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ETHICS FOR ADVERSARIES AND POLITICAL DELIBERATION. SOME PRELIMINARY ARGUMENTS[1]

Manuel Toscano
Universidad de Málaga
mtoscano@uma.es

Resumen

"Ethics for adversaries" es el rótulo que se aplica a las cuestiones y discusiones normativas sobre las prácticas e instituciones diseñadas para promover el conflicto entre los participantes. Tales prácticas son visibles en muchos ámbitos de la vida social: en el derecho, en los mercados, la política o los deportes. La discusión al respecto se ha desarrollado preferentemente en torno a lo que se conoce como "adversarial legal system" y dentro de la literatura sobre la ética profesional de los abogados, al menos hasta la publicación de Arthur Applbaum, *Ethics for Adversaries* (1999). En mi comunicación plantearé el interés de conectar la discusión sobre las prácticas de adversarios con la deliberación en las asambleas políticas, y en especial el parlamento entendido como la asamblea deliberativa por antonomasia. Esa conexión suele quedar oscurecida por una concepción idealizada de la deliberación, sin duda influyente en la teoría política contemporánea, según la cual el antagonismo y el conflicto van en detrimento de la buena deliberación. Sostendré que hay buenas razones para revisar esa supuesta incompatibilidad entre deliberación y antagonismo.

Palabras clave: Ética para adversarios, deliberación, parlamento, conflicto

[1] Una versión de este trabajo se publicará en Kari Palonen, José María Rosales and Tapani Turkka (eds.), *The Politics of Dissensus: Parliament in Debate*. Santander: Cantabria University Press & McGraw Hill, en prensa.

A missing gap

In recent years there has been an emerging discussion in ethics about adversary practices and institutions. Although still restricted, it is easy to understand that growing interest. Adversarial practices are pervasive and deep-seated features of modern societies and they may be found in different domains of social life: in law, politics, markets, professions, media and sports. Most crucially, these institutions and practices raise important questions about how they can be justified and how they should be properly regulated. To the extent that they are meant for fostering competition instead of cooperation, the potential departure of the behaviour of adversaries from everyday morality is a major source of concern about these practices and institutions. "Ethics for adversaries" is the formula coined for this developing field of questions and discussions regarding adversarial settings.

In general, moral and political philosophers have showed little interest in ethics for adversaries. The issue has been mainly addressed in applied ethics, more specifically within professional and business ethics. By far the discussion about moral aspects of adversary practices and roles has focused on the adversarial legal system and developed in the literature on lawyers' professional ethics (Freedman 1975; Luban 1988, 2007; Rhode 2006; Spaulding 2008). Surely the widest research on the morality of such practices and institutions in public and professional life is the path-breaking book by Arthur Isak Applbaum, *Ethics for Adversaries* (1999). The novelty of Applbaum's work is to provide a systematic analysis of arguments for adversary practices across the board, instead of considering professions separately as usual (Goldman 2001).[2]

Given this aim of providing a general framework for discussion, it is surprising not to find any mention of parliament and parliamentary politics among the many cases and examples of adversarial institutions and practices considered in Applbaum's book. But Applbaum is not an exception. The surprise is understandable because parliament represents one of the clearest examples of adversarial settings along with competitive markets, adversarial litigation systems, interest-group pluralism, advocacy journalism, or competitive sports. Given the pivotal role that parliaments and legislatures play in democratic government, this lack of attention is even more striking.

So, this paper study is merely exploratory. It suggests that it would be worthwhile to fill this gap, connecting the discussion on ethics for adversaries with the study of parliamentary politics. The link works both ways:

On the one hand, parliament is a very significant instance of a political institution designed as an adversarial arrangement. For this reason, parliamentarism could enlarge the range of cases and issues addressed in the discussion on ethics for adversaries, supplying it with a rich repertoire of experiences and problems for analysis, comparison and normative

[2] The blog "Ethics for adversaries", created by a group of Canadian scholars (Wayne Norman, Chris MacDonald, Pierre-Yves Néron and Dominic Martin) working on business ethics and political philosophy, is a good example of the growing interest on adversarial institutions and the need of considering them from a broader point of view: http://ethicsforadversaries.com/about/

reflection. And more importantly, this way we can reinforce the shift under way from a narrow focus on professional and business ethics to a broader view of the role -and challenges- of adversarial institutions in public life and democratic politics.

