The inquiry on this topic started a few years ago when Simon Niemeyer referred to the possibility that “inquisitiveness” could be an important but overlooked deliberative virtue (see Bächtiger et al. 2010). I owe Niemeyer’s initial idea a lot. But “inquisitiveness” proved to be the wrong term of what I wanted to elicit. Etymologically, “inquisitiveness” is too strongly geared toward curiosity and underplays the critical, confrontational, and adversarial aspects of discussion which I deem crucial for advancing deliberative theory and practice. A further attempt to capture what I had in mind was “agonistic inquiry”, a term that I borrowed from an article in educational philosophy. But the term “agonistic” does not come as a free lunch in contemporary political science. Most scholars equate the term “agonism” with a postmodern understanding of politics. On the suggestion of Jane Mansbridge, I decided to use the less captious term “contestatory deliberation”. I am extremely grateful to Jane Mansbridge for offering generous and superb advice on this difficult topic. I also thank Dennis Thompson, Albert Weale, Christine Reh, Bernhard Kittel, Marlène Gerber, Seraina Pedrini, Jürg Steiner, Joachim Blatter, Simon Niemeyer for stimulating discussions on contestation and collaboration in deliberative democracy. For excellent research assistance, I thank Alda Wegmann.
Deliberation has been tremendously influential in both current political theory and practice, but how can we make it truly effective so that it unleashes its full normative potential? To date, many scholars have developed institutional innovations to organize deliberative events effectively (such as the deliberative opinion poll; see Fishkin 2010). The importance of institutional innovations notwithstanding, deliberation does not end with institutional innovations. Institutional designs do not pre-ordain deliberation: even under the best institutional conditions, deliberation may not occur. Rather, as many deliberationists have emphasized, the secret of deliberation’s success may lie in the very process of deliberation and the resulting dynamics of that process (see, e.g., Gutmann and Thompson 2010).

According to the classic view - and especially according to its many interpreters - , the ideal deliberative process consists of reasoned, respectful, impassionate, and truthful (or, sincere) discussion. The deliberative process is viewed as a cooperative venture geared towards common understanding and consensus. Critics have challenged this narrow conception of deliberation, arguing that this is not only unrealistic but also exclusionary of disadvantaged groups which may not possess the requisite abilities and willingness to enter such a rational discourse. According to feminists and difference democrats, deliberation should also incorporate other forms of communication, such as rhetoric, emotions, testimony, or storytelling. Given this diversity in defining the deliberative process, the exact specification of a desirable and effective deliberative process is lagging behind. Some years ago, Jane Mansbridge (2003: 525) noted that “political theorists are currently only gradually working out what the criteria for good deliberation should be.” This article tries to advance this crucial topic.

I propose that confrontation and contestation are frequently overlooked and undervalued elements aspects of the theory and practice of deliberation (exceptions are Schudson 1997; Remer 1999; Manin 2005; Urfalino 2005). Contestatory deliberation comprises three interrelated elements: (1) questioning which refers to a process of critical
interrogation and (cross-)examination; (2) disputing which refers a process of argumentative challenges (and counterchallenges); and (3) insisting which refers to a sustained process of questioning and disputing, inducing a thorough and rigid inquiry of the matter under consideration. Contestatory deliberation is confrontational and adversarial in design and commonly associated with competitive and passionate debating, which many scholars do not view as deliberation proper (at least not those wedded to classic deliberation). In their seminal study on Indian village discussions, the Gram Sabhas, Rao and Sanyal (2010: 166) bemoan the low overall quality of deliberation: “frequently, competition prevails over consensual deliberation in the GSs”. In their view, “the logic of competition is contrary to any attempt to recognize the merits of the opponent’s demands, a crucial condition of the deliberative ideal, as it could weaken one’s own claim.” Even John Dryzek, a pioneer of expanded notions of deliberation, has recently declared: “Deliberation is different from adversarial debate. The initial aim is not to win, but to understand.” (2009: 3). Indeed, standard accounts of deliberation draw from a “conversation model” of speech (Remer 1999) and frequently emphasize argumentation that entails respect, acceptability, and constructivity, in combination with a dispassionate attitude and open-mindedness. Or, citing Lord Thomas of Gresford (in the 2005 House of Lords debate on the prevention of terrorism bill), classic deliberation could be defined as “calm consideration with time to achieve a consensus”.  

The major claim of this article is that this way of defining deliberation is inadequate and also inconsistent with classic deliberative theories. Not only do classic deliberative theories actually value confrontational and contestatory elements, I propose that contestatory deliberation is a key technique which helps to unleash essential parts of deliberation’s normative potential, mainly its epistemic dimension but also its transformative, ethical, and inclusive dimensions. First, with regard to deliberation’s epistemic potential, contestatory deliberation can unravel inconsistencies and tacit assumptions as well as unearth new facts.

2 HL Hansard, March 1 2005, col. 131.
As such, it can function as an information-provider and truth-tracker, guiding participants toward the “correct” answer. Second, with regard to deliberation’s transformative potential, contestatory deliberation represents a clean pathway to achieve normatively desired preference changes. Contestatory deliberation counteracts the danger of preference changes due to consensus-orientation, conflict avoidance, or group dynamics (such as group polarization). Third, with regard to deliberation’s ethical potential, contestatory deliberation can also induce truthfulness. So far, truthfulness has been conceptualized in intentional terms and proved to be an elusive standard in empirical research on deliberation. Contestatory deliberation reverses this intention-based approach by viewing truthfulness as an element that can emerge out of a critical and thorough process of inquiry, thus contributing to its empirical tractability. Third, with regard to deliberation’s inclusionary potential, contestatory deliberation provides an additional response to critics’ concern of improper inclusion of disadvantaged groups in classic deliberation. Confrontation and contestation are practices of how disadvantaged groups have traditionally challenged authority, enabling them to unravel and subvert dominant frames and demonstrate that there are different ways of seeing things. Finally, contestatory deliberation also provides a solution to long-standing quarrels between deliberative theories and liberal accounts of democracy. By fully re-establishing the value of adversarial and oppositional devices in deliberative democracy, contestatory deliberation helps to reconcile liberal and deliberative accounts of democracy.

However, in order to be effective and productive, contestatory deliberation needs appropriate psychological and institutional pre-conditions. On the one hand, a successful challenger will need strike a careful balance between confrontational and more constructive forms of questioning and disputing. On the other hand, contestatory deliberation must be embedded in an environment where confrontation and contestation are considered virtues rather than nuisances. Furthermore, and somewhat paradoxically, contestatory deliberation must also be embedded in a cooperative institutional setting to yield productive effects: in a
purely antagonistic setting, actors will always find escape routes from being truly questioned and challenged by others.

Two clarifications are in order. First, shifting deliberation’s focus to confrontational and contestatory forms of engagement does not mean that controversy and conflict are its *telos*. Here, my conception of contestatory deliberation clearly deviates from the *oratory* model of speech which is primarily geared towards conflict and mobilization (see Remer1999). By contrast, contestatory deliberation retains the notions of truth, learning and self-transformation. The goal is *productive controversy*, not sterile confrontation. At the same time, my contention is that a well-functioning deliberative democracy must balance the two goals of epistemic fruitfulness and acceptability. While contestation primarily serves the goal of epistemic fruitfulness, respectful and constructive dialogue serves the goal of social and political acceptability. My ultimate claim is that ideal rational discourse should comprise both contestatory and constructive elements, complementing each other in a sequential fashion.

Second, some might say that at closer inspection, contestatory deliberation is nothing but a rehash of the old idea of “rational-critical public debate” (Habermas 1989) which was at the origin of Habermasian-inspired forms of deliberation. Indeed, classic deliberationists are strongly committed to the thorough elaboration of all available information in order to make sound and epistemologically correct decisions. What many deliberationists overlook, however, is the tension produced by deliberation’s simultaneous strong focus on consensual outcomes and civilized forms of discussion. A major claim of this article is that a thorough evaluation of an argument or demand, i.e., an in-depth and unbiased evaluation of its merits *and* its downsides, is better realized via contestatory than consensual (or, conversational) forms of deliberation.

