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The Ethics of Legislative Vote Trading

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It is argued in this article that legislative vote trading by representatives is both ethically permissible and may be ethically required in many cases. This conclusion is an implication of a thin, general account of representation that requires representatives to vote on the basis of the perceived preferences or interests of their constituents. These special duties arise from a *thin account of representation* and create a weak, defeasible duty for representatives to engage in what they believe will be beneficial vote trades. After establishing this claim, the article considers two objections to this duty. One is based on equating legislative vote trading with corruption, and the other argues that logrolling violates the 'duty of civility'. Neither objection undermines the main claim that there is a weak duty to engage in logrolling. Nevertheless, the implications of this duty may be troubling for other reasons.

Keywords: democracy; vote trading; logrolling; representation; public reason

On 21 November 2009, US Senate Majority Leader Harry Reid added a provision to page 432 of the 2,074-page Senate Health Care Bill. This provision increased Medicaid funding to states recovering from a major disaster. As it happens, only Louisiana fitted this description. The amendment was added to secure the vote of Mary Landrieu, a Democrat from Louisiana and the pivotal vote needed to move the bill out of committee. The subsequent trade was dubbed the 'Louisiana Purchase' by the press (Milbank, 2009). Although the additional subsidies to Louisiana were originally reported at around US$100 million, Senator Landrieu corrected the media by stating 'It's not $100 million, it's $300 million, and I'm proud of it and will keep fighting for it' (Chaddock, 2009). Senator Landrieu proudly secured around US$300 million in subsidies for her state in exchange for her decisive vote on a key measure.[1] The Landrieu case is striking, aside from the amount of money involved, because she openly advertised her trade. In the press conference after the vote she not only admitted to the trade, she corrected the amount. Landrieu – a Democrat – wanted to make it clear to her constituents in, mostly Republican, Louisiana exactly how much bacon she had brought back to the state.

Legislative vote trading of this type is known as 'logrolling'. Political scientists and economists have discussed descriptive aspects of the topic at length; however, its normative implications are largely unexplored. Recent literature in democratic theory has tended to focus on the epistemic or deliberative aspects of voting, in mass contexts, while virtually ignoring the ethical questions related to representative voting.[2] This is strange since the ethics of voting has recently become an important topic in political and moral theory.[3] Jason Brennan has recently argued that it is morally acceptable to sell and buy votes in order to improve the quality of voting (Brennan, 2011). If it is morally permissible to vote well, he argues, it is morally permissible to pay someone to vote well. Chris Freiman has extended this line of argument, making the case for legalizing vote markets (Freiman, 2014). These arguments, and those like them, are only concerned with the ethics of vote trading in general 'mass' elections, however. These are cases where individual citizens vote

for an issue or candidate directly. As Freiman notes, however, vote markets in general elections would likely have little effect on electoral outcomes for two reasons: the secret ballot makes enforcement of vote-selling contracts impossible or difficult to enforce; and in most general elections, the value of a single vote or even a large number of votes is negligible (Freiman, 2014, p. 761). Freiman and Brennan may be correct that it is permissible and should not be illegal to sell or buy votes in general elections, but this conclusion has limited political implications. The same is not true, however, of vote buying and selling in legislative voting by representatives. In cases of committee voting by legislative representatives, votes are neither secret nor, as we saw in the case of Mary Landrieu, of negligible value. The question of the ethical permissibility of vote trading by representatives is immensely important then because of its impact and its prevalence. In addition, questions about the ethical duties of representatives relate to fundamental questions about democratic theory and the nature of representation.

The ethics of voting by legislative representatives raises different questions than those raised by citizens voting in general elections. Despite the recent interest in the ethics of voting and vote markets in general elections and despite the obvious importance of legislative vote trading in the political process, the normative implications of this topic have largely gone unexamined. In addition, legislative representatives differ from ordinary citizens in that it is very plausible to think they have special duties as representatives to their constituency, their country, and often to their party. I argue that despite these special duties and in some cases because of them, vote trading among representatives is generally permissible and may often be normatively required. This conclusion will accord with general democratic practice but it will be unsettling if we think of vote trading as a form of corruption akin to bribery. This conclusion also goes against common intuitive notions of legislative propriety. I will argue, however, that legislative vote trading it not merely a necessary evil – a distasteful but inevitable part of the democratic process – but is instead an essential and morally acceptable aspect of democratic theory. It is the job of our representatives to 'bring home the bacon', at least some of the time.

This argument begins by looking at the practice of legislative vote trading or 'logrolling'. In the next section, I develop and defend what I call a '*thin account of representation*' that is maximally ecumenical in regards to competing theories of representation. This account of representation, which I argue is at the heart of any 'thicker' notion of representation, creates a duty for representatives, at least some of the time, to engage in logrolling. I call this the '*weak duty of logrolling*'. In the following section, I look at two objections to this duty. First, *the corruption objection* that logrolling is tantamount to bribery or corruption, and second, *the civility objection* that vote trading requires insincerity and thereby violates the duty of civility in public reason accounts of democratic liberalism. I argue that neither objection is compelling but that in addressing each objection, important questions about the nature of democratic theory come to light. In the final section, I look at some of the implications of this duty for democratic theory and practice. The conclusion we are left with is that representatives have a duty to engage in a practice that is, while morally acceptable, often quite detrimental to the political community as a whole.