On the other hand, the reflection on ethics for adversaries can help to highlight the adversarial features of the parliamentary institution and practices, bringing them to the forefront of the discussion. It can be useful no only for normative, but for analytical purposes too. It can provide an analytical framework for comparison with other adversarial practices, by examining their similarities and differences, but also a broad normative view when considering the merits and drawbacks of such practices, or the arguments used to justify and criticize them. It could be an interesting task to see if some of the arguments used in the discussion on adversarial practices can be applied to adversaries in parliamentary politics. So, for instance the idea of fair play, regarded as a tacit principle of parliamentary politics (Palonen 2012: 20), but also commonly used in sports, is an interesting cue.

What is an adversarial practice?

Nevertheless, there is a preliminary question that we should not overlook. Oddly enough, it is not easy to find a general definition of what is an adversary practice, covering different roles and institutions in professional and public life. Usually we are confronted with cases and examples, but left without an explicit definition. While Applbaum's book offers the most systematic and detailed treatment of the subject, no definition can be found there. Readers are supposed to share an implicit understanding of adversary roles and institutions.

This assumption is easy to explain in the context of professional ethics, where the matter under discussion is a specific professional role. Such is the case in the extensive literature on lawyers' role morality, where it is clear what is meant by adversary legal system in proceedings of civil and criminal law. Yet David Luban, probably the best-known critic of the adversary legal system, distinguishes a narrow and a wide sense of the term. As he explains:

"In the narrow sense, it is a method of adjudication characterized by three things: an impartial tribunal of defined jurisdiction, formal procedural rules and most importantly […] assignment to the parties of the responsibility to present their own cases and challenge their opponents" (Luban 1988: 56-7).

In other words, the key feature of the adversary legal system is adjudication organized as a clash of one-sided representations, where the lawyers are the agents of their clients. The lawyer's role in adversary proceedings is defined above all by the duty of "one-sided partisan zeal in advocating her client's position". Of course, here lies the source of much of the ethical troubles about lawyers' professional role and duties. However, litigation is just one of the many activities undertaken by lawyers. As lawyers transfer their duties of zealous advocacy outside the courtroom, we have what Luban calls the wide sense: "Thus, in a wide sense the adversary system is defined by the structure of the lawyer-client relationship rather than by the structure of adjudication" (Luban 1988: 57).

Obviously, even this wide sense is tailored to fit the lawyer's professional practice and is of little use outside legal ethics. Moreover, something important is lost, or at least it is left implicit in the background, in this wide sense of adversarial system with respect to the narrower meaning as procedure of adjudication. For the lawyer's relationship with her client must be understood in a social context analogous to the procedure of litigation in a courtroom. In other words, zealous and one-sided partisanship as a standard for attorney's behaviour must be understood within an institutional framework of strategic interaction structured as a contest.

It is this kind of competitive interaction among two or more players that seems to be the key to understand adversary settings. Of course, this is the obvious meaning conveyed by the term "adversaries". In short, adversaries act for by acting against (Applbaum 1999: 4). An adversarial strategic interaction is defined by the rivalry between the players, i.e. by the fact that their aims and interests over the possible outcomes are inversely correlated. Unlike cooperative interactions, where both players can win, in competitive interactions a player wins when the other loses or vice versa. Plainly, competition always delivers win-lose outcomes.

Focusing on transactions in markets and sports, Joseph Heath claims greater attention from business ethics to this general feature of adversarial systems and raises a crucial question about: given that competition can be regarded as a collective action problem for the participants, why foster competition rather than encourage cooperation? (Heath 2007) After all, competitors, although each pursuing rationally their own objectives, do not necessarily benefit from competition. A typical answer is that desirable kinds of competition bring about social benefits in forms of public goods and positive externalities for other people beyond the competitors.

Of course, Adam Smith's famous metaphor of the invisible hand is often invoked at this point. Overused in relation to markets, where free competition channels self-interested behaviour towards an efficient allocation of resources and greater social prosperity, the metaphor is also applied to other contexts of social interaction. Indeed, the key issue in such contexts is the existence of unintended positive social consequences, emerging as the aggregated result of human actions, but not intended by anyone. It should be noted the gap between the intentions of agents and the social effects of their actions. For adversaries pursuing their own aims against each other could unintentionally give rise to good social outcomes, in spite of the fact that they are not moved by the expected overall benefit or the good social ends of competition. Behind the use of the metaphor it is recognizable an indirect consequentialist approach to the justification of adversary settings. Nevertheless, it is important to remind that metaphors do not count as explanations or justifications in the absence of further conceptual and empirical specifications.