The article proceeds as follows: first, I will tackle some definitional issues and locate contestatory deliberation in a scheme of five different communication modes (running from the oratory to everyday talk). This is followed by a discussion how contestatory deliberation
relates to existing and established methods of inquiry such as the *Socratic Elenchus, Tibetan monastic debates, Devil’s advocacy,* or cross-examination in court. Second, I will discuss the “deliberative” potential of contestatory deliberation in relation to diverse aspects of classic deliberative theory, to critics of deliberation, as well as liberal accounts of democracy. Third, I will specify a number of empirical conditions which make contestatory deliberation an effective venture. Fourth, I will show how contestatory deliberation can be applied in the political and civic sphere and how it can provide a critical yardstick for evaluating the quality of deliberation in a novel way.

**Definitions**

Contestatory deliberation comprises three interrelated elements: questioning, disputing, and insisting. *Questioning* refers to a process of interrogation and (cross-)examination of propositions and arguments. Questioning has an informational and a critical function (see Ikuenobe 2001: 334). The emphasis here is on the critical function of questioning. Of course, this is not to deny the paramount importance of gathering information for sound judgement. Any thorough process of inquiry is dependent on gathering adequate information. But a desirable deliberative process cannot rest here. Bertrand Russell (1959) has argued that we may never reach the truth because there is always the possibility of error. Therefore, we can only vie for the highest probability through a critical process. To be sure, there may be some conceptual overlap between the critical and the informational aspects of questioning. The process of asking questions can quickly turn into asking critical questions and challenging other participants’ premises, interpretations and world-views (which is the underlying logic of the Socratic *Elenchus*; see below). The key is that questions are asked with a critical intention on part of the questioner.
Questioning is one important technique to examine the value of a proposition or an argument. Another technique is *disputing*, which means the argumentative challenge of other positions and arguments. Bernard Manin (2005: 19) calls this the “confrontation of conflicting arguments”. The goal of disputation is to bring out real differences among discourse participants.

Finally, *insisting* refers to a sustained process of questioning and disputing. The goal is a thorough and rigid inquiry of the matter under consideration. In practice, insisting means that discourse participants are not satisfied with easy answers (but insist on getting better ones) and do not quickly and easily take back their argumentative challenges because they want to avoid further conflict or do so for the sake of finding agreement (but insist until their arguments are taken seriously or refuted by better evidence).

In short, contestatory deliberation refers to a confrontational and adversarial process where discourse participants passionately engage with each other and go into the heart of the matter by persistently questioning and challenging each other’s proposals and arguments. Contrast this to the standard and colloquial understanding of deliberation: here, the essence is dispassionate conversation, constructive dialogue, and collaboration. The goal is to identify reasons that other participants can accept and to produce common understanding, common values and agreement.

At first glance, the distinction between classic and contestatory forms deliberation seems to correspond to the familiar distinction between the conversation and the oratory model of speech (Remer 1999). According to Remer, “dialogue, like conversations in general, is distinguished stylistically from the basic kinds of oratory by its form; unlike common oratory, which is single active speaker delivers to a passive audience, a dialogue is a conversation between two or more interlocutors, reflecting, ideally, the give-and-take of their discussion.” (p. 44) In addition, the oratory starts from the premise that “average person’s nature necessitates extra-rational appeals” (p. 42), achieved by using (emotional) rhetorics,
while the conversational model is geared towards reason and finding the truth. Yet, Remer’s distinction between the oratory and the conversational model of speech does not fully capture the essence of my understanding of contestatory deliberation nor does it help to properly distinguish it from classic forms of deliberation. In my conception, contestatory deliberation is located in between the oratory and the conversational model. Similar to the oratory, arguments in contestatory deliberation are “agonistic” and presented in light of ‘the strongest case’ that can be made for it. Moreover, contestatory deliberation is not be fully dialogic in the sense that it involves all participants into discussion, but generally restricts interactive elements to disputants. But there is one important difference: as opposed to the oratory, the speaker’s goal in contestatory deliberation is to find out the truth with the other interlocutors, not to refute someone as an opponent. This presupposes friendship, or at least good will between interlocutors (see Remer 1999: 49). Speakers confront each other as adversaries, but only for the purpose of debating. The problem with the oratory is that while disputants have strong incentives to present arguments in their strongest form in order to recruit the audience into their camp, they simultaneously have strong incentives to evade true challenges of their own argumentative presuppositions. Disputants in the oratory will use all sorts of rhetorical tricks such to circumvent poignant argumentative counterchallenges. By contrast, disputants in contestatory deliberation speakers are eventually willing to accept flaws in their own argumentation (even though they will avoid easy consensus). As such, contestatory deliberation has a playful aspect in that debaters try out how far their own argument can travel but are willing to “leave the bus” when they realize that have travelled to far with it. Therefore, contestatory deliberation is “productive controversy”, while the oratory generally boils down to sterile confrontation.
Table 1: Five modes of communication

<table>
<thead>
<tr>
<th>Aims</th>
<th>Oratory</th>
<th>Disputation</th>
<th>Discussion</th>
<th>Constructive Dialogue</th>
<th>Everyday Talk</th>
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<tbody>
<tr>
<td>Conflict Mobilization</td>
<td>Systematic confrontation and contestation of diverse and conflicting viewpoints, emotional rhetorics (appeals)</td>
<td>Systematic confrontation and contestation of diverse and conflicting viewpoints</td>
<td>Diversity Truth</td>
<td>Problem-solving Acceptability (common values)</td>
<td>Diversity Problem-solving Social Comfort</td>
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<td>Truth Clarification</td>
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<table>
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<tr>
<th>Method (mode of communication)</th>
<th>Oratory</th>
<th>Disputation</th>
<th>Discussion</th>
<th>Constructive Dialogue</th>
<th>Everyday Talk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systematic confrontation and contestation of diverse and conflicting viewpoints</td>
<td>Systematic confrontation and contestation of diverse and conflicting viewpoints</td>
<td>Structured presentation and elaboration of diverse and conflicting viewpoints; can entail contestation and confrontation as well as cooperation and common ground</td>
<td>Systematic presentation and elaboration of diverse and conflicting viewpoints with a key focus on finding common ground</td>
<td>Unstructured presentation and elaboration of diverse viewpoints</td>
<td></td>
</tr>
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</table>

Table 1 disentangles five major conceptions of communication, which may help to determine the exact location of contestatory deliberation. The oratory involves the systematic confrontation and contestation of diverse and conflicting viewpoints, but is geared towards conflict and mobilization via rhetorics and emotional appeals. Disputation also involves the systematic confrontation and contestation of diverse and conflicting viewpoints, but is still committed to finding the truth. Contestatory deliberation encompasses elements of both (as table 1 shows): while it is strongly aligned with disputation, it also includes an opening toward the oratory model. It can entail rhetorics and emotional speech in order to draw attention to neglected facts, while simultaneously retaining a fun factor. In my conception, contestatory deliberation is a first-class theatre with the goal of eliciting the truth, or at a minimum, clarifying what is at issue. Discussion, in turn, represents an intermediate category of interpersonal communication, located in between the oratory model and everyday talk. Discussion is a less systematic communication mode than disputation or the oratory. Constructive dialogue is geared towards finding common ground as well as social and
political acceptability. It has strong communitarian (or, republican) roots and primes acceptability over truth (see Talisse 2009). To be sure, the common understanding of constructive dialogue is much broader than this reductionist account and generally includes elements of disputation. A good example in this regard might be Benjamin Barber’s (1998: 116ff.) republican concept of “civilizing discourse” which is oriented towards commonality, cooperative strategies, and the public weal while being simultaneously “critically reflective”. But as I will argue below, a simultaneous focus on commonality and criticism may be an impediment to realize both of these aims Conceptual reductionism thus helps to keep conceptually distinct elements apart. Finally, everyday talk is the least structured mode of communication. It mainly aims at providing information and social comfort. Nonetheless, as Conover et al. (2005) have empirically shown, everyday talk can have eminently deliberative functions: it can help citizens to work out their preferences, to gain information, and to develop confidence about performing in the public sphere. Notice that the five different modes of communication are depicted in the form of ideal types, whereas real world communication will always be a mix of them. Moreover, real world communication may also entail different communicative sequences comprising different communication modes. It may start with everyday talk and discussion, turn into disputation, and end with constructive dialogue. The central claim of this article is, however, that deliberation without a strong dose of sustained critical questioning and disputation is deficient from a normative perspective and that confrontational and contestatory practices can yield positive effects for deliberation.

