Cracking the Whip: The Deliberative Costs of Strict Party Discipline

The anti-defection law, introduced by the 52nd amendment to the Indian Constitution, prohibits legislators from voting against their party's whip on any legislation or voluntarily giving up membership of their party. This includes a prohibition on abstaining when the party has directed legislators to vote in a particular manner. Legislators who act otherwise are expelled from the parliament. The amendment does not only forbid the practice of legislators voting against their party in a trust motion, or vote of no-confidence. It also seeks to prevent them from voting against its directive on any legislative matter where the party chooses to issue a whip. Following a Supreme Court ruling, the law ties a legislator to her party's directives even if that party has expelled her (G. Viswanathan v The Honourable Speaker, Tamil Nadu Legislative Assembly, 1996; Kihoto Hollohan v Zachillhu, 1992). As I later argue, other democratic states also have laws of a similar nature, whereby legislators face expulsion from Parliament if they depart from their party's stance.

Although concerned primarily with the Indian case, this article explores the deliberative costs incurred when political parties rely on strict discipline to attain unity. I begin with a brief discussion aimed at clarifying the notion of strict party discipline. The second section explores how such discipline affects the formation, expression and reception of dissenting views. In the third section, I go on to outline two approaches towards deliberation in Parliament: the epistemic approach and the political justification approach. I argue that the impact of strict party discipline on dissenting views entails costs on legislative deliberation conceptualised in either way. The fourth section highlights how intra-party deliberation could potentially mitigate the deliberative costs outlined in this article. Finally, I turn to the implications of my analysis for assessing party discipline, and then I take a closer look at the Indian case, demonstrating why the deliberative costs outlined in this article are particularly severe there.

(1) Strict Party Discipline: Some Conceptual Clarifications

By 'discipline', we refer to the modes of control exercised by the leaders of a political party over the members of Parliament (MPs) belonging to that party. Parties attempt to control many aspects of their legislators' behaviour, such as the organisations they support, the petitions they sign, the countries to which they travel, and the messages they deliver during campaigns. In this article, I focus on one dimension of control by the political party: the legislator's vote. I

exclude instances of party-hopping, as when MPs abandon their membership of the party they belonged to when they contested elections to join another party or become independent legislators. Instead, this article is concerned with the more specific act of cross-voting on legislative issues against the party's official line, expressed, for instance, through whips. Here, I first distinguish between party discipline and cohesion. I then discuss what I mean by *strict* party discipline.

(a) *Discipline versus Cohesion*

Party discipline is one route to party unity, where the latter refers to situations where legislators belonging to a particular party take the same stance on some legislative proposal. However, I distinguish party discipline from party cohesion, which offers another route to unity. *Party discipline* is defined as unity resulting from (1) formal and informal rules either at ensuring correspondence between party leaders and their colleagues in the legislature through the use of punishment and reward. Alternatively, it might stem from (2) leaders' exploitation of rules, which serve some different purpose, but enable them to punish or reward legislators in order to ensure they toe the line. Examples of the former include (1a) anti-defection legislation, which disqualifies legislators from parliament if they against their party's line. A more informal norm which exemplifies the former category is (1b) censure, as when party leaders publicly berate their colleagues for indiscipline. An example of the latter is (2a) demotion from the cabinet, given that the executive is allowed to induct or remove ministers. Here, a formal rule (prerogative of executive appointment) might be utilised to punish a dissenting party colleague. Informal rules also enable party leaders to perform this function. The (2b) confidence convention, for example, is an informal norm according to which a government should or must resign if it were to face a legislative defeat. The government might hold a vote on some matter hoping that the fear of dissolution would adequately deter their party colleagues from voting against it. The various norms highlighted here can also influence the development of each other. For instance, the existence of confidence procedures leads to the development of control mechanisms in the hands of party leaders who seek to reduce dissent when the confidence vote emerges.[i]

Party cohesion, on the other hand, is not a function of any specific attempt by party leaders to obtain legislators' obedience. Rather, it refers to a situation where legislators' expressed preferences, in fact, correspond to the party's line without the reliance on mechanisms of

control by party leaders. Such cohesion might stem from a range of sources, such as socialisation into the party's norms, consensus among co-partisans, or genuine loyalty felt by legislators to their party leaders. When party cohesion is high, there is little need for leaders to maintain discipline. This article focuses on party discipline, even though some of the normative challenges it emphasises may also obtain in the case of tight party cohesion.

(b) *The Value of Party Unity*

Having noted that party unity can obtain without discipline, it is worth emphasising that this article does not attempt to eliminate parties from the legislative domain. There are various reasons why the partisan organisation of legislatures is valuable. Firstly, political parties are pivotal to securing *accountability*. The absence of partisanship would make it very difficult for voters to hold the legislature accountable. Without a certain degree of party unity, voters would be hard pressed to figure out whether or not the party they voted for has indeed been acting in accordance with its election promises and wider programmatic commitments.

Secondly, political parties are also central to the value of *representation.* Nadia Urbinati argues in this connection that 'if election were truly a selection between and of single candidates – between and of individual names rather than political group names – representation would vanish because each person would run for him or herself alone and would in fact become a party of his or her own interests' (Urbinati, 2006, p. 39). One could also insist on the empirical, and not just normative, link between political parties and representation. According to this line of argument, parties are the locus of representation. Electors' vote for a candidate is so strongly connected to support for the party that strict party discipline is justified (Kihoto Hollohan v Zachillhu And Others, 1992, ¶19).

