extension of unconstrained discourse. Second, another account could plausibly make sense of the same phenomena, and our maxim may prove a worse guide to our intuitions and practice or it may prove a good guide though for the wrong reasons. As suggested above, a properly amended, weak Rawlsian public reason account could perhaps get us to the same end-point.

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<sup>18</sup> Which is not to say that Stout does not have an answer for the question of that to which or to whom judges are accountable. Drawing on Brandom (2002), Stout (2005b) writes that the current judge is accountable to future judges and past precedents (732). In short, the judge's authority is not representative but nonpersonal.

#### 4. Unconstrained discourse and deliberative systems

We now turn to our fourth and final section wherein we evaluate how the author's approach to public discourse and political institutions fares when measured against standards from the deliberative systems literature. First, it may be worth lingering on Stout's relation to the deliberative democratic literature. Although they a number of emphases, e.g. resistance to aggregative conceptions of democracy (Stout 2005b: 717), preference transformation in discourse (Stout 2005a: 381), shared references in democratic theory (Rawls, Habermas, Gutmann, Thompson, Pettit, etc.), Stout's work stands apart from the latter on important issues. First, micro-deliberative innovations, like mini-publics, citizens' juries, consensus conferences, planning cells, deliberative polls or citizens' assemblies (Escobar and Elstub 2017), are absent from Stout's work. Second, the author's approach embraces several strands of democratic thought: largely deliberative and pragmatist, some participatory and civic republican elements, still broadly liberal and pluralist (if neither classically nor radically so).<sup>19</sup> This comes out strongly in his focus on democratic virtues and active citizenship, discursive publics of accountability and the struggle against non-domination. Third, he deems that deliberative democracy hews too closely to contractarian public discourse and Rawlsian liberalism (Stout 2004: 339). More precisely, if he favours a talk-based approach and emphasizes the "discursive dimension of democratic culture", his "pragmatic expressivist model of democratic deliberation differs from the social contract model" advanced by Gutmann and Thompson (1996) (*idem.*). On each point, Stout has the right and the wrong of the matter. On the first and third, his avoidance of micro-deliberative institutional innovation and contractarian-style deliberative democracy are both understandable and unfortunate. They are understandable insofar as micro-deliberative institutional innovations frequently impose a set agenda on participants (Parkinson 2006: 128-33, 144-6; O'Flynn and Sood 2014). Should agenda-setting and problem-definition

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<sup>19</sup> In Rawlsian terms, Stout qualifies his brand of pluralism as "modus vivendi" pluralism (Stout 2004: 296-7).

be open, these tasks nonetheless require a moderator (Parkinson 2006: 151). So do micro-deliberative institutions impose important constraints on participants. At the same time, such avoidance is unfortunate in that Stout conflates all deliberative institutional innovations with contractarian or Type I deliberation which “embodies the idea of rational discourse, focuses on deliberative intent and the related distinction between communicative and strategic action and has a strong procedural component” (Bächtiger *et al.* 2010: 33).

Hence, the author either ignores or precludes Type II deliberation which “generally involves more flexible forms of discourse, more emphasis on outcomes versus process, and more attention to overcoming ‘real world’ constraints on realizing normative ideals (*idem.*). Despite this fact, Type II deliberation is close in spirit to Stout’s unconstrained discourse in that it promotes flexibility, outcome and practicality over *ex ante* theoretical constraints<sup>20</sup>. Parkinson (2006) also points to the prevalence of storytelling as a mode of reasoning in micro-deliberative settings (138-40). In other words, Stout is wrong to write off deliberative democracy as overly procedural and focused on democratically reasonable decisions (i.e. consensus) to the detriment of full reflective public opinion or an epistemically correct decision (Morrell 2014: 160).

Concerning the second point, we point to the systemic turn in deliberative democracy as evidence of the latter’s move from strictly deliberative innovations to increased engagement with other strands of democratic theory. While Chambers (2012), Fung (2015) and Lafont (2015) call for increased participatory measures in deliberative systems, contributions like Grönlund, Setälä and Herne’s (2010) suggest that deliberative democracy can be as attentive to questions of citizenship as of institutional design. Furthermore, the systemic turn has deliberative democracy closer to pragmatist approaches. Mansbridge *et al.* (2012) would likely assent to certain theses which Cunningham (2002) associates with democratic pragmatism: 1.)