Besides the competitive structure of the interaction, there is something else to point out, as we have been talking about adversary *practices, roles and institutions*. A practice can be understood as any kind of activity structured by a set of rules setting up roles, specifying appropriated moves or actions, and establishing penalties for breach, etc. (Rawls 1955: 3, 23). In the case of adversary practices, competition is embedded in an institutional framework or set of rules defining roles, moves and penalties. There is a sort of division of

labour under the rules, and the roles established, or at least some of them, are set up as players in a situation of competitive interaction.

Stepping back, there is something puzzling about this kind of practices. Roughly speaking, social rules and institutions tend to show a significant bias in favour of cooperation in social relations, discouraging rivalry and conflict. By contrast, in adversary settings we meet an institutional framework designed to promote rivalry and competition between people holding certain roles. Playing by the rules, professional and political actors occupying these roles have to "work at cross-purposes, furthering incompatible ends and trying to thwart each other plans" (Applbaum 1999: 5).

Speaking for and against

In any case, we may wonder to what extent this conception of adversarial practices can help us to better understand some aspects of parliamentary activities. Henceforth, I will focus on deliberation as a crucial feature of parliamentary politics.

No doubt, modern parliaments and legislatures are deliberative assemblies. "Government by discussion" was the well-known formula coined in the nineteenth century to define parliamentarism. As the name indicates, parliament is the institution where political discussion takes officially place in modern democracies, being the political assembly par excellence of representative governments. But political discussion in parliaments takes necessarily a deliberative form. No wonder, as we know from classical rhetoricians that deliberation is the distinctive rhetorical genre of political assemblies. Deliberation consists in considering reasons for and against a course of action or decision. Proposing and weighing arguments *pro et contra* is the classical definition of deliberation, as a form of both reasoning and discussion. Therefore, speaking for and against is highlighted as a key feature of parliamentarism (Palonen 2009). Indeed, if "parliamentary politics is not just politics that takes places in parliaments, but politics conducted in a parliamentary manner, according to the rules and practices of parliamentary procedure", speaking *in utramque partem* is essential to the parliamentary way of doing politics (Palonen 2012: 14).

Of course, deliberation does not have to develop as a competition between adversaries. Take the obvious case of individual deliberation, or "deliberation within" as it is sometimes called (Goodin 2000), when a person is considering the reasons for and against before making a decision on her own. Even in the case of group decisions, when some people are deliberating together about what to do, that deliberation does not have to be carried out as a contest between rivals. Of course, there may be a clash of opinions resulting spontaneously from the distribution of beliefs and preferences within the group. However, the variety of beliefs and preferences does not necessarily lead to confrontation and disputes between those holding them.

By contrast with informal talk, in parliamentary procedure deliberation is highly regulated and follows typically an adversarial pattern. First, the parliamentary deliberation takes the form of a debate heavily constrained by procedural rules. These rules change the mode of debating depending on whether it takes place in plenum or in committees, and determine who is entitled to speak, how long and for how many times, if replies are allowed, if

discussion should be focused on details and formulations or deal with broader topics and arguments, etc. Moreover, there is a general feature that matters now, albeit it can be modulated according to the rules and ways of debating. Deliberation is conducted procedurally as a debate where the roles are distributed between antagonists, with one side arguing for and the other arguing against. Each side presents his reasons for or against a particular motion or bill, and they do so by shaking and attacking the opponent's position. Echoing the words of Applbaum, speaking for is also speaking against, since speaking and arguing are parliamentary ways of acting.

Certainly, the main line of division in parliaments is traced between government and opposition; and in party-based democracies rivalry among MPs matches the boundaries between political parties. The most obvious proof of such adversarial pattern is the existence and formal recognition of a parliamentary opposition as one of the historical characteristics of this kind of political assembly. This tradition is particularly visible in parliaments based on the Westminster model, where the party with the second largest number of seats receives the title of 'Her Majesty's Loyal Opposition', or 'Official Opposition'. The institutionalization of the opposition means that, within the rules of parliamentary procedure, the MPs of the parties non-supporting the government have the mission of opposing and scrutinizing the executive's actions. This work of opposition is exercised challenging the views and proposals of the majority and the government, offering arguments against them and presenting alternative points of view in parliamentary debates.

So, the parliamentary debate can be regarded as a contest in which each side wants to win. What that "victory" amounts to may be left undecided now: there are some internal aspects as calling attention to new information or different perspectives, questioning the claims and assumptions of the other side, or simply refuting them, but also other aims as deciding the issue, attracting votes, supporters or allies, or even being recognized as winner by the mass media. In order to understand the purpose of parliamentary debates, and what "winning" could mean in these circumstances, it is useful to bear in mind another traditional characteristic of parliamentary procedure: the strict relation between debate and vote. After all, MPs have to take sides on the matter under discussion in parliamentary agenda and vote for or against motions and amendments.