Finally, some scholars have insisted that political parties are pivotal to the process of *political deliberation*. They play an important epistemic role, performing cognitively demanding tasks of gathering information and integrating a wide range of judgments and expertise into a 'sufficiently coherent and sufficiently specific conception of justice' (Ebeling, 2016, p. 630). In doing so, they serve as collective epistemic agents, finding ways in which potentially conflicting judgments can be combined into a larger whole. Further, the adversarial form in which parties present their platforms, and contest others', helps advance the cause of public justification. Parties 'hone conflict so that it is politically pertinent and cast it in an oppositional

frame to focus citizen choice' (Rosenblum, 2010, p. 307). Offering plausible alternatives is burdensome, and requires that actors advance stronger arguments for their desired option. When competition is absent, actors have little motive to engage in this demanding exercise of weighing the relative merits and demerits of alternatives, which threatens to drive down the quality of alternatives that are offered, thus affecting the stringency of political justification. Finally, since partisans aim at cultivating public support, they have reason to render their organising principles in a way that is meaningful and intelligible to a wider public. Parties, then, facilitate the process of political justification and collective self-rule by amplifying their arguments and addressing them to larger constituencies rather than just a small circle of political elites. (White and Ypi, 2011, p. 386).

While these arguments indicate the need for the partisan organisation of legislatures, their link with party discipline, however, is less obvious. The benefits outlined above only require a certain degree of *party unity.* As I have indicated, party unity can be derived from cohesion, which depends on factors like loyalty, socialisation into the party's norms, or consensus among partisans. Party discipline is not the most obvious or desirable route to party unity. The task I undertake in this article is to demonstrate how democratic systems incur certain costs when they rely on disciplinary mechanisms for the pursuit of united legislative parties. In doing so, I emphasise why party leaders should be encouraged to rely less on disciplinary mechanisms, and pursue unity through alternative means.

I am concerned primarily with the *deliberative* costs that strict discipline imposes on legislative deliberation. As my comments above indicate, there are other dimensions relevant to such inquiry. For paucity of space, I do not highlight the effects of strict party discipline on all values which are central to representative democracy. That said, investigating the implications of party discipline for deliberation is also important from the perspective of accountability and representation. Political deliberation, after all, lies at the heart of accountability. Holding representatives to account does not just entail the discovery of some pre-political will. Rather, it involves deliberation on ways in which particular policies stand in relation to the values held by citizens. In assessing whether or not some policy has delivered on the promises made by a party, and is consistent with its core values, deliberation is indispensable. Further, deliberation is also central to the concept of representation. As John Dryzek and Simon Niemeyer (2008, p. 481) argue, democracy requires the representation of *discourses*, not just of persons or groups. Individuals engage in, and are constituted by, multiple discourses. 'Discursive representation',

as they call it, has the advantage of doing a more 'comprehensive job of representing persons than do theories that treat individuals as unproblematic wholes'. (Dryzek and Niemeyer, 2008, p. 483).

(c) *Strict Party Discipline: One End of a Continuum*

Let me turn now to what I mean by *strict* party discipline. Discipline can be described as strict when as party leaders possess the ability to override the preferences of legislators through the use of punishment and reward. In many countries, legislators rarely, if ever, dissent against their party's line. Party unity is near-perfect, for instance, in Australia and New Zealand. Data on roll-call votes shows that legislators there almost never break ranks from their party (Kam, 2009, pp. 48-50). Such contexts are also characterised by unusually strict discipline. (Kam, 2009, pp. 169-188). My argument in this article speaks to such democratic systems, where the party's control over its legislators results in the absence of dissenting votes.

The most pressing case of party discipline that this article is concerned with, however, is that of jurisdictions with anti-defection laws. For reasons which I highlight later, such laws serve as paradigmatic cases of strict party discipline, where the deliberative costs I will highlight are particularly acute. In this article, I use anti-defection laws to refer to two kinds of legislative or constitutional rules. The first set (*cross-voting type*) comprises those that compel legislators to vote in a manner determined by the political party. India, Pakistan, Fiji, and Bangladesh have legislations of this sort. The second set of anti-defection laws (*party expulsion type*) refers to rules whereby legislators who are disqualified by their political party also lose their membership of the legislative assembly. Such laws exist in various countries including Guyana, Namibia, Nepal, Panama, Seychelles, Singapore, Trinidad and Tobago, and Zambia.[ii] Note that laws around anti-defection ought to be distinguished from prohibitions on party-switching. The latter refers to situations where legislators give up membership of their party in order to join another party or serve as independent members of Parliament. Party expulsion anti-defection laws are more stringent than the cross-voting types since they permit party leaders to pre-emptively act against legislators rather than waiting for them to actually vote against the party's directive. Further, they also permit party leaders to expel legislators from Parliament merely for voicing dissent. In this article, I focus on cross-voting anti-defection laws primarily because how they affect legislative deliberation is less obvious than the case of party expulsion rules.

(2) Three Implications of Strict Party Discipline for Dissent

One might object that strict party discipline does not necessarily prevent a legislator from taking a stand contrary to one's party during deliberation. After all, cross-voting anti-defection laws merely direct legislators to vote with their parties; they can nevertheless continue to voice their dissent. But this would ignore ways in which discipline aimed at determining legislators' votes has implications for the formation, expression and uptake of dissenting opinions.