Legislative Vote Trading

Representative vote trading (logrolling) occurs when representative *A* trades a vote on issue *x* to representative *B*, so that *B* will vote in *A*'s favour on issue *y*. Logrolling seems analogous to a market exchange in votes, albeit one using barter rather than money, but this analogy is more complicated than it might initially seem for three reasons. First, logrolling can only occur in trades between pivotal voters – i.e. voters who are decisive on the motion in question.[4] This decisiveness is defined by the ability to move the minimum coalition to victory or defeat.[5] Landrieu occupied this pivotal position in the above example. Since logrolling can only occur between pivotal voters, only a subset of the voting population will actually have prospects for trades at any given time, making vote trading different from typical market exchanges. Second, logrolling is only possible in committees with a small number of voters who are well informed about the motions and who can communicate with one another well enough to engage in trades. As the size of the committee increases, the cost of securing a winning coalition also increases. This is not true generally in the market where buyers tend to be 'price takers' and engage in parametric maximizing given budgetary constraints. Vote trading in committees has the form of a strategic, cooperative encounter. Third, issues typically arise in a discrete, serial process. Trading can only occur in the context of that process. *Voter A* must have a vote to trade *Voter B* now if *A* expects *B* to back *A*'s trade in the future and vice versa. The legislative agenda will constrain the possibilities of trades. Committee members may, of course, introduce or amend motions but they cannot do so indefinitely.

Despite these differences with normal market exchanges, logrolling is a way for voters to make local Pareto improvements through trading. Consider an example with three voters $\{A, B, C\}$ and two issues $\{x, y\}$.[6] Both issues are costly for *Voter A* who would prefer that neither pass. *Voter B* and *Voter C*, however, both gain more from the passage of their preferred issue (x and y, respectively) than they lose by the passage of the other issue. Hence there is an opportunity for *Voter B* to trade a vote on y in return for a vote from *Voter C* on x. This is represented in Table 1.

In this example, the absolute value of the utilities involved are not important – only the relative intensities in utility between the issues. That is, *Voter B* need only prefer x & y over $\sim x$ & $\sim y$ or $\sim x$ & y. *Voter A* is indifferent between the passage of either issue, but would be harmed if both pass. *Voter B* and *Voter C* share the same second and third preference for the scenario where both are passed and neither is passed, respectively.

Table 1: Logrolling Gains

	x	y	x & y
Voter A	–2	–2	–4
Voter B	5	–2	3
Voter C	–2	5	3

To call this a Pareto gain is somewhat misleading, however. After the trade, *Voter A* is worse off than if no trade had occurred. *Voters B* and *C* are made better off than they would have been with no trade, but at the expense of *A*. It might be tempting to add up the utility gains from *Voters B* and *C*, compare them against the losses from *Voter A*, and conclude that the trade was globally or Kaldor-Hicks efficient. In principle, *Voters B* and *C* could compensate *A* and still be better off. It is enough to note, though, that *A* need not be compensated and, given this, we should think of the gains from logrolling as locally rather than globally efficient. This is another feature that makes logrolling different from typical market exchanges.

As with all trades, the lower the transaction and enforcement costs, the more likely it is that trades will occur. In this context, transaction costs will be the cost of ascertaining the relative preferences of the other potential voters. In a typical legislative setting, this will involve talking to other members and the cost will tend to be relatively low as long as the group size is small. Representatives can strategically misrepresent their relative preferences in an attempt to increase their bargaining position, but their votes will ultimately be public. Enforcement of vote trades is a more serious issue. This is especially important in common cases where votes are not simultaneous. Enforcement of trades can only be assured by the threat of withdrawing cooperation on future trades and in tarnishing the non-complier's reputation. This enforcement mechanism has serious flaws in large settings, but in small groups where there is public knowledge and repeated interaction, it tends to work fairly well.[7] Public voting and transparency are essential to an efficient vote trading system. If it is impossible or hard to check whether or not a trading partner voted the way that they promised to vote, the urge to defect will be high and parties will be wary of engaging in trades. This is why vote trading in general elections with a secret ballot is difficult if not impossible. Representative voting, however, tends to be very transparent and unlike citizen voting in general elections, votes are not secret. Because of this, it is easy for representatives to evaluate compliance with vote trading agreements.

Representatives, then, have reason to engage in vote trading when it is possible to offer a pivotal vote on an issue that one cares about in exchange for a pivotal vote on an issue that one cares less about. In this way, committee members can achieve local Pareto improvements by trading votes. The question still remains, however, whether these votes should be considered legitimate or appropriate.