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<sup>20</sup> For other typologies, see Morrell (2014: 158-60) which reviews his own Madisonian-Kantian distinction. Similarly, see Chambers’ (2005) treatment of “public *reason*” and “*public* reason” as distinct modes of reasoning (207, cited in Parkinson 2012: 153).



democracy is of unlimited scope; 2.) democracy is context-sensitive; 3.) democracy is a matter of degree; 4.) democracy is problematic (143-5)<sup>21</sup>. All in all, a strong, principled separation between Stout's unconstrained discourse and deliberative systems seems unfounded.

Furthermore, Stout (2010a) seems sympathetic to the need for a systemic approach. Notably, his examples do not constitute "a full picture of contemporary democratic practice" in which "many groups of different kinds are needed" (xviii-xix), echoing Parkinson (2012: 170). Accordingly, Stout (2010a) may be incapable of extending structures peculiar to BCOs to the internal activity of other organizations playing different democratic functions, as worked out in §3 above. Consequently, it would behoove us to see whether and to what extent Stout's unconstrained discourse and BCOs might contribute to deliberative systems. For present purposes, we adopt Mansbridge *et al.*'s (2012) threefold systemic functions, i.e. epistemic, ethical and democratic functions (10-13), to gauge the performance of a democratic system in which unconstrained discourse and BCOs are at maximal extension, i.e. counter-publics co-extensive with publics.

Mansbridge *et al.* (2012) define the epistemic function as a system's ability "to produce preferences, opinions, and decisions that are appropriately informed by facts and logic and are the outcome of substantive and meaningful consideration of relevant reasons" (11). This yields two criteria: appropriately informed deliberation and meaningful reason-giving. Given the way BCOs' internal structure incorporates unconstrained discourse, Stout's approach may fit the second criterion straightforwardly. Still, it bears asking whether that structure tends to produce consideration of all *relevant* reasons as the community wherefrom the group is drawn may lack access to certain reasons relevant for deliberation but which do not arise in the context of internal discourse. On the other hand, relevant reasons might be forthcoming from other parts of the system, e.g. BCO organizers or counterparts within the public of accountability, be they

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<sup>21</sup> Compare Cunningham's theses specifically with Mansbridge *et al.* (2012): 2-4.

citizens, other organizations or officials. If “judging the quality of the whole system on the basis of the functions and goals one specifies for the system does not require that those functions be fully realized in all the parts” (Mansbridge *et al.* 2012: 13), BCOs may indirectly furnish relevant reasons in virtue of their systemic role in eliciting such reasons from other parts.

As regards the first criterion, one could point to the same internal structure of BCOs to claim that preferences, opinions and decisions formed are mere affective expressions. Yet this critique may fail to account for the truth- and fact-tracking qualities of power analysis and issue-definition. While power analysis reconstructs the concrete relations of power within a community and the intersection of individual and common interests, issue definition attunes the group’s priorities to feasibility with regards to the current political climate. In both cases, deliberation must be informed by facts and logic if it is to arrive at actionable conclusions.

Alternatively, a more systemic tack could point to the similarities between BCOs and pressure groups and the ways pressure groups may help to “promote the circulation of useful information” (Mansbridge *et al.* 2012: 13). If the affect of unconstrained discourse moves BCOs to exert pressure on organizations with access to appropriate information and said pressure moves those organizations to apply or make available that information, then maximally extended BCOs may make a net-positive contribution and meet the epistemic function’s first criterion. Finally, the publicity of BCO decisionmaking can be counted as another consideration in favour of their net-positive epistemic contribution to a deliberative system.

The second function is ethical and serves “to promote mutual respect among citizens” (Mansbridge *et al.* 2012: 11). It is, however, difficult to reach consensus on the precise criteria for determining whether mutual respect has been achieved. Candidate criteria include mutual recognition of autonomy, seeing the other as source of legitimate claims, non-domination, etc. BCOs *prima facie* make good on this requirement in rather direct fashion in virtue of their internal structure. The person’s ability to influence discussion, to define an issue and to decide

whether to join in public action contribute both to developing the person's sense of moral autonomy and to securing others' recognition. Naturally, the fact that any person may become a leader on a subject and hold representative authority may heighten this effect.