Conceptual Origins

From a conceptual vantage point, contestatory deliberation has origins in several well-known and established methods of inquiry. First, contestatory deliberation has strong roots in the Socratic method, called the *Elenchus* (see Vlastos 1983; Benson 2000). The Elenchus is a
form of inquiry and debate between individuals with opposing viewpoints based on asking
and answering questions. It is a disciplined dialectical examination method, in which the
defence of one point of view is pitted against the defence of another. The aim is “testing or
examining the knowledge or wisdom of those reputed (by themselves or others) to be wise”
and “showing those who are not wise their ignorance”. Socrates gives an example at his trial
when he cross-examines Meletus, one of his accusers. Meletus states a thesis, as something he
knows to be true because he is wise about the matter in question. Socrates then asks questions,
eliciting clarifications, and extensions of the thesis. He then claims that the original thesis is
logically inconsistent with something affirmed in these further responses. For Socrates, it
follows that the respondent did not know what he was talking about: true knowledge would
prevent one from such self-contradiction. According to Benson (2000), Socratic elenchoi
cannot prove the falsehood of a specific belief, but they “can aim at truth by aiming at
doxastic inconsistency.” They “engender perplexity”, which leads to the awareness of
ignorance and a desire to know (ibid, p. 90). The intended self-transformation relies on what
modern psychology calls cognitive dissonance: the interlocutor dislikes himself for holding an
inconsistent position and will seek to rid himself of that inconsistency. Even though the
practice of the Elenchus was such that Socrates was almost always right, the ideal of the
Elenchus is different: the examination of others is also intended as an examination of himself.
As Benson (2000) concurs, the Elenchus is decidedly epistemological in content, even if it
can only establish the inconsistency of the interlocutor’s beliefs.

Second, contestatory deliberation has also roots in a non-Western variant of the
Socratic Method, the Tibetan monastic debates (see Perdue 1992). According to Perdue, there
are three purposes of the Monastic debate: (1) refutation of mistaken conceptions or invalid
reasoning; (2) positing the correct view; and (3) clearing up uncertainties about the validity of
the position which has been stated (an apparent inconsistency in the correct view must be
resolved). Great emphasis is placed on the knowledge to be gained through debate. Tibetan
monastic debates also entail serious preparation on part of the debaters: “Like warriors preparing for battle, the monks train and develop their capacities in order to defeat the enemy of ignorance.” (ibid, p. 24) An actual session of debate involves two monks, a Challenger who stands and asks questions and a Defender who sits and gives answers to the challenger. As Perdue (1992: 32) notes, “Tibetan monastic debate is both physically and verbally aggressive … the monks speak loudly with confidence, clap their hand with fervor, and occasionally (when a wrong answer is given), scold and mock the opponent.” The Challenger will also trick, test, and befuddle his opponent: “If a Defender is coerced away from a correct position by a clever Challenger, then his understanding is not solid.” (ibid, p. 30) Although the monks may become very excited in debate, the purpose for his debate is not to defeat and embarrass an opponent, or gaining victory for one side. Rather, the purpose of debate is to help the opponent to overcome his wrong view. Moreover, Tibetan Monastic debate is also not about learning an accepted dogma which is defended against all possible objections. Rather, “debate is an intense and imaginative critical analysis.” (ibid., p. 31)

Third, contestatory deliberation has also strong roots in the concept of the devil’s advocate, a formalized dissent role within the Roman Catholic Church since the early 1500s. Historically, a devil’s advocate was a canon lawyer appointed by Church authorities to argue against the canonization of the candidate. The devil’s advocate must thoroughly and rigorously examine the negative side of the proposal for sainthood. By separating the function of the promoter and dissenter for sainthood, devil’s advocacy ensures that both sides of the question will be thoroughly presented and evaluated, since the roles are not subject to intrapersonal conflict. Today, the concept of the devil’s advocate has some footing in corporate business, with the goal of avoiding biased evaluations of business projects.

Fourth, contestatory deliberation is also aligned with cross-examination in courtroom and with investigative journalism. In court, cross-examination is the interrogation of a witness. The goal of cross-examination is to impeach the credibility of the testifying witness
and to cast doubt on evidence presented by the opposite party with all available rhetorical means. Cross-examination frequently produces critical evidence in trials, especially if a witness contradicts previous testimony. Generally, cross-examination is seen as a highly strategic procedure involving trickery and unfair tactics. There are dozens of maxims (or, tricks) of how to successfully master cross-examination. For instance, a successful cross-examiner should never ask a critical question without knowing the answer (Cotsirilos 1971: 144). But according to its veteran practitioners, cross-examination is still oriented towards finding the truth: “[c]ross-examination … is the keenest test of truth and more penetrating than an affidavit.” (Brown Megargee 1987: 21). According to Brown Megargee, a good cross-examiner as a “skilful surgeon”, dissecting the character and motives of witnesses and trying to find out whether witnesses are testifying from some bias that they even do not appreciate (ibid.). Investigative journalism, in turn, is a form of journalism which attempts “to discover the truth and to identify lapses from it in whatever media may be available.” (de Burgh 2000) The investigative journalist deeply investigates a topic of interest and uses critical interrogation techniques to unravel the truth.

Finally, contestatory deliberation is also linked with “debating club” formats. There are several such formats (the Karl Popper or Oxford debate format) but the usual setup consists of two opposing teams defending or refuting a specific “resolution”. According to the “international debate education association (IDEA)”, “[d]ebate is not a forum for asserting absolute truths, but rather a means of making and evaluating arguments that allows debaters to better understand their own and others’ positions. This sense of a shared journey toward the truth brings debaters closer together, even when they represent opposing sides of an issue or come from vastly different cultures or social classes.”

However, the conception of contestatory deliberation that I defend is broader than each of these well-known and established methods of inquiry. First, while contestatory deliberation

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3 http://www.idebate.org/debate/what.php
is most closely related to the Socratic Elenchus Tibetan monastic debates and debating clubs, it is not necessarily a rigid method of inquiry and debating but can appear in various forms and realizations. Moreover, contestatory deliberation is not only about pitting the defence of one point against the defence of another, but may also be used towards shaking up indifference and re-direct participants’ attention towards previously neglected facts and frames. Second, compared to the concept of the Devil’s advocate, contestatory deliberation has dialectical features, similar to what social psychologists have called “dialectical inquiry”: “Dialectical inquiry uses debates between diametric sets of recommendations and assumptions, whereas devil’s advocacy relies on critiques of single sets of recommendations and assumptions” (Schweiger et al. 1986: 52). In addition, contestatory deliberation is not only about role-playing, but can also involve an authentic devil’s advocate who brings up an oppositional standpoint in which she or he sincerely believes. Third, compared to cross-examination in law, investigative journalism, and adversary inquiry is not about tracking down (and virtually “assaulting”) adversaries via extreme oppositional measures and “dirty tricks”. Rather, the intention of contestatory deliberation is positive, using confrontational and contestatory devices in a productive way in order to stimulate reflection on part of the challenged and induce preference transformation (as well as self-transformation).

To date, contestation and confrontation have not figured prominently on the agenda of deliberative research. To be sure, there is frequent mentioning of deliberation as “discussion and debate” (see, e.g., Chambers 2003), but the exact status and the relationship of discussion and debate is not really clarified. Thomas Risse (2000) has been one of the few to mention the transformative potential of confrontation and contestation. Focusing on the public sphere in international politics, he stresses the importance of interrogation and challenges for the change of preferences (or, at least positions) of states. He dubs this process “argumentative self-entrapment”. Risse presented a number of empirical cases where human-rights violating governments were forced into a dialogue by the sustained pressures of mobilized domestic
and transnational networks. At some point, the democratic “brakemen” could no longer (reasonably) defend the indefensible. Consequently, they switched to a “logic of arguing” and started acknowledging positions and arguments.