In his *Political Tactics* Jeremy Bentham emphasized the importance of keeping the process of debating distinct and prior to voting in the British parliamentary practice by comparison with traditional assemblies of the *ancien régime* in France (Bentham 1843). This strict separation is not just neglected in common conversation, but it casts an interesting light on the differences between parliamentary assemblies and courts of justice. As Bentham explained, judicial and political bodies both have "propositions to decide upon, resolutions to form and votes to give", but there is one significant aspect in which they work in a completely different way. In courts the issue has to be discussed by lawyers representing each side and judges decide after that. In parliaments and political assemblies in general "there is not such distinct class of persons", being the members of the assembly both advocates and judges:

"In assemblies of the latter descriptions, each member unites in his single person the distinct, and in a certain sense opposite, characters of advocate and judge. By his vote he

exercises the latter function; by the part he takes in the debate – by his speech, in a word – and in the case of the author of a motion, by the making of that motion – he exercises the former" (Bentham 1843: chapter VI, § 5).

So, speeches and votes are kept apart as different moments in parliamentary procedure, but not assigned to different people in the exercise of distinct roles. Those who speak for and against are the same people who have to vote and decide the issue. This is an aspect in which the workings of parliamentary assemblies differ decisively from the adversarial legal system, affecting the dynamics of competition and dissensus.

In effect, when a conflict or dispute is brought before a court of law for adjudication, the nature of conflict and the structure of interaction necessarily change. On the one hand, the conflict has to be turned into a matter of dissensus, namely a disagreement about questions of fact or questions of law. On the other hand, something else happens concerning the structure of interaction: the conflict between two opposing sides is transformed into a triadic relation, where a third party is responsible for settling the dispute (Aubert 1963: 33). In parliamentary debates conflicts also become a matter of disagreement about facts and questions of value and policy, but there is not a third party apart or above the political opponents. The Speaker or the chair presiding the assembly, although watches over order and respect for the rules of parliamentary procedure, is not a third party in the judicial sense. MPs are advocates arguing for and against, but judges by their votes too.

At this point it is worth asking why this adversarial pattern of political deliberation in parliaments and legislatures is not usually put under the spotlight, or just gets unnoticed. Of course, it concerns an important gap in the literature on deliberation, because "there is no systematic investigation of *institutions* which might be favourable to a more deliberative mode of policy making", as Bächtiger and Steenbergen reported some years ago (2004: 2). However, a more theoretically interesting reason can be found in the way in which political deliberation is conceived in contemporary political theory. I would like to pose the question by means of some examples.

The 'conversational model' of deliberation

In his introduction to a well-known collection of essays on deliberative democracy, Jon Elster takes the case of Athenian democracy for explaining the difficulties of deliberation in large assemblies composed of several thousand citizens. It is a lengthy quotation, but it is worth paying attention to his use of the notion of deliberation:

"In assemblies of this size, "deliberation" can at best mean discussion among a small number of speakers before an audience rather than discussion among all members of the assembly. The speakers, typically, try to persuade the audience rather than each other. They may talk about each other – to point out weaknesses in their opponents' character or arguments – but not to each other. *This procedure obviously falls short of what many proponents of deliberative democracy have in mind*. *Nevertheless, it may to some extent mimic the process of genuine deliberation* where the aim is to persuade the interlocutor rather than an audience" (Elster 1998: 2, my emphasis).

Of course, the assembly size matters, but nothing changes substantially if we are talking about several hundred participants instead of several thousand. In any case, we have a few speakers addressing a wider audience, both in mass meetings and in parliamentary plenary sessions. As noted above, things are different in the case of the works of parliamentary committees. But, as a matter of fact, that represents the typical situation of discussion in large political assemblies. Strikingly, in the passage Elster makes clear that this situation cannot count as deliberation in the proper sense, as the use of quotation marks shows. Being something else, this kind of procedure can at best mimic the "genuine deliberation", and certainly it is not what most advocates of deliberative democracy are thinking about. But there is another interesting point in the chosen text. By contrast, these debates should be regarded as closer to the adversarial legal system:

"The procedure of debating one another before an audience may be compared to adversarial proceedings in the courtroom, with the jury in the role of the audience, or to negative advertising, with consumers in the same role" (Elster 1998: 2).