A Thin Account of Representation

Chris Freiman and Jason Brennan have argued that vote markets can be permissible, both legally and morally, in a mass voting context (Brennan, 2009; 2011; Freiman, 2014). My claim is stronger. I argue that not only is it legally and morally permissible for representatives to engage in vote trading, it is actually required in some cases. There is what I call a '*weak duty*' to engage in logrolling. This duty is a direct and trivial implication of what I call a '*thin account of representation*'. This account of representation is disjunctive with variable scope and strength and, as such, it should be generally applicable to any representative democracy. Further, despite its 'thinness', this account of representation will, when combined with the normal features of democratic government, lead directly to the weak duty of logrolling. This duty is weak because it is a function of the thin account of

representation that I defend and it shares the disjunctive and variable scope and strength features of that account.

There is substantial debate about the normative status of the representing relationship in democratic theory.[8] Because of the stakes involved, representation lends itself to many contested interpretations (Gallie, 1956). In some loose sense, as Hanna Pitkin has argued, all forms of government are representative (Pitkin, 1967, p. 21). My goal here is not to give a full or detailed account of representation; instead it is to articulate a common core that all representative systems share: what I call a '*thin account of representation*'. In order to show that the duty to engage in vote trading does not depend on any particular theory of representation, the thin account of representation is constructed to have maximal extension over any theory of representation. As such, it is not meant as a full-blown theory of representation in itself, but rather as a maximal placeholder for any particular theory of representation. The only limiting factor is that the account of representation must specify some relationship between the decisions of the representative and the interests or preferences of some set of constituents. I take it that this is, minimally, what we mean by representation.

Any account of representation is a conjunction of two variables: scope and substance. The scope of the representing relationship is some set of citizens that a representative is meant to represent. This may be the country as a whole, a particular federal state, a locality, or some other constituency. For simplicity, I will use the term 'constituency' to mean the smallest scope of representation appropriate to a given representative. For a US Senator, the constituency is a state. For a US Congressperson the constituency is the legislative district. The constituency of the American President is the entire country. I pick the smallest scope, because some representatives (US Senators, MPs, Congresspersons) have particular constituencies, but it is an open question whether they should also look to the interests or desires of the country as a whole in their voting.

The substance of what is to be represented is the feature or features of the constituency the representative should take into account when acting as a representative. There are two popular specifications of the substance of representation, what are sometimes called the 'delegate' and the 'trustee' models of representation (Fox and Shotts, 2009). In the delegate model, the substance of representation is some aggregation of the preferences of the individuals in the constituency. The duty of the representative is to reflect the preferences of those in the constituency. In the trustee model, the substance is – for lack of a better word – the interests of the constituents. Interests can be counter-preferential and require the representative to make a judgement about the true interests as opposed to the actual preferences of the constituents. Each model of the substance of representation has certain virtues and drawbacks, but for my purposes these can be safely ignored. The important point is that there is some feature of the constituency that the representative is meant to represent: preferences, interests or some combination of the two.

With these two variables I can now articulate the thin account of representation. This account does not privilege any particular value in the scope or substance of representation, but instead is an attempt to capture the concept of representation at its most general level. It should apply to any particular specification of the variables in question.

> *Thin Account of Representation*: A representative as representative should vote on the basis of what he or she believes will further the interests or preferences of their constituents. When voting on the basis of the interests or preferences of their constituents conflicts with the interests or preferences of the larger political unit (state, country, etc.), they should vote in a way that reflects the interests or preferences of their constituents, taking into account how the impact of that vote will benefit the interests or preferences of their constituents over time.

This account is disjunctive in terms of the substance of representation. It claims that the representative should represent the interests or the preferences of his or her constituents, leaving open the correct way to specify that variable. It also attempts to reconcile conflicts of interests between the constituency and the larger political unit by specifying that the representative should not narrowly construe the interests or preferences of the constituents, but instead should take into account how the larger political situation will impact on the constituents over time. Although this account of the basic normative situation of the representative is 'thin', it has important implications – specifically that it will lead to a special duty to engage in logrolling or vote trading in certain circumstances.

The account of representation I am defending here for the purposes of this argument has the advantage of being maximally ecumenical, although it may conflict with some theoretical notions of representation that see the representative as completely divorced from either the preferences or interests of constituents.[9] This model is simpler and lacks the granularity of Andrew Rehfeld's model of representation that, by introducing a third variable (responsiveness), doubles the possible types of representation from four to eight (Rehfeld, 2009, p. 223). Despite the additional elements in Rehfeld's model, I believe that the thin account of representation articulated here largely overlaps with Rehfeld's model in regards to the duties of representatives to engage in logrolling.

To see the implications of this account of representation, let's return to Senator Mary Landrieu. If she genuinely believed that she was acting in the interests or preferences of her constituents, she was acting rightly by the standards of the thin account of representation. According to this account of representation, representatives have a special duty to their constituents that is not easily outweighed. The thin account of representation creates special reasons for representatives to engage in vote trading to promote or protect the interests or preferences of constituents. In some cases, as in the Landrieu example, logrolling will be obligatory to fulfil one's representative duty.

