

## ***The Democratic Legitimacy of Closed-Door Deliberations***

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Within deliberative democratic theory there has been a broad consensus that, all other things being equal, processes of deliberation oriented toward political decisions should be open, transparent, and public. Exceptions usually concern either strategic security contexts within which adversaries might exploit information to inflict harm a people, or situations that are economically strategic within a very short time horizon, as with (say) central bank decisions. Here we address a broader issue involving the strategic nature of politics, particularly among elected representatives with legislatures. Recent thinking in deliberative democratic theory suggests that legislative policy making processes are and should be based, at least in part, on what we have elsewhere called “deliberative negotiations,” in which self-interest, constrained by fairness, is accepted in the deliberation and the give and take of reasons both invites win-win proposals and captures the epistemic benefits of deliberation. Elected actors speaking in public, however, have strong incentives for speaking strategically rather than deliberatively. They then are speaking not only to their elected colleagues but also to their constituents, to activists, to others in their parties, and to potential enemies. Speaking in the constrained ways that will not be misconstrued and misused by these others undermines the potential gains from deliberation.

One widely proposed solution is to provide more spaces for closed-door deliberations, which can help to free actors from some of these strategic incentives. But can closed-door deliberations ever be democratically legitimate? Two key values of openness would appear to be sacrificed: the value of accountability for the reasons that motivate decisions and the deliberative interactions among broader publics that are incited and focused by legislative debates. Yet we argue that in some conditions closed-door deliberations can be democratically legitimate. First, deliberators should be able to count on *protections against exposure* of the process, at least for the length of their careers. Second, the relevant interests and publics must be *fairly represented* within the process. Third, publics must be able to have *warranted trust* that the deliberators will fairly represent their interests, a trust greatly facilitated by strong conflict-of-interest and other anti-corruption regimes. Finally, closed-door deliberations must have *transparency in rationale*, supported by *ex post* justifications of results. When all of these conditions are met, closed-door venues within legislative

processes can both contribute to the deliberative quality of democracy and meet tests of democratic legitimacy.