Following Bentham's remark, we have noticed the crucial difference between political and parliamentary assemblies and the adversarial legal system. Nonetheless, the comparison made by Elster is symptomatic insofar as it seems that the resemblance to the adversarial legal system comes at the expense of the deliberative nature of political discussions. In that case, we can wonder what many contemporary theorists have in mind as "genuine deliberation" when they talk about deliberative democracy.

Obviously, it is not the same thing that classical thinkers viewed as the political rhetorical genre. To be more precise, the contemporary mainstream on deliberation and deliberative democracy follows what Gary Remer calls "the conversational model". This model presents three main features: 1) deliberation is conceived as a free and open dialogue; 2) the strict symmetry of the partners, so that dialogue takes place between equals; and 3) dialogue is understood as a cooperative enterprise where only "the force of the better argument" matters (Remer 1999, 2000).

Some interesting implications derive from these characteristics. As Remer points out, regarded as free and open conversation, dialogue is more suitable for less-formal, nongovernmental gatherings. Interlocutors in dialogue are expected to participate on equal footing, as turn-taking is characteristic of conversation and they enjoy equal rights and opportunities for speaking. Typically, there are a certain number of virtuous dispositions required or appropriate for participating in these reasoned exchanges. So, interlocutors are supposed to be sincere, tolerant and respectful, willing to listen to others and change their own views accordingly.

More interesting here, dialogue is understood as a joint enterprise, which aims at discovering the truth or the right answer, but it is not about defeating opponents. Indeed, as a cooperative task, there are not adversaries, but partners who win or lose together. Accordingly, all the arguments, pro and con, should be seen as a common pool from which everyone benefits, regardless of those who bring them into the conversation. So, zealous partisanship and rivalry are regarded as major obstacles to deliberating together, just the opposite of what is supposed to be a "genuine deliberation".

If this conversational model prevails in contemporary reflection on political deliberation, in some proposals as a regulatory or counterfactual ideal, it is not surprising that the adversarial character of deliberation in parliament is ignored. It simply does not fit that highly idealized model of deliberation; rather it is detrimental to it. It could also serve as a clue regarding the relative lack of interest of supporters of deliberative democracy in parliamentary institutions and practices[3]. Accordingly, it is one of the reasons why proponents of deliberative democracy are interested in designing new deliberative settings and experiences, as deliberative polls, citizens' juries and citizen's assemblies.

Take an example of this approach. In his presentation of one of these experimental deliberative settings, the Australian Citizens' Parliament held in 2009, John Dryzek, a leading scholar in the field, highlights that "deliberation is different from adversarial debate". If in adversarial debates participants are oriented to win, the aim of deliberation is mutual understanding and changing minds about preferences, beliefs and values. For this reason, Dryzek then adds:

"After the Citizens' Parliament concludes, I found it very hard to listen to parliamentary debates. The deliberative quality in these debates is low compared to what our citizens achieved" (Dryzek 2009: 3).

The same widespread assumptions are found in normative theories and more empirical oriented studies on deliberative politics. Nonetheless we can wonder whether the adversarial character of debates always plays against their deliberative quality, or justifies simply excluding them from the category of "genuine deliberation"[4]. After all, there is something decidedly bizarre in this position when you consider that debates along with fights and games have been seen as the prototypes of conflicts and agonistic interactions[5].

Debating under 'hostile banners'

There are some good reasons for revising this position against the adversarial nature of political deliberation. Looking back in history we find clear examples of thinkers who argue just the opposite. There are different reasons supporting a more positive stance and it would be worthy to look into details more closely that it is possible here. Take for example the case of *The Federalist Papers*, where there is a passage in which Publius compares the need for unity in the executive branch of government with the legislative:

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[3] As notable exceptions, see the interdisciplinary work of the Bern Center for Interdiciplinary Deliberation Studies (BIDS): Steiner, Bächtiger, Spörndli & Steenbergen 2004; Bächtiger 2005. See also Uhr 1998.

[4] A brief comment on the concept of deliberation is in order here. There are preliminary questions about the use of the concept that are important for both the normative theories and the empirical research on deliberative democracy. I mean, leaving aside different conceptions of the concept. For example, is deliberation an empirical concept for describing some forms of political communication? Or is it an evaluative term for good forms of communication? (Neblo 2007). Like "courage" or "lying", it seems to be what moral philosophers call a "thick concept", mixing both an evaluative and a descriptive import.

[5] See the classic book by the game theorist Anatol Rapoport, *Fights, Games and Debates* (1960).

"The differences of opinion, and the jarrings of parties in that department of the government [legislative], though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection; and serve to check excesses in the majority" (*The Federalist Papers*, No. 70).