This leads directly to the weak duty of logrolling, which is a trivial implication of the thin account of representation with non-trivial implications for democratic theory.

> *Weak Duty of Logrolling*: If a representative believes that the interests or preferences of his or her constituents can be advanced by trading a vote on an issue that does not harm the interests or preferences of their constituents in order to secure a pivotal vote on an issue that does advance the interests or preferences of their constituents, there is a duty as a representative to engage in that trade when possible.

This duty is 'weak' because it requires the representative to engage in beneficial vote trading when the opportunity arises but it does not require the representative to maximally seek out opportunities to logroll or to be successful in all cases. There will be cases where circumstances make it difficult to engage in beneficial vote trading and in those cases the

representative is not failing in his or her duties, though it is possible that the representative might have performed them more competently. It is also 'weak' in the sense that it requires the representative to make a defeasible judgement about whether the net effects of the trade will be beneficial to the interests or preferences of their constituents. The duty does not require that the representative be correct in this assessment, only that they reasonably believe that it will be net beneficial.

This duty, though weak, is a real duty of representatives that comes directly from the thin account of representation with important normative implications. In democratic systems with a high degree of responsiveness the importance of this duty will be amplified by the realities of electoral competition. A system is responsive if it is easy to replace representatives who act in opposition to the preferences or interests of their constituents. This is a negative conception of responsiveness, involving a veto in the form of voting representatives out of office. Responsive procedures are procedures where, as Gerald Gaus puts it, the 'citizens exercise enough control over legislation such that, if generally unpopular, it can be overturned' (Gaus, 1996, p. 228). Voters, however disinclined they may normally be to political participation, will tend to respond to representatives who are seen as acting against their interests or preferences. When constituents can reliably know how their representatives are voting and can easily vote them out of office, it will be in the interest of representatives to listen carefully to what their constituents want and to vote accordingly. Representatives not only have a duty to engage in beneficial vote trading, they also have a reason to make compromises and logroll on the basis of self-preservation.

Corruption and Sincerity

In the last section I argued that on the basis of general assumptions about the nature of representation, representatives have a special duty to engage in what they see as beneficial vote trading. Although this duty seems to accord with the actual practice of democratic politics, it also seems to conflict with other commonly held democratic values and with much in normative democratic theory. In this section, I look at two objections to the weak duty of logrolling based on these values. These two objections are not likely to be exhaustive but they constitute the two most common and, to my mind, the most serious objections to the weak duty of logrolling – what I call the '*corruption objection*' and the '*civility objection*'. I ultimately argue that neither objection is decisive, but this does not mean that there are no negative consequences to legislative vote trading. I explore what I see as the most serious implications in the following section.

Abraham Lincoln engaged in widespread and complicated logrolling to pass the 13th Amendment to the US Constitution outlawing slavery. As David Herbert Donald notes, Lincoln used 'other means of persuading congressmen to vote for the Thirteenth Amendment' than those based on the justness of his cause (Donald, 1996, p. 554). He gave pivotal, undecided voters various sinecures and support on other issues to gain their votes. As Thaddeus Stevens, the radical Republican abolitionist famously recollected, 'the greatest measure of the nineteenth century [the 13th Amendment of the US Constitution] was passed by corruption, aided and abetted by the purest man in America' (Donald, 1996, p. 554).

The sentiment that Stevens articulates is at the heart of the corruption objection to the weak duty of logrolling. The basic idea is that whatever benefits logrolling may produce, the practice is, at its core, a corruption of the democratic ideals of representative government. In the case of the 13th Amendment there is no doubt that the policy was net beneficial but the means used to achieve that end were, according to Stevens, ignoble. This version of the objection seems like a variation of the 'dirty hands' problems that one finds in many political contexts (Walzer, 1973; Wijze, 2013). This is, however, a mistaken interpretation of the corruption objection. Instead, it is a concern that seeing representatives as having a duty to engage in logrolling is akin to seeing them as having a duty to engage in an activity that corrupts or undermines the democratic process as a whole, not merely that they must individually engage in morally tainted activities to secure a larger good.

This objection puts logrolling and bribery in the same moral category. The problem with bribery, from the democratic point of view, is that bribed representatives act on the basis of the wrong kinds of reasons when they vote. They vote on the basis of their self-interest, rather than based on the interests or preferences of their constituents. Consider the case of William Jefferson. Congressman William Jefferson of Louisiana's 2nd congressional district (apparently nicknamed 'Dollar Bill') was caught with over US$90,000 worth of bribes hidden in a freezer as part of an FBI investigation. Although he was stripped of his committee memberships by the Democratic Party leadership, he was able to win another term despite his corruption. The Jefferson case was notable because the raid on his congressional office by the FBI was unprecedented and also for the brazenness of Jefferson exchanging political favours for literally 'cold cash'. Jefferson was presumably voting in a way that reflected the interests of those who bribed him and not on the basis of what he saw as the interests or preferences of his constituents.