I. Hinders the Formation of Dissent: Strict party discipline can restrict the formation of opinions contrary to one's party. This is because it increases the likelihood of the adjustment of one's preferences to reflect the decision one must finally support. Cognitive dissonance is likely when a legislator supports one view but must vote for another. When what she votes for is already fixed by the party, dissonance reduction is likely to take the form of adjusting her own preferences to fit that stance (Elster, 2007, pp. 17-20; Festinger, 1957) Further, consider the phenomenon where persons form beliefs in a selective manner, gathering evidence only to the extent that this supports the opinions she would like to be true. The scientist, Gregor Mendel, for instance, practised this method of 'quitting when you're ahead' in his experiments (Elster, 2007, p. 54). Applied to the parliamentary context, this mechanism highlights how legislators would have good grounds not to probe further once their attempt to learn about an issue has confirmed their party's views. This argument is particularly valid for processes of legislating, which, more than some other epistemic activities, are significantly demanding. Taking the evidence for contrary conclusions seriously is an epistemically costly task. If the *only* opinion legislators are required to justify is their party's, then they have little incentive to engage in such an onerous exercise.[iii] Finally, strict party discipline can also have a *systemic* impact on the formation of opinions. No person is likely to meet all the epistemic challenges of legislation in their individual capacity. Instead, meeting these demands requires the development of skills and institutions that enhance the quality of opinions held by parliamentarians. It requires, for instance, the provision of research assistance, help with understanding complex legalese involved in bills, and commentaries explaining the likely implications of alternative policy decisions. If individual legislators, however, are not expected to form their own opinions on the subject, then there is little reason to invest in this long-term and costly capacity-building exercise.

II. Stifles the Expression of Dissent: Strict discipline can also stifle the expression of views which are contrary to those endorsed by one's party. Party leaders can use punishments and rewards to police the opinions expressed by their backbenchers. Those who dissent publicly could face penalties ranging from censure to slower progression within the party or fewer resources for re-election campaigns. But legislators may find it hard to express dissenting opinions even when party leaders do not explicitly target such speech. Insofar as party discipline determines how one must vote, it can also indirectly affect the opinions one is able to express on a given issue. Here, one may insist that even cross-voting anti-defection laws merely direct legislators to vote with their parties; they can nevertheless continue to voice their dissent. But such an objection would ignore how the pre-determined nature of the vote stifles the expression of opinions contrary to those supported by the vote. If a legislator criticised her party's stance and publicly expressed disagreement, she would ordinarily be expected to demonstrate consistency by voting against it. This is particularly true where disagreement runs deep or revolves around an issue considered central to her political project. But if one criticises the party on a wide range of issues, or vehemently so on some particular issue, electors might ask why one yet continues to remain member of that party and vote in accordance with its whips. 'Why not just vote against your party if you disagree that much', electors could ask. Party leaders could raise the cost of cross-voting by penalising dissenting voters. At the same time, legislators do not wish to be viewed as hypocrites. As a result, putting up a façade of consistency means that one is unlikely to express opinions contrary to that one is required to vote for.

III. Reduces the Uptake of Dissent: Backbenchers can exercise considerable influence over legislation even though this impact is not always obvious. Dissent at the decisional stage is merely the tip of the deliberative iceberg. Backbenchers can play a role well before legislative proposals are actually put to a vote. Under some circumstances, they can force their governments to retreat, taking a bill off the agenda for fear of legislative defeat (Russell and Cowley, 2016, pp. 125-6). Further, their 'anticipated reactions' can lead governments to amend bills behind-the-scenes in line with backbenchers' preferences (Russell and Gower, 2017, pp. 134-7). Strict discipline can make it easier for party leaders to override the preferences of their backbenchers. To the extent that ways of enforcing discipline succeed, leaders need not worry about backbenchers' reactions, rendering them less likely to engage with their views. In the absence of such coercive methods, they would need to painstakingly work on obtaining adequate support from their parliamentary party to secure a comfortable legislative victory.

(3) The Deliberative Costs of Strict Party Discipline

So far, I have argued that strict party discipline crucially affects the formation and expression of dissent as well as the uptake such dissent it is likely to gain. What impact does this have on the deliberative processes of Parliament? Before proceeding, it is worth reflecting on how we ought to understand deliberation in the legislative sphere. I discuss two views of deliberation, and demonstrate that strict party discipline leads to deliberative costs on either approach

The *epistemic* approach suggests that political deliberation is about 'problem-solving', where there are procedure-independent standards for what counts as the right answer:

> Problem-solving aptly describes a lot of what the deliberation among representatives in national assemblies is supposed to achieve, whether these assemblies are trying to fix the national health care system, come up with ways to regulate bankers' compensations, or deal with environmental issues (Landemore, 2013, p. 97).