Interestingly, Risse’s conception of “argumentative self-entrapment” entailing critical interrogation and argumentative challenges has barely translated in empirical research on deliberation. The most prominent empirical measure of deliberative quality, the *Discourse Quality Index* (DQI; Steenbergen et al. 2003) focuses on deliberative ideals such as justification rationality, common good orientation, respect, and constructivity. Contestatory deliberation has not been part of the DQI’s research focus. While the DQI does not directly discriminate against contestatory and confrontational elements (such as questioning, disputing, and insisting) it does not count these instances as high quality deliberation either.\(^4\)

With regard to empirical measurement, there are two exceptions, however. One is Holzinger’s (2001) speech act analysis which explicitly lists the core elements of contestatory deliberation, namely “asking”, “challenging”, and “insisting” under the rubric of “arguing”. However, Holzinger’s conception of “arguing” is under-theorized with regard to deliberative theory. In particular, the exact status of challenging and insisting remain unclear. According to Holzinger, the “truly argumentative speech acts” are “justifying” and “concluding” rather than “challenging” or “insisting”. Thus, Holzinger still follows standard conceptions of deliberation and eventually devalues the “deliberative” value of adversarial and confrontational communication modes. The other exception is Mucciaroni and Quirk’s concept of informational quality. Mucciaroni and Quirk (2010; 2006) argue that DQI analyses focus on a debate’s compliance with a set of “plays-well-with-others” indicators. In their view, such an approach is deficient since it neglects the substantive consideration of policy issues and the related informational quality of a debate. To assess the intelligence of debate –

\(^4\) The DQI counts these instances as “neutral respect” in general; yet, harsh confrontational speech acts are counted as “negative”, the lowest coding category of the DQI respect measures.
or, its epistemic quality -, they focus on the accuracy and realism of legislators’ claims about the effects of policies. In so doing, their analytical focus encompasses contestation, confrontation and even emotional appeals. While Mucciaroni and Quirk (2006) are heading in the right direction, their conception lacks a proper theoretical reflection of the exact place and value of these practices in the deliberative theory.

The goal of this article is to fully re-establish the value of confrontation and contestation in deliberation, but to do so in a theoretically reflected way by conceptualizing confrontational and contestatory practices as *techniques* contributing to realize a number of classic deliberative ideals. This is the topic of the next section.

**Relationship to classic deliberation, critics, and liberal theories**

**Contestatory Deliberation and Classic Deliberative Theory**

Contestatory and confrontational forms of engagement are far from being anti-theitical to classic, Habermasian-inspired forms of deliberation. Granted, the colloquial understanding (and caricature) of Habermasian deliberation is a collaborative enterprise priming on reasoned, respectful, dispassionate, and constructive discussion with a focal point on common values and interests. Indeed, most empirical researchers who have tried to operationalize Habermasian deliberation have focused on elements such as justification rationality, common good orientation, respect, and constructivity (see Steiner et al. 2004). Even though Habermas supports this way of operationalizing his discourse model (Habermas 2005), it would be wrong to see Habermasian discourses as exclusively geared towards reasoned, respectful, and constructive dialogue. First, and in very basic terms, questioning or disputing is the entry point and input of any Habermasian discourse: without disagreement about validity claims, there is no need to enter deliberation (see also Thompson 2008). Second, in his early work,
Habermas has hinted at the importance of *rational-critical debate* in the emergence of the bourgeois public sphere. In this regard, Habermas also explicitly refers to the importance of controversial argumentation. Yet, at a later stage, by focusing on the ideal speech situation and a “universal audience”, the Habermasian discourse model has drifted towards the idea of reasoned consensus arrived through by rational argumentation. The synthesized core of rational argumentation is the “orderly exchange of reasons” (“geregelter Austausch von Gründen”). This, in turn, does not pre-judge the concrete mode of communication which can range from the mere presentation of reasons to consensus-oriented dialogue or, to an adversarial and confrontational exchange of reasons. As Manin (2005: 19) correctly argues, the Habermasian discourse model, while being conceptually open to confrontational and contestatory forms of communication, does not *require* them. Other classic deliberative democrats (e.g., James Fishkin) have drawn from the Habermasian discourse model, but have tried to adapt it to real world constraints, especially by dropping an unduly orientation towards consensus and by tolerating a “great deal of incompleteness” in the content and form of reasons offered by discourse participants (Fishkin 1995). Nonetheless, they have retained the idea of “orderly exchange of reasons” in combination with civil discussion, dispassionate attitudes and open-mindedness. Thus, the exact value and status of confrontational and contestatory practices remains unspecified in classic deliberation. And this is where the trouble lies.

Before I discuss of the specific advantages of contestatory deliberation in relation to different dimensions of the classic deliberative model – epistemic, transformational, ethical – some more basic considerations are in order. To start with, a thin quality standard that all deliberative democrats embrace is the *thorough evaluation* of an argument or demand, i.e., an in-depth and unbiased evaluation of its merits *and* its downsides. A thorough evaluation of an argument or demand also forms the basis of the diverse epistemic and transformative benefits
alleged to deliberation. My claim is that a thorough evaluation of an argument or demand is better realized via contestatory than consensual (or, conversational) forms of deliberation.

To understand why contestatory deliberation outperforms classic deliberation in this regard, we need to take a look at the *mechanisms* inherent in consensual and contestatory deliberation. In consensual deliberation, the essence is finding common ground and arguments that warrant the assent of others. Participants do not want to win, but to listen, understand, and learn. Some authors (e.g., Hall 1971) have speculated that in consensual discussion, all persons are encouraged to express their own views, opposing opinions are addressed and criticized directly, and that the ensuing *open controversy* results in a thorough exploration of the problem and the creation of high quality solutions to which members are committed.

It is my contention that a strong gear towards consensus is not automatically conducive to open controversy and a thorough exploration of the problem at hand. Quite to the contrary: a strong gear towards finding consensual solutions may have a *reductionist* logic to argumentation’s content and range. As Pattie (2008) has demonstrated formally, strategic actors oriented towards a common result will only use those arguments that can be accepted by others, leading to the strategic ommitance of certain arguments. From a psychological point of view, finding common ground also has the effect that participants may not look into potential downsides of other arguments “for fear of being perceived as an opponent of a measure objectively promoting the common goal” (Manin 2005: 10). Finally, a strong gear towards finding consensual outcomes also entails a simple transaction cost problem. Since finding common ground in a pluralistic and diverse society is generally very difficult, discourse participants will need to invest a serious amount of time to identify shared reasons and shared premises (often very basic ones) upon which others can agree. This investment is inversely related to the amount of time invested in finding contravening reasons. In all these instances, the search for consensus may lead to an incomplete as well as biased evaluation of the merits and downsides of different arguments.
But even if an orientation towards consensus is abandoned and we capitalize on the fact that deliberation usually occurs in the context of disagreement over validity claims and in the context of opinion diversity, deliberation in the form of civilized discussion may not lead to a thorough evaluation of arguments and demands. Of course, strong initial disagreement may quasi-automatically spark criticism and controversy, which form the basis for thorough evaluation, as I shall detail below. But my contention is that the format of civilized discussion – the standard way of running deliberative events – still entails a number of pitfalls. First, from a psychological perspective, arguments that others find reasonable are frequently those who resonate well with pre-existing beliefs and attitudes of others or seem plausible and coherent on the basis of the existing discourse structure. Second, a “satisficing” logic amplifies this problématique. Since information search is always costly, discourse participants may stop the search for information once a seemingly good reason has been advanced (Manin 2005: 10). Third, group deliberation always contains the danger of confirmatory bias in that shared information is more frequently mentioned (and remembered) than unshared information. This will “generate a disproportionate amount of information and arguments reinforcing the already prevailing belief” (Manin 2005: 12). Fifth, the very rules of classic deliberation may fall onto the heads of participants. Radical criticism, insistence, passion, and disrespect can always be attacked by other discourse participants on the grounds of being a non-deliberative and non-constructive way of engagement, violating the very rules of deliberation. In all these instances, discussion may produce a biased evaluation of the merits and downsides of an argument or demand.