As the description of this case shows, however, bribery is clearly at odds with the thin account of representation articulated above. It is therefore at odds with the duties of a representative as representative. Since bribery involves voting on the basis of a representative's self-interest or the interest of those paying the bribes and not the interests or preferences of constituents, it is not compatible with the weak duty of logrolling. Bribery then is very different from logrolling. Whatever corruption bribery entails, it is not shared by logrolling as described in the weak duty of logrolling. This version of the corruption objection does not apply to the duty to engage in legislative vote trading at issue here. Whatever else we think of the duty to logroll, it is not a duty to engage in obvious corruption.

A more serious objection comes from public reason democratic theorists and holds that legislative vote trading will require representatives to be insincere about their reasons for voting on a particular issue. It will therefore conflict with what Rawls described as the 'duty of civility' in public reason (Rawls, 1996, pp. 270 and 279). Civility is a moral duty to:

> [e]xplain to one another on those fundamental questions how the principles and policies they [representatives] advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fair-mindedness in deciding when accommodations to their views should reasonably be made (Rawls, 1996, p. 217).

Jonathan Quong elaborates this duty:

> The idea of public reason further requires that, in the political arena, citizens and public officials only offer each other arguments based in public reasons, and that they generally refrain from appealing to their comprehensive doctrines or other beliefs about the whole truth as they understand it. This latter requirement ... is known as the moral duty of civility (Quong, 2010, p. 256).

This duty has many interpretations, but in any form it is a duty to justify a proposed issue on the basis of public reasons. Rawls limits this duty to debates about what he calls 'constitutional essentials', but as many have pointed out, it is difficult to create a firewall between what concerns a constitutional essential and what does not. Quong argues that the demands of public reason and, in turn, the duty of civility should be conceived broadly and should apply to all political proposals or what I have called 'issues' (Quong, 2010, Chapter 9).

Public reason liberals may object to legislative vote trading because representatives may vote for or propose issues that they might otherwise see as unjustified in order to get passage on another more important issue. Vote trading, in this way, seems to be a violation of a commitment to sincerity and its important relationship to the duty of civility in Rawlsian public reason (Gaus and Vallier, 2009; Schwartzman, 2011). This concern can be illustrated by an example. Consider two representatives: Tobias and Lindsey. Tobias is committed to supporting public funding of the arts. His constituents have re-elected him several times and his efforts to support the arts, especially the dramatic arts, have won him considerable support. In contrast, Lindsey and her constituents are intent on restricting immigration into their constituency. Tobias's constituency has little interest in immigration. His constituents would tend to oppose immigration restriction, but only very weakly as it does not directly concern them. Lindsey's constituents tend to be less concerned with public support of the arts and many would be opposed to it on principle, but most do not rank it very highly in their concerns. Lindsey is backing an issue I_e to increase immigration enforcement in her district. Tobias is backing an issue I_a to increase support for the dramatic arts in schools to help aspiring thespians. The perceived interests or preferences of each representative's constituents are listed as an ordinal ranking in Table 2. Both Tobias and Lindsey prefer their second option, to pass both issues in order to avoid the defeat of their most favoured issue. Accordingly, they will benefit by logrolling to achieve this end.

The civility objection assumes that Tobias and Lindsey are insincere when they advocate and vote for the conjunction of I_e and I_a thereby violating their duty of civility by voting

Table 2: Representative Issue Rankings

Tobias	*Lindsey*
I_a & $\sim I_e$	I_e & $\sim I_a$
I_a & I_e	I_e & I_a
$\sim I_a$ & $(\sim I_e \vee I_e)$	$\sim I_e$ & $(\sim I_a \vee I_a)$

on the other's preferred issue in order to pass their own. The reason they have for endorsing the other issue is strategic in the sense that their endorsement is necessary to pass their own issue. They don't necessarily think that the other issue is, in itself, justified and they rate the passage of their preferred issue and the failure of the other issue above the passage of both. This objection holds that Tobias and Lindsey do not have a shared public reason for voting on the other's issue. Instead, they each have a separate reason for voting on the issue – namely that it will help the passage of their preferred issue. This seems to violate the duty of civility, undermining the public justification of the resulting legislation. Quong defends this view because he believes that public reason requires representatives only to act on the basis of shared reasons (Quong, 2010, p. 261). If sincerity and civility require that individuals offer shared reasons in defence of an issue, cases of logrolling such as the one described above will be ruled out from the point of view of public reason and, by implication, the weak duty of logrolling will be incompatible with a public reason conception of democracy. Quong, among others, argues that a shared reasons interpretation of sincerity is essential to maintaining the core insights of the public reason approach. In particular, violating this duty involves treating our fellow citizens as something other than our political equals.