The epistemic approach leads to a particular way of conceptualising legislative deliberation, which is a process aimed at tracking the truth or a 'trial by discussion' (Leydet, 2015, p. 235). It aims at weeding out good arguments from the bad ones, and ensuring that the force of the better argument prevails. The epistemic view need not be viewed as incompatible with the special relationship that legislators share with their constituents. The legislators could be understood, as Nadia Urbinati (2002, pp. 81-2) argues, as advocates—they occupy the specific perspective of their constituents, and share a passionate link to their cause. And yet, their advocacy is rooted in a higher commitment to the common good that enables them to distance themselves from their constituents' partial perspectives. This allows for them to subordinate the claims of their electors to the demands of 'reason, justice and the good of the whole' during deliberation in Parliament (Mill, 1971[1861], p. 447). The emphasis on democracy's epistemic dimension should not be taken to mean that this is all there is to the working of a democracy (Muirhead, 2014). At the same time, proponents of the epistemic approach rightly emphasise that democratic deliberation's ability to produce better decisions is vital to its normative case and our support for it (Cohen, 1986; Marti, 2006; Landemore, 2013, pp. 208-31; Min, 2016).

Let me turn now to a second way of understanding legislative deliberation. One could insist that the aim of political deliberation is not to track 'truths', or raise a doubt that there are, in

fact, procedure-independent standards available to strive for in the political world. Instead, we might insist that deliberation aims at *political justification* for the exercise of political power. It is only through such justification that power can be considered legitimate, based on collective authority rather than brute force. On this account, political justification is the 'means by which decision making acquires an identifiable rationale, one that can be scrutinised and evaluated by those whom decisions will affect' (White and Ypi, 2016, p. 55). Naturally, this approach conceptualises the role of legislative deliberation very differently from the epistemic account. It views Parliament as a forum for making visible this process of public justification. The role of legislators is to clarify to the external public the differences that exist between them and the reasons for them:

> The parliamentary chamber is first and foremost a place to 'put one's case'. Each party sets out the most coherent and persuasive justification it can, for its preferred position. Like barristers arguing a brief, MPs do their best to set out their arguments in an orderly, logical fashion . . . Insofar as counterarguments of their opponents threaten to undermine their own case, they respectfully register those arguments and attempt to refute them . . . But in parliamentary debate, no one seriously expects to change any other MP's mind….The various parties are merely 'making their pitch' to the media . . . and through them to the electorate at large. (Goodin, 2005, pp. 188-90).

The second view, then, emphasises that deliberation in Parliament need not be oriented towards actually changing the minds of one's fellow legislators. Rather, it is geared at providing the external audience, namely, the voters, with the 'epistemic location' of decisions, and helping to situate parties on the 'space of public political reasons' (Rummens, 2012, pp. 33-4; Leydet, 2015, pp. 240-3). In doing so, partisan exchanges between different parties draw politically relevant cleavages and make politics intelligible to citizens, thus advancing the cause of political justification.

In what follows, I discuss three ways in which strict party discipline poses a challenge for legislative deliberation. The first two costs outlined here pertain to the epistemic approach, emphasising how strict party discipline affects legislatures' problem-solving capacity. The third cost I highlight relates to the political justification approach. Here, I emphasise how strict party discipline can prevent legislatures from providing an adequate map of political arguments to citizens.

(I) The Epistemic Benefits of Size

One of the primary strengths of the legislature as a deliberative body is its size. Legislatures are usually large bodies, comprised of several hundreds of persons. The large size of the assembly is seen as contributing to its epistemic strength. As Jeremy Waldron (2009, p. 344) emphasises, in our high-flown enthusiasm for deliberation focused on principles, it is easy to forget that legislatures must be adequately informed about diverse interests in society. No one individual or small group of individuals, no matter how competent, is likely to possess all the relevant information. As a result, the task of legislating ought to be given to a 'large assembly consisting of hundreds of individuals, ranked roughly as equals' (Waldron, 2016, p. 131). In her work on collective intelligence, Helene Landemore (2013) makes a similar argument emphasising the wisdom of the many over the few. Although above average competence might be helpful in some respects, the perspective of experts might be limited in others, resulting in common blind-spots. Her suggestion relies upon what is known as the Diversity-Trumps-Ability theorem. The emphasis on cognitive diversity leads to the idea that legislative assemblies should be numerically large (Landemore, 2012).

In fact, it is arguments like these that one often finds in criticism of strong judicial intervention in the legislative process. (Vermeule, 2008, pp. 25-56). Decision-making by the judiciary is said to be epistemically inferior in relation to legislatures since it emanates from a body comprised of a small group of individuals. This group is also less cognitively diverse since it is formed of a narrow professional class of legal experts. At the same time, it is possible also to exaggerate the cognitive diversity of a legislative assembly. After all, by virtue of being political elites, elected representatives, too, form a particular class that is likely to be limited in its perspective. This is particularly true in circumstances marked by the professionalisation of politics, where politicians remain in office over a period of time. Further, the cost of the electoral process in most democracies means that they are likely to be economically, if not socially, privileged.

Strict party discipline reduces the effective size of the legislature to a small group, depriving it even of its limited cognitive diversity. By hindering the formation of opinions or reducing the likelihood of their uptake, it restricts the ability of legislators to act as many heads, and reduces the range of permissible opinions to those sanctioned by a small number of party leaders. In doing so, it deprives legislative deliberation of an important epistemic resource. Further, it

limits even the restricted number of problem-solvers to particular *kinds* of politicians. Ordinarily, one would expect party leadership to travel together with certain features such as long political careers: leaders are likely to have spent more rather than less time as politicians. (Bale and Webb, 2014, p. 26).[iv] Indeed, such long careers have epistemically productive features. But insofar as this longevity comes with other costs—such as insulation from the concerns of ordinary life—having newer politicians contribute to decision-making can enhance a legislature's cognitive diversity.