What is healthy for promoting political deliberation in the assembly is not just the diversity of opinions, but also the clashes between parties. The judgement is nuanced since Publius admits that the consequences of differences and jarrings are not always for the best, as they may sometimes hinder good laws and policies. But often they serve to promote deliberation and prudence. Not least important, they are also useful as checks against the excesses of the majority in the assembly. Inevitably the allusion reminds the reader two of the main themes of the *Federalist Papers*: the problem of factions in the Republic and the system of checks and balances to limit power. The cited passage suggests the reader a sort of connection between them, inasmuch as deliberation and checks are seen as the outcome of differences and antagonisms between parties in the legislative assembly.

One robust empirical finding in social psychology, the social phenomenon of "group polarization", serves to illustrate this point. Group polarization is said to happen when the individual members of a group are moved towards an extreme position after group discussion by reference to their initial opinions and dispositions. Suppose for instance that a group has to discuss about a decision involving some risk and people in the group are inclined to take some risk. After discussion, people are more risk-inclined, more willing to take greater risks than before the discussion, that is, group discussion enhances the previous preferences and opinions of group members, decreasing differences within the group and shifting them to more extreme position. According to Cass Sunstein, who gives the phenomenon the status of law:

"The effect of deliberation is both to decrease variance among group members, as individual differences diminish, and also to produce convergence on a relatively more extreme point among predeliberation judgements." (Sunstein 2002: 178)

This social pattern has been found in experimental studies but also outside in different kinds of groups, as commissions, multimember courts, juries, etc. It is particularly interesting here insofar as it is said to cast doubts on the effects and real value of deliberation, and besides nothing prevents it from happening in political assemblies and legislatures.

Probably the best antidote against group polarization is deliberation properly understood as speaking for and against, instead of being a synonym for mere discussion in the group, as it is used in Sunstein's article. Consider the two main explanations of group polarization. The first is social comparison and reputational effect, for people care about how they are perceived by others and they accordingly adjust their opinions or preferences to the dominant position at the group. The second is related to the persuasive arguments available at the group discussion. If the group is inclined towards some position X, its members will be exposed to a greater variety and number of arguments favouring X. We can wonder whether some degree of rivalry and antagonism may be helpful for blocking or countering the social drive towards conformity and agreement. But undeniably the best way of

countering the second mechanism is organizing the discussion as a debate between rival advocates speaking *pro et contra*. If so, the differences and clashes between parties are useful ways of preventing the majority in the legislature or assembly from shifting to more extreme opinions and decisions.

A related but different kind of considerations revolves around the enhanced quality of debates by adversaries arguing for and against. Bentham is again an excellent example here. Discussing about the exclusion of written discourses in his reflections on the practices of the British Parliament, he reports the energetic virtues of agonistic debates in political assemblies:

"It is easily perceived that a political assembly is not a society of academicians; that the principal advantage of a national senate, and of public discussion, arises from that activity of mind, from that energy of feeling, from that abundance of resources, which results from a large assembly of enlightened men who animate and excite each other, who attack without sparing each other, and who, feeling themselves pressed by all the forces of their antagonists, display in their defence powers which were before unknown to themselves." (Bentham 1843: chapter XI, § 4)

We can agree that political assemblies should not be regarded as academic societies or scholarly seminars, as the conversational model of deliberation might suggest. Of course, the point of Bentham's quotation is to highlight the benefits of public discussion in legislatures and political assemblies. But the wording of the passage makes clear that all these advantages, all that "activity of mind, energy of feeling and abundance of [cognitive] resources", are extracted from the participants in the assembly by the forces of mutual antagonism. So, a vibrant and lively discussion, or an assembly full of activity and excitement as portrayed by Bentham, depends on adversaries attacking and defending each other. It is easy to recognize in his words the creative virtue generally attributed to competition as members of the assemblies, being pressed by their opponents, are said to display powers before unknown even to themselves.

Bentham's keen remarks about the use of attention, a scarce resource, in discussion offers an interesting clue. Debates between adversaries display the sort of dramatic interest appropriated for attracting and enhancing the attention of the participants and public. As he says, attention is like a mirror concentrating "the rays of sun into one focus", and nothing is more important for the quality of discussion than creating and sustaining this attention to the issue under discussion:

"When attention is excited, nothing passes without examination: every truth tells –every error provokes refutation; a fortunate word, a happy expression, is more efficient than a long speech […]" (Bentham 1843: chapter XI, § 4).