The question is whether logrolling violates sincerity in Quong's sense. On its face, it clearly does. Tobias believes he is justified in endorsing his arts proposal, but cannot believe that Lindsey is justified, on the basis of the same reasons, in endorsing his. Given this, the only reasons that Tobias could reasonably give in favour of his issue to Lindsey is that if she votes for his issue, he will vote for hers. In no way, however, does Tobias endorse Lindsey's issue, nor should Lindsey expect him to endorse it. Both Tobias and Lindsey then lack a first-order reason to endorse the other's issue. This should be enough to disqualify any subsequent trade from the point of view of civility and sincerity – at least if sincerity requires sharing first-order reasons for endorsing an issue.

What they do share, however, is a second-order reason to endorse the other's issue in order to pass their own. The second-order reason, but not the first-order reason, is public and shared. If sincerity requires sharing first-order reasons then logrolling will violate sincerity, but why should we think that sincerity should be so narrowly construed? Sincerity is important because it expresses a shared commitment to treating fellow citizens as free and equal and, as Stephen Macedo argues, because it creates mutual assurance on the shared conception of justice and helps maintain social stability (Hadfield and Macedo, 2012).[10] It is perfectly plausible to think, however, that advocating an issue on the basis of a shared second-order reason is consistent with sincerity so understood. Representatives don't need to agree on the substance of every issue to agree that citizens are free and equal. Indeed, being reasonable means being willing to recognise that the burdens of judgement and pluralism will lead to reasonable disagreement about substantive, first-order reasons for endorsing or rejecting issues. Reasonable disagreement can be reconciled by higher-level (second- or third-order) agreement that focuses on other possibilities of common ground. In this case, the shared interest in reaching an agreement.

There is another reason for thinking that the shared reasons view endorsed by Quong construes the duty of civility too narrowly. Convergence accounts of public reason like those proposed by Fred D'Agostino, Gerald Gaus and Kevin Vallier endorse versions of

civility and sincerity that allow reasons to be non-shared so long as the reasoning for the justification of issues converges on the same conclusion (D'Agostino, 1996; Gaus, 1997; 2010; 2011; Gaus and Vallier, 2009; Vallier 2011). In the above example, Lindsey and Tobias both have reasons for the passage of the two issues, although their reasons differ. On the convergence account of public reason this would be enough for the passage of the issues to be justified. This account of public reason, or something like it, looks to be closer to the actual practice of logrolling. There was no obvious insincerity in Mary Landrieu's vote trading, for instance. Indeed, she was exceptionally open about the reason for her vote.

Even if we do not accept the convergence account of public reason, Quong's account of civility is notable for how narrowly he construes civility, arguably going much further than Rawls. In 'The Idea of Public Reason Revisited', Rawls discusses what he calls the 'wide view' of public political culture and public reason (Rawls, 1997, p. 783). As he describes public reason, the reasoning of agents in the public sphere can give shared, non-sectarian reasons to justify their proposed issues, but they may also give non-shared reasons 'that can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime' (Rawls, 1997, p. 776). Along these lines he introduces what he calls the *proviso*:

> This requirement [the proviso] still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support (Rawls, 1997, p. 776).

Assuming then that we take the strongest version of the civility objection that reasons for legislative vote trading are non-shared and hence non-public, the proviso would allow these reasons to be used to justify a vote on an issue so long as some public reason could 'in due course' be presented to support the issue independently. In the case of Tobias and Lindsey, public reasons could be given for each of their issues. This is also true in the Landrieu case.

There may be cases where vote trading could not meet the proviso and in those cases logrolling may run afoul of the civility objection, but it is not generally open to this objection. In addition, as I argued above, even if we accept that public reason requires shared reasons, there is no requirement to think that this only applies to shared first-order reasons. Reasonable people will disagree about first-order matters, but they can come to agreement on the basis of shared second-order reasons. Treating others as political equals sometimes involves recognizing that their interests or their constituents' interests may differ from one's own. There is no insincerity in, for instance, Harry Reid recognizing that he needs to offer something to Mary Landrieu for her constituents in order to secure her vote on a key matter for his constituents.[11] Instead, there is a recognition that each constituency matters and that neither representative is forced to sacrifice their duty to their representatives.

Normative Implications

I have argued that legislative vote trading is morally acceptable and is sometimes required if we accept a very thin notion of representation. I have also argued that this duty does not

conflict with fundamental democratic opposition to corruption in politics and that logrolling is, in most cases, compatible with the idea of public reason and civility. That does not mean, however, that the duty to engage in vote trading has no negative consequences or normative implications. There are three I will highlight here: conflicts of interest, global inefficiency and theoretical implications of the weak duty of logrolling.