The design of the electoral system could play a role in mitigating some of the size-reduction costs induced by strict party discipline. An electoral system that promotes multiple parties, such as proportional representation, might facilitate this diversity. However, the very conditions under which multiple parties are likely in the legislature are also those that promote coalition-building by parties. While coalitions are not necessarily free of internal dissent, one might expect further loss of heterogeneity of opinion in such circumstances. As a result, even an increase in the number of parties—if they enforce strict discipline—is unlikely to produce the kind of cognitive diversity we would expect to find in a Parliament which is not subject to strong party discipline.

One might worry that at some point a group of decision-makers 'may become so large as to inhibit the productive exchange of information through deliberation, thus undercutting the informational benefits of a larger size' (Hessick and Jordan, 2009, p. 649). It is difficult to evaluate the degree to which this serves as a constraint on a parliament's numerical size. That said, we should not be unduly pessimistic. Deliberative experiments consisting of hundreds of participants at a time have been conducted with considerable success around the world (Landemore, 2013, p. 110). Many of these experiments have taken place within contexts of considerable difference with respect to language, culture and values. Yet, despite the increased communicative costs induced by such contexts, these deliberative experiments have generally shown good epistemic performance. It is not clear then that permitting some measure dissent within partisan legislatures would lead to a significant decrease in the quality of productive deliberation.

(II) The Epistemic Value of Bicameralism

Most legislative assemblies around the world are bicameral. The manner in which the second chambers are constituted, as well as the power they enjoy relative to the first chambers, differ across legislative contexts. Underlying various modes of bicameralism lies a set of epistemic arguments, which insists that a second chamber can enhance the quality of legislative decisions. Indeed, such arguments are somewhat controversial, and a complete defence of the epistemic merits of bicameralism is beyond the scope of this article. To that extent my argument is conditional: *if* that case is right, then strict party discipline undermines the epistemic benefits of bicameralism.[v] Here, I outline two prominent epistemic arguments that have been offered by constitution-makers in their proposed justifications for bicameral assemblies. I then try to show that party discipline in its strict form would undermine the epistemic benefits which these arguments emphasise.

Second legislative chambers have been defended as *second-opinion mechanisms* aimed at enhancing the epistemic quality of decisions. One might argue that the demand for two opinions also introduces a delay in the legislative process. Such delays can be epistemically productive insofar as they provide a check against momentary passions, preventing them from being embedded in the content of laws. However, the argument for an additional chamber need not rely upon such delays. It is compatible with allowing both chambers to consider a bill simultaneously. Here, the value of bicameralism would lie in multiplying opportunities for rectifying possible errors. In order to serve this purpose, second chambers need not be regarded as epistemically superior relative to first chambers. Instead, as long as they offer an *independent* judgment, they can provide an additional route for the detection of flaws.

For second chambers to serve this corrective purpose, they must be constituted of a distinctive set of persons. To see why, imagine that all members of the ruling party in the second house were chosen from that party's MPs in the first house. In this hypothetical case, some legislators would serve a dual role as members of the first and the second chamber of Parliament. This situation is likely to be unacceptable from the perspective of the epistemic case for bicameralism. This is because at least part of the epistemic case hinges on the distinctiveness of members in each house, which is necessary if the second chamber is to provide a second independent opinion rather than allowing the same members to re-affirm their own decision. After all, MPs already do so in the course of multiple readings of a bill in the first chamber.

Deliberative autonomy and the ability to form independent judgments is crucial for the distinctiveness of legislators. Distinctiveness cannot be simply about the physical presence of two different sets of legislators. If the only permissible view they can voice is the one sanctioned by the party's leadership, and if they lack the capacity to form opinions that differ from that view, then distinctiveness no longer obtains. We, then, lose, what the epistemic case for bicameralism suggests, is the value of having two chambers of parliament.

An alternative argument for bicameralism relies on the *division of deliberative labour* it enables. On this account, the epistemic value of the additional opportunity offered by the second chambers stems from their compensating effects relating to the deficits of first chambers. Once again, this account does not suggest that second chambers are epistemically superior to first chambers. Rather, it insists that both chambers manifest distinctive institutional features which have their respective costs as well as benefits. On this account, second chambers have institutional features which mitigate some of the epistemic costs imposed by the institutional features of first chambers. Consider, for example, the idea that the second legislative chamber serves to provide a 'sober second thought'. Second chambers possess institutional features that are designed to mitigate the impact of hot emotions on decisions. The longer electoral terms of their members, and their smaller numerical size have both been defended by appealing to this corrective role. This account might leave us with a puzzle: 'Under bicameralism, if the upper house supplies the sober second thought, why have a politically intemperate lower house in the first place?' (Vermeule, 2011, p. 1450). This dilemma dissolves once we recognise that are also epistemic benefits to having a legislative chamber where emotions are indeed allowed to play a significant role. Hot decision-making in such chambers can supply vigour or motivational power. It might also be valued for its propensity to generate new ideas, and being less rigidly predisposed towards apparent constraints. In sum, each legislative chamber aims at securing some epistemic values which the other lacks, while relying on its counterpart to mitigate the costs that this entails.