Contrast this with the mechanisms inherent in contestatory forms of deliberation. Contestation has a deepening and widening logic to argumentation’s content and range. Disputants are not searching for agreement but want to win (at least in the first instance), and show that their own ideas are superior to others. Speakers have every incentive to challenge other participants’ arguments and unravel problematic or diffuse links between premises and
conclusions. Oftentimes in political discourse, arguments contain non-substantiated claims and assumptions rather than clear inferential links between premises and conclusions. Contestation will excavate such unsubstantiated claims and assumptions. Moreover, disputants have also every incentive to be creative and ingenuous rhetors and provide the interlocutors and the audience with surprising or subversive counter-evidence. In short, contestation creates incentives to challenge each other’s positions and arguments in a radical fashion, creating an expansive logic to argumentation’s content and range. It is this expansive logic of competitive argumentation – and not a gear towards consensus or the simple presence of opinion diversity (see Manin 2005) - which is conducive to a thorough evaluation of the problem at hand.

I will now demonstrate how contestatory deliberation can help to realize essential goals deliberation, epistemic fruitfulness, normatively desirable preference change, truthfulness, and inclusion.

**Outcomes of Deliberation I: Epistemic Quality.** One of the key alleged benefits of deliberation is the enhancement of epistemic quality (see Mansbridge 2010) Epistemic deliberative theories emphasize the instrumental properties of deliberation, namely the fact that it may and should get us to the “correct” answer”, or at least, to the best possible answer to a given collective problem (Estlund 1997; Talisse 2009). However, what epistemic approaches mostly lack is the exact specification of the deliberative process. Landemore (2010), for instance, sets the prime on group composition which should maximize “cognitive diversity”. Similarly, focusing on the epistemic aspects of representative government, Goodin and Spiekermann (2011) emphasize the importance of a “deliberation effect” which is bound “to contribute something” to epistemic quality. In their view, the work of deliberation consists of uncovering some new evidence. This generally happens through the pooling of information (see Goodin 2006).
Indeed, the mere presentation of (cogent) standpoints as well as the release and pooling of private information can sometimes fulfill epistemic purposes. Argument can be a learning experience, expand perspectives, and provoke insights. In addition, a high amount of opinion diversity increases the chance that diverse arguments are presented. But cognitive diversity, the presentation of arguments and the revelation of private information may not always lead to epistemologically superior outcomes. First, as mentioned before, as long as deliberation is conducted according to norms of civilized discussion and geared towards consensual outcomes, the evaluation of arguments and demands may be lopsided. Second, as Manin (2005: 9) contends, “diversity of views” does not necessarily imply “conflicting views”, which would form the basis for criticism and controversy. Third, effective information-pooling requires truly independent observers. When all observers rely upon the same source of evidence, consensus among them does not tell us much. Finally, as rational choice scholars have formally demonstrated, strategic talk can never be excluded (Landa and Meirowitz 2009). Even under cooperative conditions, strategic actors will always have incentives to conceal specific pieces of information.

Contestatory deliberation can fill this void. By questioning and challenging each other’s claims and arguments, potential holes in factual knowledge or inconsistencies in argumentation may come to the fore. Moreover, argumentative challenges also force others to search out for better counterarguments. This can contribute to better epistemic quality. From an empirical vantage point, there is intriguing empirical research demonstrating the epistemic superiority of contestatory forms of inquiry. In a laboratory study, Schweiger et al. (1986) compared the effectiveness of the dialectical inquiry, devil’s advocacy, and consensus approaches to strategic decision making by groups. Results showed that both dialectical inquiry and devil’s advocacy led to a higher level of critical evaluation of assumptions and better quality recommendations than the consensus treatment. This result is even more remarkable since in the consensus treatment participants were asked to consider
counterarguments carefully and critically as well as to avoid changing their mind simply to avoid conflict and reach agreement. Similar results are found in citizen juries. In juries oriented towards consensus, Huitema et al. (2007) found tendencies that not every argument was properly discussed: “We observed that this led the juries to avoid both potentially divisive topics and, to some degree, the adoption of unreal assumptions in their recommendations.” (p. 302)

**Outcomes of Deliberation II: Preference Change and Respect.** Besides epistemic quality, there are other outcomes which deliberative theorists consider desirable products of deliberation. First, most deliberationists subscribe to the notion of opinion change, or the “willingness to accept something else”\(^5\). This generally combines with respect toward other arguments and demands (see Gutmann and Thompson 1996). Contestatory deliberation provides a clean pathway to achieve these goals: by providing a thorough evaluation of arguments and claims, it can induce discourse participants to get an in-depth understanding of the topic at hand and change their minds accordingly. Under argumentative competition, discourse participants may also realize that they defend the indefensible, which can lead to the acceptance of other arguments and demands. Furthermore, contestatory deliberation may induce a richer account of one’s own position, as well as create new and overlapping ties to others. And we may even consider a somewhat paradoxical emergence of respect: similar to the ideal of the Socratic Elenchus, disputants may discover the real strength of other positions, which might lead to respect toward others as well as to instances of self-transformation. Preference change on the basis of a rigid and thorough inquiry is at the core classic deliberation. Classic deliberationists are loathe to value preference changes that are based on a mere consensus-orientation, conflict avoidance, or group dynamics (such as group polarization).

\(^5\) I borrow this fortuitous notion from Ian O’Flynn.
However, there is widespread suspicion that contestation and confrontation widens rather than narrows divisions, thus subverting any attempt to find common ground. Indeed, in real world communicative encounters, there seems be a trade-off between epistemic fruitfulness and social acceptability. In their laboratory experiment, Schweiger et al. (1986) found that subjects in the consensus groups expressed greater acceptance of their groups’ decisions as well as a desire to continue to work with their groups compared to participants in dialectical inquiry or devil’s advocacy groups. Contestation may also (too) rarely point to overlapping ties, but simply reinforce existing differences. Such differences may also be part and parcel of “reasonable disagreement”, thus not amenable to swift agreement and resolution. If we retain consensual outcomes and acceptability as important deliberative goals, then this trade-off creates a demand for a complementary stage of constructive engagement, the details of which I will detail below.

Finally, contestatory deliberation also directs us to another outcome which has some attraction from a philosophical perspective: prudence (see Hibbs 2001). Prudence – classically considered to be a one of the four Cardinal virtues (besides justice, fortitude and temperance) - is frequently considered a virtue of the practical intellect. It means exercising sound judgment in practical affairs. Prudence also contrasts with rashness. The idea here is that prudence often stops certain developments before irreparable damage has been done. Contestatory deliberation represents an important pathway how prudence is produced: the more thoroughly people are questioned and challenged and start seriously reflecting on an issue, the more they will realize how complicated certain issues can be, or, that certain issues are currently un-decidable given the evidence at hand (see Goodin 2006: 240).

**Truthfulness.** Truthfulness (or, sincerity) is a key ethical value in classic deliberation. In practice, it means that discourse participants do not use arguments in a purely opportunistic fashion to “dupe” the audience but really “say what they mean and mean what they say”. In
recent years, however, a number of scholars have proposed to relax – or abandon – the truthfulness (or, sincerity) constraint. According to Markovits (2006), deliberative theory would do well to relax the sincerity requirement considerably since it oversimplifies human psychology by ignoring the possibility of multiple and complexly related intentions while at the same time denigrating alternative forms of speech. Thompson (2008: 504), too, holds that students of deliberative democracy should not worry about sincerity or truthfulness: “actual arguments are what matter, not motives.” Yet, completely abandoning truthfulness may come at the price of any residual claim of benefits ascribed to deliberation. As Neblo (2007) argues, truthfulness may be constitutive - or regulative - of deliberative processes. If we do not think that we were offering better and worse arguments on behalf of some policy, it is difficult to see why deliberative democracy should have a much stronger claim on us than aggregative democracy. As to truthfulness, it is hard to understand why people should feel respected by living under laws generated by a process which traffics in polite lies (Neblo 2007). As such, deliberative research may not dispense of an independent test of truthfulness. Yet, a pervasive challenge is the problem of measuring sincerity because it is extremely difficult to determine an actor’s true orientation, as these are intra-psychic processes, which are difficult to verify, sometimes even to oneself (Holzinger 2001: 251). Contestatory deliberation offers one possible escape route for tackling the perennial problem of truthfulness, providing an indirect empirical tool to investigate truthfulness. Similar to cross-examination in court, contestatory deliberation might unravel relevant information that otherwise would be withheld. And it might refute the credibility of certain accounts. While it may be futile to get hold of the inner motives of participants during a deliberative process, challenges and counter-challenges can be seen as moment of truth-seeking, regardless of the initial or inner motives of the participants. To the extent that there was contestation in the deliberative processes, it may perform a regulatory function on truthfulness in much the same way in which an investigative news media regulates the behavior of potentially strategic political representatives: the
tendency to make strategic claims is regulated to the extent that they would be subjected to
critical and rigid scrutiny. In sum, contestatory deliberation reverses an intention-based
approach to truthfulness by viewing truthfulness as an element that can emerge out of a
critical and thorough process of inquiry.