The first implication of the duty of logrolling is something that has already been mentioned – namely potential conflicts of interest between constituencies. This conflict was underplayed in the discussion of representation because the representative is first and foremost responsible to his or her constituency. The interests of one or several constituencies, however, will not always converge and this will result in conflicts of interest. The traditional Labour interests of the north of England do not align with the more commercial and financial interests of the south, for instance. Various vote trading alliances or coalitions can form that effectively veto the interests of one region or constituency in order to achieve the goals of another. Sometimes these logrolling coalitions can have negative or at least ambiguous consequences. It is not logrolling as such that leads to these, often negative, outcomes but rather the democratic process and the existence of conflicting political interests. The recent focus in democratic theory and political philosophy on deliberative consensus, public reason and epistocracy have obscured the basic fact that normal democratic politics is largely about adjudicating the conflicting interests of various constituencies.[12] One important goal of constitutional design and institutional analysis is to harness those competing forces so that diverse interests can be made to serve the common good. This result, though, is not a necessary or maybe even a common result of democratic politics, but an achievement of institutional refinement and circumstances. Recognizing that representatives have a general duty to engage in logrolling can help democratic theorists reframe and reorient their focus to the important political and institutional aspects of democratic politics that have serious normative implications.

The second implication of a duty to engage in vote trading has already been foreshadowed in the first – namely a tendency for locally efficient vote trades to impose externalities and costs on third parties, often making logrolling globally inefficient. Logrolling will often lead to Pareto improvements for the constituents of the logrolling representative, but even though the parties involved in the trade will benefit, sometimes the rest of the nation, or at least some definite third party, will ultimately have to pay for those gains. For those like Riker and Gaus who are acutely aware of this problem, there is a concern that normal politics, rife with logrolling, will devolve into 'institutionalized aggression' of one constituent group against another (Gaus, 1996, p. 292). There is a difference, though, between vote trading on issues that safeguard the rights and basic interests of constituents and vote trading on issues that create costly pubic goods and redistribute benefits between constituencies (Gaus, 1996, p. 270). Logrolling on the latter issues will tend to increase the amount of 'pork barrel' policies and, hence, tend to be globally inefficient. Unanimity rules can be introduced to prevent inefficient issues (Gaus, 1996, p. 271). While this reform might decrease the danger of inefficient logrolling, it has the effect of creating significant minority veto powers and increasing the cost of coming to any legislative decision. Unanimity rules are also non-neutral and tend to favour the *status quo* (Christiano, 2010, pp. 108 and 290). The duty of logrolling seems to show that there is no 'free lunch' when

it comes to democratic politics. Global efficiency may conflict with the duties that representatives have to their constituents.

These examples point to major difficulty with reigning in globally inefficient vote trading: issues are not 'natural political kinds' – i.e. they are not naturally individuated (see Gaus, 1996, p. 269). In the example from the last section, we considered Tobias and Lindsey's trade serially, but the two bills could be conjoined into a larger omnibus bill (arts funding and immigration enforcement). Combining individual issues that will not pass into super-issues that have more support is a common practice. The annual farm bill in the US and the recent Patient Protection and Affordable Care Act are examples of huge super-proposals that include benefits to enough constituencies to ensure passage. According to William Riker, this strategy of redefining the issues at stake in order to capture a winning coalition is at the very heart of politics – logrolling is just one aspect of it. Surely it is not possible to have politics without agenda control, dimensional manipulation and logrolling. Indeed, the well-known Gibbard-Satterthwaite theorem proves that any voting system that meets basic standards is open to strategic manipulation (Gibbard, 1973). The implications of this may seem gloomy, but they are merely the standard dangers one finds in democratic politics – not a special result of the duty representatives have to engage in vote trading. Theorists cannot eliminate these dangers by stipulating that this type of behaviour is unethical if, as I have shown, there is a general duty for representatives to engage in logrolling that is based on a thin account of representation.

The final normative implication will only be discussed briefly since it is in the background of the preceding discussion. This is the implication that recognizing a duty to logroll has on our notions of democratic theory and political philosophy as a whole. These implications are numerous and would require substantial elaboration that is impossible here so I will only note issues that seem to be under-examined in contemporary theory. First, as I have already noted, the emphasis on consensus in both public reason and deliberative accounts of democracy may obscure the important role democracy has in reconciling and adjudicating between genuinely competing interests. Indeed, political liberalism and public reason began as an attempt to propose principles of liberal politics characterized by considerable diversity and pluralism and that diversity should not be idealized away if theorists are to capture the essence of democratic politics. Second, democratic theorists and political philosophers underemphasize the importance of representation. By bringing representation to the fore and highlighting an important implication of the thin account of representation one of my goals was to expose this important lacuna in contemporary theory. In short, if we accept my argument here, one implication for theorizing about democracy and politics is that we should be careful to look to the practice of democratic politics more to aid our theorizing.