Again, when strict party discipline is applied across bicameral legislatures, it deprives them of the epistemic benefits of this division of labour. Decisions are not a product of two chambers constituted in contrasting ways. Instead, decisions affirmed by both bodies are determined externally, without benefitting from the epistemic advantages distinctive to the design of deliberation in each chamber.

(III) Limiting the Map of Opinions: Deliberating with the Adversary

Dominique Leydet (2015, p. 250) argues that the government does not typically rely upon members of the opposition to pass legislation. Instead, it tends to count upon the support of MPs belonging to its party, which ordinarily holds the majority, in order to win the day. But the presence of internal dissent from the parliamentary party can change this scenario, and enhance deliberation. The need to persuade MPs rather than relying upon their vote gives the legislative debate an 'immediate and significant stake' (Leydet, 2015, p. 251). The parliamentary party has to be persuaded and not simply mobilised. The government cannot simply restate general arguments in favour of its position in the knowledge that it will ultimately win the legislative vote. Rather, it must specifically attend to criticism from the opposition as well as its parliamentary party.[vi] In doing so, it has to outline its own position in greater detail, and clarify why it believes those who are opposed to it are wrong. This process can make the legislative debate more informative for the wider public.

While this is true, Leydet's argument can be strengthened by emphasising how strict party discipline affects deliberation by hindering the expression of dissent by all MPs and not only legislators from the ruling party. As previously discussed, strict discipline can stifle the expression of opinions contrary to one's party. Even when party leaders do not directly block their MPs from stating dissenting views, legislators are more likely to censor such views when they must vote in accordance with the whip. This restriction affects the legislature's capacity for public justification, by preventing it from providing a complete 'map' of arguments for or against proposed legislations. This map ought to include all arguments, or as many shades of arguments as possible, one might find on a certain issue. Strict party discipline undermines the legislature's ability to do this by privileging the expression of some opinions at the cost of others that might be held within a political party.

Being able to see the map of positions endorsed by one's partisan adversary is valuable from the perspective of political justification in at least two ways. Firstly, it can help blunt the negative edges of polarization by pointing out the contingency of our adversaries' opposition to our position. Consider, for instance, a polarised debate on same-sex marriage, where liberals and conservatives are widely seen as lying on opposite sides of the issue. For liberals, viewing dissensus within the conservative camp can alert them to the contingency of conservative opposition to their position. It can make them aware that opposition to same-sex marriage is

not a necessary outcome of subscription to a monolithic conservative worldview. Rather, they can see that it is possible to defend the contrary position even while continuing to appeal to conservative premises. This awareness of internal diversity can help blunt the negative edges of polarisation, as when one's partisan's adversaries are viewed as necessarily opposed to all the things one values. Being able to find proponents of our own position across the aisle may enhance our willingness to deliberate with partisan adversaries.[vii]

Secondly, a more nuanced map of arguments also reduces the demands involved in deliberating across difference to build an overlapping consensus. Situated, as individuals are, within their particular worldviews, it is often difficult for them to 'switch' their perspective, and explore an issue from premises entirely different from their own. Dissenters within one's partisan adversaries can help to make this task easier: they can guide us by demonstrating how our position could find support also through the use of premises different from ours. In doing so, they facilitate the task of building forms of overlapping consensus, where agreement can be derived from varying justifications. In other words, there is a difference between *arguing from* an adversary's premises, *and finding arguments* within an adversary's perspective. I have suggested that critics internal to one's adversaries can perform the latter, more demanding task, allowing us to perform the former. Insofar as strict party discipline increases the difficulty in finding premises that might be used to convince partisan adversaries, it hinders legislative deliberation on the public justification approach.

One might worry that facilitating greater debate between members of parliament may multiply dimensions to a point where this renders debate unintelligible for ordinary citizens. However, firstly, concerns about the multiplication of dimensions can be overstated. Indeed, though a rise in the dimensions considered is possible, it is constrained by the partisan contexts in which it takes place. After all, even dissenters within partisan camps remain partisans.[viii] They are likely attracted to a particular party because they share its perspectives on many, if not most, political issues. Such perspective includes ways of conceptualising a problem. Insofar as a broad, shared ideological orientation increases the likelihood that political problems are viewed in similar ways, the multiplication of dimensions may therefore remain limited even under relatively loose party discipline. Secondly, empirical work on the subject emphasises that deliberation plays a significant role in reducing dimensionality. The mechanism through which deliberation does so is equally important. Christian List and his colleagues suggest that 'deliberation may induce a socially co-ordinated reframing of decision problems so as to

eliminate certain purely self-regarding and socially inconsiderate preferences' (List, McLean, Fishkin, and Luskin, 2000, p. 12). Finally—and most crucially—it is not reduction in dimensionality per se that we value. Rather, reduction of dimensionality is valuable only if it happens for good reasons.[ix] We ought to distinguish between making a deliberative process *simple* to access on the one hand, and rendering it *simplistic* by shedding potentially relevant aspects on the other. It is unclear why the kind of polarisation fostered by strict partisanship reduces dimensionality in the appropriate direction rather than over-simplifying it a normatively suspect way.