**Conestatory deliberation and critics of deliberation**

Feminists and difference democrats have taken a critical view on classic, Habermasian-
inspired forms of deliberation. Sanders (1997) bemoans that the deliberative virtue of civility
has a sedative effect that curbs unruly behavior on part of the disadvantaged. In a similar vein,
Young (2002: 49) challenges “an identification of reasonable public debate with polite,
orderly, dispassionate, gentlemanly argument.” In her view, people can be manipulated by
rational discourse: “many academics are very good at adopting a stance of controlled and
measured expression that commands authority, transcending the dirty world of interest and
passion.” (p. 64) Young therefore advocates a more “agonistic model” of the democratic
process which puts a strong prime on greeting, rhetoric, and narrative and is more sensitive to
the needs of disadvantaged groups. Contestatory deliberation provides an additional answer to
these concerns. First, similar to investigative journalism, its goal is to unravel problematic
aspects of dominant frames and interpretations while simultaneously demonstrating that there
are different ways of seeing things. Second, contestation is a practice of how excluded and
disadvantaged groups have traditionally challenged authority. Thus, contestatory deliberation
provides a concrete device of how to include them in the deliberative process. Third,
contestatory deliberation is a way of directly as well as subversively challenging positions and
arguments of advantaged and dominant groups. While greeting, story-telling, rhetoric, and
testimony may entail confrontational aspects as well, they do so in far less direct and
subversive way. Finally, contestatory deliberation’s conceptual opening toward rhetorics
accords with the re-newed focus on the importance of rhetorical dimensions in deliberation
(Chambers 2009; Dryzek 2010). According to Chambers (2009), rhetorics can yield positive effects for deliberation by creating a dynamic relationship between speaker and hearer and by engaging hearers by the speech. Emotional rhetorics in contestatory deliberation can critically support this goal.

However, difference democrats and feminists may object that formalized forms of contestation – such as the Socratic Elenchus, Tibetan Monastic debates, or debating formats - are highly demanding formats requiring sophisticated cognitive as well as rhetorical abilities, thus being as exclusionary to disadvantaged people as Habermasian rational discourse. For Young, disputation is not open to culturally different modes of presenting claims and giving reasons. Indeed, psychologists have shown that there is gender bias when roles such as the devil’s advocate are assigned. Womens’ reputations can be harmed when their words threaten men (Sinclair and Kunda 2000). Similar results were found when Kunda et al. (2002) examined reactions of whites to statements by blacks. In other words, while contestatory deliberation may help to reduce epistemic bias, it may do so at the expense of increasing inequality of disadvantaged groups.

My response to this criticism is three-fold. First, if these contestatory formats indeed possess superior epistemic qualities and ultimately serve the needs of disadvantaged groups, then we should not easily dismiss them. Second, careful preparation is the key to successful performance in contestatory formats, as the extensive preparation in Tibetan monastic debates underline. Third, there are also two institutional responses to the inequality problématique: on the one hand, the effective deployment of contestatory practices depends on the type and temporal stage of the conflict. On the other hand, it may be well true that some people shy away from performing in a debating format. But given the fact that debating is generally conducted between a challenger and a defender, these people can remain observers and profit from the exchange of the disputants.
**Contestatory deliberation and liberal democratic theory**

Oppositional activity and adversarial debate are generally considered key components of the liberal account of democracy. The recognition of oppositional speech and the emergence of a legitimate opposition in parliament are viewed as the major ingredients of the emergence of liberal democracy (see Hofstadter 1969). Contemporary liberal approaches echo this longstanding tradition. Focusing on the “democratization” of the European Union, Follesdal and Hix (2006) consider *competitive debate* as a crucial factor to enhance the Unions’ democratic quality. For quite some time, this adversarial and competitive vision of democracy has been at odds with most deliberative theorists. In their view, a properly functioning democracy should be geared towards identifying common values rather than being stacked in conflict and irreconcilable pluralism. Sunstein (2007), for instance, refers to Madison who hoped that the Bill of Rights together with the Constitution would become a source of shared understanding among diverse people. According to Sunstein (2007: 38), “[t]he example illustrates the founders’ belief that for a diverse people to be self-governing, it was essential to provide a range of common values and commitments.”

Contestatory deliberation can build bridges between liberal and deliberative accounts of democracy. By re-establishing the buried value of adversarial and oppositional devices in deliberative democracy while simultaneously retaining central principles of classic deliberation such as transformation of preferences in direction of common values, contestatory deliberation helps to reconcile liberal and deliberative accounts of democracy.

As we shall see in the next section, contestatory forms of interaction that yield “deliberative functions” are far from being “condition-free”. If contestatory deliberation should realize its epistemic, transformative, ethical, and inclusionary potential, it is strongly dependent on – albeit not determined by - appropriate psychological and contextual preconditions.
Conditions

Empirical research on deliberation has shown that deliberative virtues do not just magically appear whenever a group of individuals, be they citizens or politicians, are put in the same room to talk. Deliberation emerges there where individual and contextual pre-conditions are right. This is also true for contestatory deliberation. With regard to the pre-conditions of contestatory deliberation, we need to consider individual, group-level, institutional, and issue-specific factors.

Individual and group level prerequisites. Adversarial argument can be unpleasant. Not every person reacts to all types of arguments in the same way: some people do not mind being challenged, while others are put off by it. In this regard, politicians in liberal democracies may represent a highly self-selected species who generally value confrontation and contestation. But when deployed on many other people, confrontation and contestation may work in counterproductive ways: rather than producing awareness and better knowledge, they might lead people to retrench and be dismissive of an argumentative challenge. This is exactly what happened to Socrates when he persistently questioned other for justifications and clarifications: “it makes others hate him, may (indeed does) lead to his death, and is remarkably unsuccessful in achieving even its preliminary aim of persuading the individual of his ignorance.” (Benson 2000: 31) As educational philosophers have emphasized, a questioner or challenger cannot stay confrontational throughout the process. Rather, “instructors have to develop a constructive and non-threatening way to ask questions and teach students a process of asking questions so that one does not alienate and intimidate” (Ikenuobe 2001: 340). This means that a successful questioner or challenger must be able to build bridges to other frames and interpretations and offer constructive ways of how to resolve the disagreement. Practitioners of cross-examination also emphasize that “bullying” and a “harsh style” may be detrimental to the advocate’s success since this causes valid points on the jury (see Brown
Megargee 1987). The upshot of this discussion is this: if contestation has any merit at all, it should not be vitiated by pure adversarialism, which is expected to engender a negative attitude on part of the challenged. But this soft-pedal approach is at odds with the full deployment of contestatory techniques, subverting a truly critical evaluation of the topic at hand. We can think of two pathways to overcome this problem. One pathway is the slow build-up of a fully-fledged critique. Brown Megargee (1987: 100) mentions an example from the practice of cross-examination: “A masterful cross-examiner, Kiendl would invariably treat an adverse witness with the greatest courtesy and friendliness, making the witness less suspicious and more relaxed. Slowly, definitely, methodologically, question after question, until the witness was impaled in the meat hooked by his own answers.” Another pathway to realize the full deployment of confrontational and contestatory techniques is institutional: individual-level and psychological hindrances to fully-fledged contestation may be less (or, not) important when contestatory deliberation is institutionalized as in Tibetan Monastic debates or other debating formats and consists of role-playing. I will return to this point in the section on institutional conditions.