Again some recent psychological research on reasoning can be used in support of what Bentham says about the quality of discussion. If we take reasoning as the cognitive capacity for finding and evaluating reasons, empirical studies show that reasoning performs poorly under some conditions, for example when people reason alone, but also when they reason with like-minded people, as mentioned regarding the phenomenon of group polarization

(Mercier & Sperber 2011). There is a psychological mechanism for explaining the poor performance in both cases, the confirmation bias, about which the empirical evidence available is overwhelming. According to this cognitive bias, people tend to gather, interpret and remember information selectively, focusing on evidence or reasons that confirm their beliefs and expectations. Further, the more entrenched or emotionally loaded are these beliefs, the stronger the effect of bias. As a result, when reasoning alone or reasoning with like-minded people the confirmation bias runs unbridled.

It is really important to take into account the confirmation bias for considering the benefits of public discussion. Of course, reasoning with others is better than solitary reasoning concerning the epistemic quality of results, but not under any conditions. Discussing with like-minded people tends to produce overconfidence and group polarization. As a consequence, if we want to improve it, discussion should be arranged to check the confirmation bias. There is no better way to do that than by means of deliberation strictly understood, that is, having an exchange of reasons for and against between people of different persuasion (Mercier 2012)

Two key points are presupposed here. First, as proponents of the argumentative theory hold, reasoning works better in communication, where we search reasons to convince others and evaluate their reasons to be convinced when it is right (Mercier & Sperber 2011). And second, as the explanation of the confirmation bias predicts, we are good for finding and producing arguments confirming our beliefs as well as for testing the arguments presented by others, but not the other way around. So, deliberation makes a virtue of necessity. Instead of repairing the effects of cognitive bias at individual reasoning, it is a matter of using them in public deliberation to offset and neutralize each other (Mercier 2012: 254).

Naturally, this is only one aspect of a complex social situation like public discussion, but it seems to offer a powerful reason for encouraging dissenting voices and opinions at group discussions by design. The figure of devil's advocate could be an example. Indeed, the best way of procedurally warranting and promoting dissensus is to set up deliberation as a debate between adversary advocates speaking *pro et contra*. That means a deliberative division of labour between adversaries concerning the search and evaluation of reasons exchanged. Or, as it were, there is a sort of specialization about the reasons for the sake of debate, with each side focusing on a partial set of reasons and views. Assuming this deliberative specialization of roles, each discussant adopts the point of view of the partisan, defending unilaterally his own views and attacking those of his adversaries, but the social process of debate is expected to take into account, in the aggregate, all the concerns and reasons about the issue under discussion[6]. Here we see how crucial is the difference noticed by Bentham between political assemblies and parliament and courts of justice, since in the first case there is no impartial judge or jury to decide after hearing the advocates of the two sides, while the MPs are both advocates and judges.

[6] This is what Applbaum calls "the problem of restricted reasons", characteristic of adversary practices and institutions: "Each adversary actor ought to do so (or, more modestly, is permitted to do so) because in the aggregate the institution of multiple actors acting from restricted reasons properly takes into account the expansive set of reason, values, interests and facts" (Applbaum 1999: 6).

As Applbaum explains about adversary practices and institutions in general, these considerations rely on some notion of a favourable equilibrium resulting from the interactions between adversaries. The image of the division of labour brings to mind the sort of specialization attributed to roles, but also the necessary complementarity between them. By contrast, there is another popular image that easily follows from the previous discussion: the equipoise, stressing the conflict between the specialized agents and roles. Furthermore, it suggests that the favourable equilibrium relies on the balance of forces pulling in opposite directions (Applbaum 1999: 6)[7].

It is easy to recognize such a combination of specialized complementary views and balance of opposing forces at some famous pages from *On Liberty*. Following the *motto* of the book, Mill links there his vindication of free speech to the diversity of beliefs. However it is noteworthy that it is not mere diversity, but antagonism and tension between opposing points of view which are crucial when talking for example about the party of order and the party of progress and reform in political life. As he states, both are "necessary elements of a healthy state of political life" since each standpoint derives its utility from the drawbacks and shortcomings of the other. Of course, they are not only complementing each other, but also opposing each other. And that opposition is healthy inasmuch as it keeps each side "within the limits of reason and sanity" (Mill 1859: 253). Again we find in Mill the idea of a favourable equilibrium sustained by a contest between adversaries:

"Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites, that very few minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners" (Mill 1859: 254).

References

APPLBAUM, Arthur I. (1999): *Ethics for Adversaries. The Morality of Roles in Public and Professional life*. Princeton: Princeton University Press.

AUBERT, Vilhelm (1963): Competition and Dissensus: Two Types of Conflict and of Conflict Resolution, *The Journal of Conflict Resolution*,7:1, 26-42.