Likewise, when the person exposes her experience as a concrete individual with concerns over the state of political society and receives others' recognition of those concerns as legitimate, her self-experience may be transformed in important ways. She may come to view herself as a source of claims on others under certain conditions. Lastly, BCOs structure their internal operations so as to reduce arbitrary exercise of power within and without by maximizing opportunities for accountability between organizers, leaders, members and officials. If non-domination consists in limiting the arbitrary exercise of power, maximally extended BCOs may be an important tool for reducing domination throughout the deliberative democratic system.

Nevertheless, the question remains whether BCOs produce a systemic net-gain ethically. One might worry that the discursive framework imposed by BCOs during rites of public commitment undermine other actors' autonomy and status as a source of claims, e.g. turning off elected officials' microphones if the latter do not respect the framework (Stout 2010a: ch. 4). The concerned observer could conclude that BCOs employ unethical means. Stout (2010a) tries to show that BCOs' control over the format of such rites remains ethical in that it "aims to enhance the ability of citizens to influence and contest the decision of elites" rather than to diminish citizens' opportunities to do so (83). Consequently, it remains, on balance, ethical.

This leads us to the third function put forward by Mansbridge *et al.* (2012): the democratic function seeks "promote an inclusive political process on terms of equality" (12). It may be treated as inclusiveness and is capable of positive or negative application. Negatively, a deliberative system is democratic if it does not exclude a citizen for reasons which that citizen or others might reject. Positively, a deliberative system is democratic if it takes steps to facilitate inclusion and participatory opportunities.

When evaluated from the perspective of the democratic function, Stout's deliberative system does reasonably well. Regarding the negative criterion, it leaves open the possibility for exclusion as a feature of contemporary democratic societies but counsels against such and lays the burden of proof with the excluder. More precisely, Stout (2010a) maintains that, due to competing notions of the sacred, persons within society will inevitably disagree on matters of importance (138, 227, 319). Although persons should not tolerate the intolerable, they must at once tolerate differences to pursue the common good and remain sensitive thereto. In short, both internally and systemically, BCOs are ordinarily evenhanded with exclusionary measures. Positively, BCOs increase voices within the system and opportunities for participation therein. After all, BCOs seek out and make room for marginalized voices within a community in order to formulate issues and earn representative authority necessary to translate members' concerns into concrete political results. While all seems well from an internal standpoint, the issue should nevertheless be pressed from the systemic perspective. Maximally extended BCOs may fail to include certain persons as they bring in those most involved in the community (i.e. a weaker variant of the "usual suspects" problem (Parkinson 2006, 56-63)). For isolates, it is thus unclear whether BCOs can overcome the same motivational obstacles which face other deliberative innovations, i.e. scarcity of participatory resources and overemphasis on active citizenship (MacKenzie and Warren 2012). This may be exacerbated by BCOs' displacing other civil-society organizations which, directly or indirectly, afforded those persons a means of active or passive inclusion and participation (Mansbridge *et al.* 2012: 17). Yet these issues face many deliberative democratic approaches, so the burden on BCOs is perhaps no heavier.

With this, we may now summarize how maximally extended BCOs practicing unconstrained discourse fare when evaluated from the deliberative systems standpoint. We have summarized our findings in Table 1 where "+/-" designates equally plausible positive and negative outcomes. At a glance, such a deliberative system comes out even on most counts. From the

internal standpoint, maximally extended BCOs score highly on ethical and democratic function, with even epistemic function results. From the systemic standpoint, the outcomes are less clear-cut, perhaps due to the contextual difficulties surrounding application to a dynamic system for which unknown values exist. All told, such a system appears to break even on initial examination as plausible counterarguments exist for the possible shortcomings outlined.