(4) Strict Party Discipline and the Systemic Approach: The Role of Intra-Party Deliberation

In recent times, theorists of deliberative democracy have encouraged the adoption of a systemic approach, which insists that all sites of justification need not conform to a single ideal of deliberation (e.g. Parkinson and Mansbridge, 2012; Owen and Smith, 2015). Instead, we ought to see political deliberation in various sites as part of a wider interconnected system. Different forums can play different roles in serving the deliberative system. On this approach, strict party discipline might be acceptable, or even warranted, insofar as the costs outlined in the previous section are adequately addressed by other deliberative sites. In this section, I explore how one such site—the political party—could address some of the deliberative costs outlined above. I focus on intra-party deliberation because one might insist that the aggregation of preferences within the party is binding on its legislators insofar as it is preceded by a fair hearing of views.

Firstly, inclusive intra-party deliberation could ensure that a more substantial number of participants, and not only a small group of bosses, contribute to the problem-solving process. The epistemic benefits from inclusive deliberation would be particularly strong if the broader party, rather than the parliamentary party alone, were engaged in this deliberative exercise. Here, one might insist that there are epistemic benefits to deliberation in diverse legislative assemblies, and that these cannot be replicated when each party unit discusses an issue internally, and filters the decisions into legislative discussion. Deliberation with co-partisans might be insufficiently diverse to appreciate good minority perspectives. Something valuable could get lost in the filtration process from the party's deliberative sites to Parliament. While these concerns might be valid, it is easy to overstate them. Large, umbrella parties can be adequately diverse for their deliberations to benefit from a variety of perspectives (Scarrow

and Gezgor, 2010; Van Haute and Gauja, 2015). Interestingly, encouraging intra-party deliberation can fuel the very conditions needed for enhancing the diversity of such processes. Reversing the standard assumption that political participation is a 'cost' which citizens incur, Carlo Invernizzi-Accetti and Fabio Wolkenstein (2017, pp. 101-2) argue that such participation ought to be viewed as an incentive in itself. On this account, intra-party deliberation can attract groups currently put off by elite-dominated party fora, thereby enhancing the inclusiveness of the democratic process.

Further, intra-party processes could mimic–or even perform better than–the epistemically productive mechanisms which bicameralism attempts to introduce. Political parties can establish mini-publics comprising its members, which could serve as second opinion mechanisms for decisions taken by party leaders (Wolkenstein, 2016). They could also enable the kind of close, structured deliberation that the American Senate, for instance, was designed to facilitate. On the other hand, intra-party deliberation can also take place in local branches, drawing upon a broader range of members. This could ensure the kind of inclusive deliberation, and reflection on a wide spectrum of interests, that numerically large legislative chambers were intended to secure.

Finally, intra-party deliberation can also compensate for the impact of party discipline on the legislature's ability to enact debate. Fabio Wolkenstein (2016, p. 314) points to members' conferences held by Germany's *Social Democratic Party* prior to its membership ballot on the issue of the coalition agreement with the Union parties. These conferences allowed large numbers of members and activists to debate the terms of the coalition face-to-face with party leaders. The initial resistance by parts of the party base, notably the party's youth organisation (JUSOS), 'mobilised internal protest against the coalition' resulting in 'pressure on the leadership to more extensively justify the coalition agreement' (Wolkenstein, 2016, p. 314). Problem-specific mini-publics with randomly selected members drawn from different local branches can provide another avenue for intra-party deliberation. These sites can enable outsiders to observe the varied opinion on any given issue within a political party.

In sum, intra-party deliberation could potentially offset some of the deliberative costs imposed by strict party discipline. At the same time, this analysis also indicates why such discipline is troublesome from a normative perspective. Indeed, many political parties have made important changes aimed at offering their members the opportunity to influence party affairs. These

efforts have taken two main forms: 'giving interested members more opportunities to shape party policy priorities, and giving members the right to vote on important party decisions' (Scarrow, p. 179). Yet, commentators agree that the impact of such attempts has been modest (Katz and Cross, 2013, p. 6). More importantly, as Invernizzi-Accetti and Wolkenstein (2017, p. 101) argue, such moves remain closely wedded to aggregative conceptions of democracy: they simply aim at extending voting rights to the membership through procedures like primary elections and membership ballots, while their ambitions with respect to deliberation continue to remain limited. These are undoubtedly contingent facts about how parties currently operate. If and when parties adopt more inclusive deliberative procedures, the case against strict party discipline might have less force. Until such time, however, the deliberative costs of such discipline are particularly worrying.

(5) Assessing Strict Party Discipline from a Deliberative Perspective

Although this article is primarily concerned with the impact of the anti-defection law on legislative deliberation in India, let me summarise the implications of my argument for assessments of party discipline in other contexts. My analysis emphasises how strict party discipline could obstruct the formation or uptake of dissenting opinion, and impose epistemic costs on legislative deliberation. It is possible that these epistemic costs are also incurred in countries without anti-defection legislation, such as Australia, where roll call dissent by legislators is nearly altogether absent. Unfortunately, empirical research into legislatures is presently poorly equipped to indicate how much uptake dissent receives in a political system. This is because, by treating the absence of roll call dissent as a proxy for the absence of dissent, it fails to track different ways in which legislators can influence their parties' positions before they bring them to a vote (Sieberer, 2006; Depaw, 2003; Cowley and Norton, 1999). This influence may take various forms. For instance, governments may introduce amendments in response to pressure from their backbenchers, or keep some issue off the legislative agenda fearing rebellious votes. That said, if my argument in Section 2 is sound, then, all things equal, party leaders' uptake of dissent is less likely under conditions of strict party discipline.