BÄCHTIGER, André & Marco STEENBERGEN (2004): The Real World of Deliberation. A Comparative Study of its Favourable Conditions in Legislatures, European University Institute, EUI Working Paper SPS No. 2004/17.

BÄCHTIGER, André (2005): *The Real World of Deliberation. A Comparative Study of Its Favorable Conditions in Legislatures*. Bern: Haupt.

BENTHAM, Jeremy (1843): *Essay on Political Tactics*, in *The Works of Jeremy Bentham*, vol. 2, John Bowring ed., Edinburgh: William Tait, available at: http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1921&chapter=113915&layout=html&Itemid=27.

[7] As mentioned above, the notion of invisible hand is the third image applied to adversary practices, as the favourable equilibrium is presented as the result of adversaries' actions, but not designed by them.

DRYZEK, John (2009): The Australian Citizens' Parliament: A World First, *The Journal of Political Deliberation*, 5:1, 1-7.
ELSTER, Jon, ed. (1998): *Deliberative Democracy*. Cambridge: Cambridge University Press.
FREEDMAN, Monroe (1975): *Lawyers' Ethics in an Adversary System*. Indianapolis: Bobbs-Merrill.
GOLDMAN, Alan H. (2001): Review of Applbaum *Ethics for Adversaries*, *Ethics*, 111:2, 395-8.
GOODIN, Robert E. (2000): Democratic Deliberation Within, *Philosophy and Public Affairs*, 29:1, 81-109.
HEATH, Joseph (2007): An Adversarial Ethic for Business: or When Sun-Tzu Met The Stakeholder, *Journal of Business Ethics*, 72, 359-74.
LUBAN, David (1988): *Lawyers and Justice: An Ethical Study*. Princeton: Princeton University Press.
LUBAN, David (2007): *Legal Ethics and Human Dignity*. Cambridge: Cambridge University Press.
MANIN, Bernard (1997): *The Principles of Representative Government*. Cambridge: Cambridge University Press.
MERCIER, Hugo and SPERBER, Dan (2011): Why Do Humans Reason? Arguments for an Argumentative Theory, *Behavioural and Brain Sciences*, 34, 57-74.
MERCIER, Hugo (2012): Reasoning is for Arguing: Understanding the Successes and Failures of Deliberation, *Political Psychology*, 33:2, 243-58.
MILL, John Stuart (1859): *On Liberty*. In *The Collected Works of John Stuart Mill, Volume XVIII - Essays on Politics and Society Part I,* John M. Robson ed. Toronto and London: University of Toronto Press & Routledge and Kegan Paul, 1977.
NEBLO, Michael A. (2007): Family Disputes: Diversity in Defining and Measuring Deliberation, *Swiss Political Science Review*, 13:4, 527-57.
PALONEN, Kari (2009): 'Objectivity' as Fair Play. Max Weber's Parliamentary Redescription of a Normative Concept, *Redescriptions*, 12, 72-95.
PALONEN, Kari (2012), Parliamentary Procedure as an Inventory of Disputes: A Comparison between Jeremy Bentham and Thomas Erskine May, *Res Publica*, 27, 13-23.
RAPOPORT, Anatol (1960): *Fights, Games and Debates*. Ann Arbor: University of Michigan Press.
RAWLS, John (1955), Two Concepts of Rules, *The Philosophical Review*, 64, 3-32.
REMER, Gary (1999): Political Oratory and Conversation: Cicero versus Deliberative Democracy, *Political Theory*, 27:1, 39-64.
REMER, Gary (2000): Two Models of Deliberation: Oratory and Conversation in Ratifying the Constitution, *The Journal of Political Philosophy*, 8: 1, 68-90.
RHODE, Deborah L. (2006): Legal Ethics in Adversary System: The Persistent Questions, *Hostra Law Review*, 34:3, 641-69.
SPAULDING, Norman W. (2008): The Rule of Law in Action: A Defense of Adversary System Values, *Cornell Law Review*, 93, 1377-411.
STEINER, Jürg, BÄCHTIGER, Andre, SPÖRNDLI, Markus & STEENBERGEN, Marco (2004): *Deliberative Politics in Action. Analysing Parliamentary* Discourse. Cambridge: Cambridge University Press.
SUNSTEIN, Cass (2002), The Law of Group Polarization, *The Journal of Political Philosophy*, 10:2, 175-95.

UHR, John (1998): *Deliberative Democracy in Australia: The Changing Place of Parliament*. Melbourne: Cambridge University Press.