**Table 1:**

	<i>Internal standpoint</i>	<i>Systemic standpoint</i>
<i>Epistemic function</i>	+/- Efficacy necessitates accurate information Group composition may entail information imbalance	+/- Pressure may force needed information into the open Pressure may privilege emotion over information
<i>Ethical function</i>	+ Fosters members' ethical growth	+/- Makes visible ethical, engaged citizenship Communicative strategy may be mistaken for unethical action or domination
<i>Democratic function</i>	+ Secure institutional footing and representative authority requires maximal inclusion	+/- May face motivational obstacles, displacement issues and lack of impact These obstacles face other deliberative innovations

## 5. Conclusion

In this paper, we sought to answer two questions: 1.) whether associational and institutional settings are sufficiently similar for Stout's unconstrained discourse to displace Rawlsian public reason or other conventional views of deliberation in institutional settings; 2.) whether, from a systemic point of view, unconstrained discourse and BCOs are deliberatively net-positive. After §1 and §2 recalled the broad outlines of public discourse as unconstrained discourse and its institutional counterpart in BCOs, § 3 questioned paid particular attention to the traditional liberal institutions of the legislature, executive and judiciary and found that unconstrained

discourse has an important role to play in elected, representative positions within the legislature in executive. More specifically, we hypothesized that Stout might uphold a maxim on which public officials may have recourse to unconstrained discourse so long as there exists a public of accountability wherein citizens might engage them in default-and-challenge interactions. Thereafter, our attention shifted in §4 to whether, evaluated epistemically, ethically, and democratically, maximally extended BCOs practicing unconstrained discourse provide deliberative inputs and outputs likely to generate positive net-deliberative outcomes for the system. The initial findings seem promising. In that unconstrained discourse and BCOs break even on most counts and score highly on others, we contend that BCOs may prove, if not the “royal road to democracy” (Bohman 2012: 93), at least a privileged tool within the deliberative systems approach for reaching more fully democratic results. Moreover, Stout’s (2010a) account stands to benefit as well from the careful attention given to overarching national and international institutions by authors within the deliberative systems literature, an attention at times lacking on his part. All in all, Stout and deliberative democratic authors may share more than mere reasons and claims.

**References:**

- Bächtiger, A, Niemeyer, S., Neblo, M., Steenbergen, M.R. and J. Steiner (2010). Disentangling diversity in deliberative democracy: competing theories, their blind spots and complementarities. In *Journal of Political Philosophy* 18(1): 32–63
- Bohman, J. (2012). Representation in the Deliberative System. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (72-94). Cambridge, UK: Cambridge University Press.
- Brandom, R. (1994). *Making It Explicit: Reasoning, Representing and Discursive Commitment*. Cambridge, MA: Harvard University Press.
- Brandom, R. (2002). *Tales of the Mighty Dead: Historical Essays in the Metaphysics of Intentionality*. Cambridge, MA: Harvard University Press.
- Caluwaerts, D. and Reuchamps, M. (2016). Generating Democratic Legitimacy through Deliberative Innovations: The Role of Embeddedness and Disruptiveness. In *Representation* 52(1): 13-27.
- Chambers, S. (2005). Measuring publicity's effect: reconciling empirical research and normative theory. In *Acta Politica* 40(2): 255–66.
- Chambers, S. (2012). Deliberation and Mass Democracy. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (52-71). Cambridge, UK: Cambridge University Press.
- Christiano, T. (2012). Rational deliberation among experts and citizens. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (27-51). Cambridge, UK: Cambridge University Press.
- Cunningham, F (2002). *Theories of Democracy: A Critical Introduction*, London, UK: Routledge.
- Dryzek, J.S. (2000). *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford, UK: Oxford University Press.
- Fung, A. (2015). Putting the Public Back into Governance: The Challenges of Citizen Participation and Its Future. In *Public Administration Review* 75(4): 513-522.
- Grönlund, K., Setälä, M. and Herne, K. (2010). Deliberation and civic virtue: Lessons from a citizen deliberation experiment. In *European Political Science Review* 2(1): 95-117.
- Gutmann, A. and D. Thompson (1996). *Democracy and Disagreement*. Cambridge, MA: Harvard University Press.
- Habermas, J. (2008). *Between Naturalism and Religion*. Boston, MA: Beacon Press. Translated by W. Rehg.
- Hauerwas, S. (1983). *The Peaceable Kingdom: A Primer in Christian Ethics*. Notre Dame, IN: University of Notre Dame Press.
- Hart, H.L.A. (1994). *The Concept of Law*. Oxford, UK: Clarendon Press (2<sup>nd</sup> edition).
- Lafont, C. (2013). Religion and the Public Sphere: What are the Deliberative Obligations of Democratic Citizenship?. In C. Calhoun, E. Mendieta, & J. VanAntwerpen (Eds.), *Habermas and Religion* (230-248). Cambridge, UK: Polity Press.
- Lafont, C. (2015). Deliberation, participation, and democratic legitimacy: Should mini-publics shape public policy?. In *Journal of Political Philosophy* 23(1): 40-63.
- MacIntyre, A. (1981). *After Virtue*. Notre Dame, IN: University of Notre Dame Press.