From a group-specific perspective, another pre-condition for effective contestatory deliberation is group heterogeneity and diversity of viewpoints. According to Page’s (2007) “Diversity Trumps Ability Theorem”, the presence of cognitive diversity in a group matters more than the average individual ability of its members for their collective competence in solving certain types of problems. Group heterogeneity and cognitive diversity are also important pre-conditions to make contestatory deliberation work. If a group is homogeneous, then the chance of having people engaging in contestatory deliberation is lower. Of course, even in a homogeneous group, someone might play the role of a devil’s advocate. But it is doubtful whether role-playing will yield the same deliberative effects compared to an “authentic” devil’s advocate who sincerely questions and disputes other participants’ positions and arguments.
Institutions. The importance of institutional settings for the realization of deliberative ideals has been emphasized both by normative and empirical scholars. The same is true for contestatory deliberation. First, contestatory deliberation may be dependent on institutional settings which are explicitly geared towards tough questioning and adversarial argument, treating contestatory deliberation as an appropriate way of conduct. As Herbert and Estes (1977: 665) have noted: “Institutionalizing the dissent function may help de-personalize the conflict generated by criticism.” Parliaments, for instance, represent one such locus. Offensive speeches are the norm as well as the appropriate logic of action in most parliaments (Mucciaroni and Quirk 2010:36). By contrast, citizen deliberation can be easily derailed if confrontational and contestatory practices are deployed head-on. But if we accept that deliberation remains unfulfilled when it avoids contestatory practices, one goal of “deliberative capacity building” (Dryzek 2009b) must be the development of positive attitudes towards confrontation and contestation.

Second, the realization of effective and productive contestatory deliberation also depends on the overall institutional context. At first glance, there seems to be a natural affinity of contestatory deliberation with competitive institutions. Of course, the method of systematic contestation and confrontation is a constitutive feature of competitive regimes. But since contestatory deliberation retains the goal of truth-finding, its relationship to competitive regimes is not as straightforward as one might surmise. As cheap talk theory demonstrates, truth-finding only works in institutional settings where positive sum games can be played (see Austen-Smith 1992) and where actors have scope to reason and change minds on their own (see Elster 1998). Under zero-sum conditions and strict delegation, actors will switch to the oratory, will try to evade stringent counterarguments, and use the same arguments (or, variants of it) over and over again in order to make them stick with the audience. This is also corroborated by a study conducted by Esterling (2011) who finds that nonfalsifiable types of arguments are more often expressed in the context of strong partisan conflict. To be sure,
contestatory deliberation might be effective under purely competitive conditions as well. Imagine a case in which argumentation proceeds to the point in which the challenged person can no longer (reasonably) defend the indefensible such that the ‘forceless force’ of good argument takes over. But one might wonder at what frequency such a situation occurs.

Therefore, and somewhat paradoxically, the ideal of productive controversy is best realized under cooperative institutional conditions with reduced partisan competition and limited delegation. Only when these conditions hold can actors act as truly reflective and constructive beings – and can expect that others act likewise. At the same time, institutional settings geared towards cooperation and consensual outcomes may have a tendency to forego serious scrutiny and try to achieve easy agreement instead. Thus, it is exactly these institutional settings which have the highest demand for contestatory deliberation.

**Issue specificity.** Empirical research on deliberation has shown a large impact of issue type both on deliberative process and outcomes (Steiner et al. 2004; Farrar et al. 2008; Naurin 2010; Esterling 2011). The finding is that deliberative quality augments when issues or topics under discussion are less polarized and less salient. Philosophers, too, argue that argumentative persuasion cannot be effective when they discussion topics are divisive or when first principles are involved (see Goodin 2006). First principles - such as conservative or liberal ideology - are difficult to be challenged on the basis of logical incoherence or weak points in the argumentation (of course, advocates in both camps exactly try to do so). Opinion changes in the context of highly polarized issues resemble Wittgensteinean convergence rather than simple communicative persuasion. These are troubling findings indeed. To paraphrase Naurin (2010), deliberation seems to work best “when it is least important”. Thus, while the truly effective and productive use of contestatory deliberation seems to be limited to issues which are not fully polarized and divisive, there is still a partial escape route: subversive argumentation.
Subversive argumentation – which is an essential component part of contestatory
deliberation - is neither an external nor an internal critique of a specific ideology or first
principles. Neither does it aim at refuting fundamentals of a specific ideology - which would
require the (tacit) acceptance of that ideology. The only goal of subversion is to unravel
unpleasant aspects and inhumanities of an ideology, simply demonstrating what a specific
ideology entails. Nothing is invented or misrepresented, and even the true believer may not
strongly oppose this type criticism since he considers it irrelevant for the ideology’s core
premises. But in the longer run, inhumanities of a specific ideology may have an undermining
potential (see Schleichert 1997).

Notice finally, that for some issues, confrontational and contestatory techniques may
simply be superfluous. They may be unnecessary when simple epistemic questions need to be
tackled. Here, the pooling of information from independent sources can fully do the job.

Systemic Logics

A key challenge is that a re-newed focus on confrontation and contestation might trump
collaboration and consensus, since it may not be so easy for a single person to switch from
one to the other logic of action. Indeed, much of deliberation’s drive stems from the fact that
it provides an alternative to the standard adversarial and aggregative way of decision-making.
As Condlin (2011: 3-4) holds in the context of legal dispute: “In many ways, legal dispute
equipment has become corrupted over the years, relying less on reasoned argument from
consensus norms and more on rhetorical force, threat, deception, intransigence”. So, how can
we strike a balance between the two major goals of deliberation, epistemic fruitfulness and
social acceptability?

To solve this tricky issue, I propose to re-think contestation and cooperation in the
context of a “deliberative system” (Mansbridge 1999). A growing body of the normative and
empirical literature now points to the importance of functionally distributed deliberation in
different parts of the deliberative system (Parkinson and Mansbridge 2011). In this regard, Goodin (2005) has argued for sequentially “dividing up the deliberative task,” creating a system of “distributed deliberation,” in which different institutions play different roles and the different virtues of deliberation appear one after the other. On this basis, we can think at what sequence and at what location of the decision-making process contestation should occur. First, much depends on the type of conflict. In cases of deep conflict and sensitive issues, collaborative phases may need to precede contestation. Under such conditions, “insincere good manners” (Warren 2008) might be better apt at fostering cooperation and peaceful outcomes. By contrast, when conflicts have matured and arguments and counterarguments are well-known (as in abortion debates, for instance), then one may start with contestation head-on and check whether novel and surprising arguments show up during the debate. If this is not the case and the goal is to find a consensual outcome, actors should turn to constructive dialogue and try to identify consensual dimensions of the conflict.

Second, a remaining objection is how actors engaging in contestation can be turned into cooperative actors in a second stage. As argued before, the full deployment of contestatory forms of communication may undermine a cooperative spirit. One way to address this problem is the institutional separation and institutional independence of different communication modes. Herbert and Estes (1977), for instance, refer to the possibility of a special confrontation session which is built into a decision-making process. Another example for institutional separation may be the German political system. The German political system can be depicted as a mixture between competition and cooperation: on the one hand, there is a highly contestatory arena in the parliament (Bundestag and Bundesrat); on the other hand, cooperation is frequently delegated to such as the Conference Committee. Both institutional venues are also composed of different types of actors: in the parliament, there are partisans practicing contestation and confrontation; in the Conference Committee, there are more moderate politicians who have followed the debate and try to identify reasons that all can
accept (see Spörndli 2004). This is clearly an idealized picture of how the German Conference Committee works. In general, actors in the Conference Committee try to identify partisan-based domains of agreement rather than epistemologically superior policy solutions. But the key point here that functionally differentiated but nested arenas could, at least in theory, fulfil different deliberative virtues, namely epistemic fruitfulness and consensual solutions, whereby the latter are made dependent on a prior exposure of participants to a rigid and adversarial inquiry.