Conclusion

I have argued that any plausible theory of representation will entail that representatives have a *weak duty* to engage in legislative vote trading. The implication of this is that logrolling is often both ethically permissible and sometimes required. Logrolling is neither necessarily corrupt nor insincere, but is instead an acceptable and necessary part of representative democracy. This conclusion is at odds with many of the main threads of

democratic theory. Although I have argued that vote trading does not involve any insincerity, my account of vote trading does conflict with a 'shared reasons' account of public reason. One implication of the conclusion here is that representatives have a duty to advance the interests and preferences of their constituents, and not necessarily to seek consensus on first-order reasons. The interests of their constituents will more likely be advanced by making deals and finding reasonable compromises with particular trading partners on the basis of shared second-order reasons rather than by finding common first-order reasons that every member could agree to. If the argument here is correct, democratic theorists have focused too much on consensus and deliberation and too little on vote trading and compromise.

Even if we endorse this conclusion, legislative vote trading is not unambiguously good. Democracy often requires something less than the best. This conclusion, however, is too negative and ignores the positive aspects of the argument presented here. Looking at democratic theory from the point of view of representatives moves us away from ideal theories of voting or democratic authorization that focus on voting procedures producing the 'right' or 'correct' output. Instead, we are led to focus on the crucial role that compromise and bargaining play in democratic politics. There is substantial evidence that diversity trumps ability when it comes to decision making (Hong and Page, 2004; Landemore, 2012; Page 2007, Chapter 10). Bringing more points of view to bear on a problem makes solving that problem easier. The problem is that democratic decision making in not primarily about solving problems or generating optimal solutions. Representative democracy is not the mechanism anyone would endorse if optimal decision making were the goal. Instead, democratic intuitions allow and require representatives to reconcile the conflicting interests of their constituents by making deals and compromises.

The key to good democratic politics, regardless of one's specific normative theory of democracy, is to make sure that politics is a mutually beneficial process. That being a member of a democratic society is a good deal that one doesn't have reason to regret. It is the representative's duty to find out partners to make deals with to get their constituents what they want and need when possible. Diverse communities of constituents will have conflicting wants and needs and it is the democratic process of vote trading and compromise that allows that conflict to be resolved through policies that are, if all goes well, mutually beneficial to as many constituencies as possible. If this happens, democracy is a game worth playing and logrolling is an essential aspect of that process. Yet, as noted above, it is important not to be too Panglossian about the effects of logrolling. Too much compromise can lead to the overproduction of public goods and shuffling of costs for these public goods onto minorities without sufficient voice to block them. Of course, vote trading can also give the representatives of minority groups the ability to form coalitions that can protect their constituents and advance their interests more effectively as well. The machinery and institutions of normal politics must be arranged so that the political process can reliably benefit the people whom it is meant to govern.

The conclusion here may be, then, that while democratic politicians should aim at higher goals, their actual incentives are focused lower. The way to raise the sights of representatives is not to insist that they act contrary to their self-preservation or their constituents' interests, but instead to reorganize our institutions so that they tend, more

closely, to reconcile the competing interests of various constituencies. By focusing on the institutional aspects of real democratic decision making and by evaluating their normative aspects, we are able to evaluate better both benefits and problems with representative democracy, allowing us to carry out comparative institutional analysis more thoroughly and from a clearer normative point of view.

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Notes

1 This amount is slightly more than the original Louisiana Purchase in 1803, which in 2013 US dollars is a little more than $200 million.
2 Notable exceptions include Christiano (1995); Gaus (1996, pp. 267–71, §15.4); Goodin (1992, Chapters 2 and 7).
3 See Brennan (2009; 2011); Estlund (2008, p. 212); Freiman (2014); Sandel (2012, p. 15); Satz (2010, pp. 102–3).
4 Decisive need not only mean the winning vote in a narrow sense. For instance, if a key issue needs three votes for passage, each vote will be decisive in this sense and it may be worth trading with each of those three votes to secure passage. This type of situation will typically occur in smaller committees or in situations with tight party discipline where only a small number of votes may be in play. The winning coalition will be the smallest coalition of vote traders to pass the issue at hand.
5 This is a type of Shapley value for committee voting contexts (see Riker, 1959; Riker and Ordeshook, 1973, Chapter 6; Shapley and Shubik, 1954).
6 Throughout, 'issue' will be used to indicate any bill, proposal, resolution, etc. that is voted on by representatives.
7 On the problems of 'folk theorem' enforcement of compliance in large, anonymous groups see Bicchieri (2002); Bicchieri and Chavez (2010); Bowles and Gintis (2011, Chapter 6); Vanderschraaf (2007).
8 For recent treatments of representation, see Dovi (2007); Hardin (2004); Mansbridge (2011); Rehfeld (2005, 2011); Sabl (2002).
9 For instance, Jane Mansbridge's notion of 'gyroscopic' representation (Mansbridge, 2011).
10 Kevin Vallier and I dispute that a consensus based on shared reasons is stable in this way (Thrasher and Vallier, forthcoming).
11 Thanks to an anonymous referee for suggesting this example.
12 It is important to note that many democratic theorists do take this aspect of politics seriously – e.g. see Christiano (1995; 1996); Gaus (1996, pp. 267–71); Hardin (1995; 2003).

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