- MacKenzie, M.K. and Warren, M.E (2012). Two trust-based uses of minipublics in democratic systems. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (95-124). Cambridge, UK: Cambridge University Press.
- Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., Thompson, D. and Warren, M.E. (2012). A Systemic Approach to Deliberative Democracy. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (1-27). Cambridge, UK: Cambridge University Press.
- Miles, K (2017, 14 September). How Man-made Earthquakes Could Cripple the U.S. Economy. Retrieved from <http://www.politico.com/magazine/story/2017/09/14/earthquakes-oil-us-economy-fracking-215602>.
- Morrell, M. (2014). Participant Bias and Success in Deliberative Mini-Publics. In K. Grönlund, A. Bächtiger & M. Setälä (Eds.), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (157-176). Colchester, UK: ECPR.
- Niemeyer, S. (2014). Scaling Up Deliberation to Mass Publics: Harnessing Mini-Publics in a Deliberative System. In K. Grönlund, A. Bächtiger & M. Setälä (Eds.), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (177-202). Colchester, UK: ECPR.
- O'Flynn, I. and Sood, G.. (2014). What Would Dahl Say? An Appraisal of the Democratic Credentials of Deliberative Polls® and Other Mini-Publics. In K. Grönlund, A. Bächtiger & M. Setälä (Eds.), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (41-58). Colchester, UK: ECPR.
- Papadopoulos, Y. (2012). On the embeddedness of deliberative systems: why elitist innovations matter more. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (125-150). Cambridge, UK: Cambridge University Press.
- Parkinson, J. (2006). *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy*. Oxford, UK: Oxford University Press.
- Parkinson, J. (2012). Democratizing Deliberative Systems. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (151-172). Cambridge, UK: Cambridge University Press.
- Parkinson, J. (2016). Ideas of Constitutions and Deliberative Democracy: A Conceptual Conclusion. In M. Reuchamps and J. Suiter (Eds.), *Constitutional Deliberative Democracy in Europe* (147-168). Colchester, UK: ECPR.
- Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Rawls, J. (1996). *Political Liberalism*. New York, NY: Columbia University Press.
- Rawls, J. (1999). *Collected Papers*. Cambridge, MA: Harvard University Press.
- Stout, J. (1981). *The Flight from Authority: Religion, Morality, and the Question for Autonomy*. Notre Dame, IN: University of Notre Dame Press.
- Stout, J. (2001). *Ethics after Babel: The Languages of Morals and Their Discontents*. Princeton, NJ: Princeton University Press (2<sup>nd</sup> edition).
- Stout, J. (2004). *Democracy and Tradition*. Princeton, NJ: Princeton University Press.
- Stout, J. (2005a). Responses to Five Papers on *Democracy and Tradition*. In *Soundings: An Interdisciplinary Journal* 87(3-4): 367-402.
- Stout, J. (2005b). Comments on Six Responses to *Democracy and Tradition*. In *Journal of Religious Ethics* 33(4): 709-744.



Stout, J. (2010a). *Blessed are the Organized: Grassroots Democracy in America*. Princeton, NJ: Princeton University Press.

Stout, J. (2010b). Rorty on Religion and Politics. In R.E. Auxier & L.E. Hahn (Eds.), *The Philosophy of Richard Rorty* (pp. 523-545). Chicago, IL: Open Court Press.

Stout, J. (2016, June). Lincoln's Religion: An Ambiguous Legacy. *Commonweal*, 12-18.

Stout, J. (2017). Religion Unbound: Ideals and Powers from Cicero to King [Gifford Lecture series]. Retrieved from <https://giffordsedinburgh.com/>.