Applications

In the real world of politics, there is generally no shortage of confrontation and contestation. In representative politics, there are several institutional settings which are geared towards the practice of contestation. This concerns hearings, question hours (such as the British Prime Minister’s question time) and debates. Yet, the current practice of hearings, question hours and debates is quite far away from an idealized account of contestatory deliberation. Hearings, question hours, and debates are frequently sterile and ritualistic encounters embedded in a competitive and partisan environment, closely conforming to the oratory. Most of the time, we confront the situation that opposition parties interrogate and closely scrutinize proposals presented by the government party (and vice versa). But interrogation and challenges only serve the purpose of collecting information and searching for weak points in the argumentation of the opposing parties. These weak points are then used to demonstrate the incompetence of the government or the irresponsibility of the opposition (see Scharpf 1997: 192). In other words, questioning and disputing serve the purpose of polarization and mobilization rather than finding the truth (or, epistemic superior solutions). Questioning and debating are a far cry from the ideal of “productive controversy” or the “imaginative critical analysis” in Tibetan Monastic debates.
With regard to the political sphere, I consider two fields of application of contestatory deliberation. One is turning representative politics – at least parts of it - into a sort of a “debating club”. Although it is beyond the scope of this article to develop in full, let me try to imagine what this would mean in practice. The British House of Lords might serve as a useful illustration here. The House of Lords combines the competitive features of the Westminster system with a less partisan approach. It mainly features competitive debating and harsh cross-examination. But disputation and cross-examination does not always lead to sterile confrontation, but can also lead to the acceptance of a specific challenge. Sometimes, members of the House of Lords also engage in constructive dialogue. And finally, the House of Lords is also one of the few places where contestation and collaboration go hand in hand (rather than appearing in a sequential mode). Of course, the powerlessness of House of Lords stands in the way of making exaggerated claims of the beneficial effects of its unique deliberative style, bridging contestatory and consensual forms of deliberation. Nonetheless, the sheer fact that an institution like this exists should tickle our fantasy and make us think how we could transfer these practices to other spaces in the polity.

Another application of contestatory deliberation in real world politics concerns the shaking up of indifference. A prominent example in this regard is the routine renewal of a patent on the Confederate flag insignia in the U.S. Senate in July 1993 (see Gutmann and Thompson 1996). Carol Moseley Braun, the chamber’s only black member, radically challenged the amendment and threatened a filibuster. Similar to investigative journalism, she tried to unravel the hidden meanings and consequences of the patent renewal. Mosley Braun’s impassionate speech and first class theatre provoked the Senate not only to take the issue seriously, but also provoked many senators to see the issue in a different light. Senator Heflin, for instance, who “r[o]se with a conflict” to Moseley-Braun’s motion of reconsideration, acknowledged that the issue is one of symbolism rather than routine: “We live a world today where symbol mean a great deal. They are important to this Nation and to its people. This
matter is indeed an issue of symbolism that has been so eloquently raised by the junior Senator from Illinois.” Mosley-Braun’s challenge stimulated a reflective and highly respectful debate that changed senators’ minds, or at least their positions. Twenty-seven senators reversed their earlier vote, defeating the amendment 75 to 25. Focusing on the aforementioned pre-conditions for effective and productive contestation, several of them apply for this case. On the one hand, institutional conditions were favorable for making the Mosley-Braun’s challenge successful. In the Senate’s case, several senators affirmed that the issue was not truly partisan since there were Senators from both aisles supporting and opposing Mosley-Braun’s motion of reconsideration. In addition, the Senate is a body where party discipline is not strict, allowing its members to change their minds more easily.

In the civic sphere, minipublics and their most prominent variants, deliberative opinion polls and citizen juries, entail institutional design elements to spur one crucial element of contestatory deliberation, namely questioning. Indeed, the major goal of deliberative polls is a thorough inquiry of the issue under consideration. My contention here is that while deliberative polls contain institutional means to induce contestatory deliberation, the actual practice falls short of a fully-fledged version of contestatory deliberation. Institutionally, deliberative polls contain plenary sessions and small group discussions. In the plenary sessions, competing experts and policy-makers present their arguments and are available to answer participants’ questions. Fishkin and Luskin (2005) depict this process as follows: “The panelists in the plenary sessions respond to the questions formed in the small groups. These are not simple questions of fact, to which there are undebatably right and wrong answers. Rather, they concern the policy alternatives’ consequences and costs, the tradeoffs they may entail, and the like.” Thus, the setup of the plenary sessions seems to provide a device (and encouragement) for critical questioning. Yet, in reality, the critical aspect of questioning tends to be underdeveloped in the plenary sessions. What the plenary sessions frequently lack is “insisting”, i.e., the persistent deployment of critical questions.
This is also hindered by the fact that groups rather than individual have to prepare and ask questions to experts and policymakers. This makes it quite difficult for individual citizens to ask follow-up questions that force experts and policy-makers to truly engage with their concerns. Thus, plenary sessions in deliberative opinion polls are a far cry from a Socratic *Elenchus*, rigorous cross-examination in court and often resemble more to an educational rather than to a critical forum. The small group discussions, in turn, are generally a place where diverse opinions are presented rather than disputed and challenged. True, there were instances where participants challenge what other participants have said. But the strong emphasis on civility – implemented by a facilitator – frequently seems to act as a brake on the full deployment of contestatory forms of engagement. To date, the exact process in deliberative opinion polls is still mostly a black box. Systematic empirical research is needed to unravel what is really going on in the plenary sessions and the small group discussions.

**Conclusion**

In 1927, John Dewey wrote that the central challenge of modern democracies is “the improvement on the methods and conditions of debate, discussion, and persuasion.” (p. 206) While recent decades have seen enormous advances in our understanding the role of communication for democracy, there is still disagreement which modes of communication best realize which aims, and which modes are also desirable from a normative point of view. This paper is a modest contribution to this big debate. It claims that confrontation and contestation are frequently overlooked and undervalued aspects of the theory and practice of deliberation. Many scholars consider adversarial forms of engagement the opposite of deliberation which is geared towards reasoned, respectful, dispassionate, and constructive discussion. This article argues that this reading of confrontation and contestation is wrong. Not only are classical deliberative approaches conceptually open to confrontation and
I have proposed that contestatory deliberation is a key technique to unleash essential parts of deliberation’s normative potential, namely its epistemic, transformative, ethical, and inclusionary dimensions. By providing a rigid and thorough evaluation of an issue at hand, contestatory deliberation can guide discourse participants to the “correct answer” and lead to clean preference changes based on the true merit and downside of arguments and demands, as well as induce truthfulness. Moreover, by unravelling and subverting dominant frames, contestatory deliberation can also help to include the demands of disadvantaged groups. In sum, contestatory deliberation shifts deliberation’s frequent focus on a collaborative and “play-well with others”-approach (see Muccioni and Quirk 2010) to a conception of deliberation which fully re-values adversarial and confrontational practices and turns deliberation into a critical and rigid inquiry (similar to cross-examination in court).

However, I do not claim that contestation is the panacea of deliberation. Contestatory forms of deliberation may have their own pitfalls, especially undermining a cooperative spirit and the realization of social and political acceptability. There is a long tradition in educational philosophy which takes a skeptical view at confrontational and contestatory practices since they produce negative attitudes on part of the challenged. On the one hand, effective and productive contestatory deliberation must be balanced by constructive speech acts; in addition, it must be also embedded in a cooperative institutional environment which has in-built routines for confrontational and contestatory practices. On the other hand, institutional safeguards notwithstanding, contestatory deliberation may still fail to produce consensus and acceptability. If we retain, the latter as important deliberative goals, then we need a complementary stage of constructive engagement, where participants invest in identifying bridging arguments and premises that all can accept.

Future research needs to test these claims empirically. We need to continue the path-breaking work of social psychologists on the differential effects of different communication modes (Schweiger et al. 1986). In particular, we not only need to disentangle the effects of
contestatory forms of communication from consensual ones, but also investigate how they differ from an intermediate category, civilized discussion, the standard format of most deliberative events.
References