Further, I have emphasised how strict party discipline could restrict the formation and expression of dissent, imposing costs on a legislature's ability to advance public justification. On this approach to deliberation, it is not sufficient for party leaders to tacitly solicit opinions from backbenchers and incorporate them in their legislative proposals. The political

justification approach to deliberation insists that Parliament ought to serve as a site for the public contestation of policies, thereby enabling citizens to make greater sense of the wider political debates in which these policies are embedded. While restricting criticism of the government and legislative discussion to sites and mechanisms inaccessible by the public might enable legislators to perform their epistemic role, the political justification approach to deliberation insists that this is insufficient. This approach demands public contestation of party's positions, where the disagreements that exist between them are outlined, even if the expressions of dissent do not ultimately influence the legislative outcome. As with assessments of uptake, empirical work on legislatures is unable to track the precise extent to which expressions of dissent are curtailed in a given system. By treating roll call votes as a proxy for dissent, it tends to neglect broader forms in which disagreement with the party might be expressed. My argument, however, points to why public expressions of dissent are less likely when parties exercise strict discipline.

Had there been no other way of obtaining party unity, then party discipline may have been a justifiable measure despite its deliberative costs. As we noted previously, there are important benefits to the partisan organisation of legislatures. However, party discipline is not the only route to organising united partisan activity in legislative assemblies. In fact, there are ways of attaining this end that do not impose the kind of deliberative costs that disciplinary sanctions entail. For instance, it is possible for political parties to demonstrate deliberative cohesion, where co-partisans agree to back a certain position after a mutual give and take of reasons. This mode of internal consensus is likely to remain the road less travelled insofar as party leaders have easy access to disciplinary sanctions. After all, building unity in this way requires effort and a willingness to compromise with dissenting colleagues.

The above comments indicate the significance of making excessive reliance on disciplinary mechanisms less accessible to party leaders. While pursuing precise mechanisms for implementing this suggestion is beyond the scope of this article, let me highlight one route offered by empirical research into party unity. Guillermo Cordero and Xavier Coller (2015, p. 608) argue that 'where more inclusive models of MPs selection are held, internal party cohesion in parliamentary groups is achieved through deliberative procedures'. On the other hand, where the selection of candidates is more centralised in favour of party leaders, this enables them to use the threat of sanctions to enforce a consensus. When party executives have centralised control for selecting candidates for legislative elections, they possess a less costly

way of applying sanctions on dissenting legislators, and they can get dissenters to toe the line without making visible the fractures that exist in the party.[x]

One might worry that alternative methods of uniting the party may not eliminate all internal disagreement. Despite sincere attempts to engage with backbenchers and secure a compromise, some critics might stick to their position, refusing to endorse a position that the rest of the parliamentary party backs. It is worth reiterating that the partisan organisation of legislatures neither presupposes nor requires perfect unity. As I have argued, we should not overstate the epistemic case for restricting decision-makers, nor the need to restrict dimensions of disagreement in the name of advancing public justification. From a deliberative perspective, dissensus can be a valuable feature of legislative deliberation. Making disciplinary mechanisms costlier for party leaders enables greater space for such disagreement. It raises the likelihood that disciplinary methods would be used only as a measure of last resort rather than allowing party bosses to sidestep the difficult task of debating critics and offering justifications for their stance.

Let me now turn to the Indian case and why its anti-defection law is particularly likely to contribute to the deliberative costs outlined in this article. Firstly, the epistemic costs discussed above are even more likely to be present under anti-defection legislation than other informal forms of party discipline. As I indicated previously, we would be mistaking perfect convergence on floor votes in India and say, Australia, as an indication that legislators in both countries have similarly low levels of influence in the law-making process. Much of the influence legislators exert takes place before a matter comes to the vote. Anti-defection legislation can severely constrain the degree to which legislators can exercise such influence. This is not only because of the severity of the penalty (disqualification from Parliament); although that, too, is important; but further, in some cases, anti-defection laws enable governments to push through any legislation simply by issuing whips. When their majority in Parliament is large enough, governments could simply disqualify rebelling legislators from the assembly and ensure safe passage for their legislation. Similarly, an opposition party can disqualify legislators who vote with the government, and potentially block a particular law from attaining, say, a supermajority. In other words, disqualification from the legislature entails loss of one's legal ability to block the decision on which dissent has been expressed. On the other hand, countries without anti-defection laws give legislators at least the formal power to block a government's move. The application of sanctions might deter them from doing so, but

legislators nevertheless remain legally able to block the decision against which they have dissented. This difference can be significant insofar as the ability to block party leaders' decisions alters the incentive structure available to such leaders for engaging with their backbenchers (Dorey, 2014, p. 141).[xi]

Further, the anti-defection law is particularly effective at stifling the expression of dissent. I have argued that, when legislators have no other choice but to toe the party line, they are less likely to publicly express their commitment to a contrary view. In other jurisdictions, legislators are able to dissent and refrain from voting with their party through abstentions or absence from Parliament (Ceron, 2015). Both options, notably, are unavailable to legislators in India. Legislators face disqualification from parliament if they absent themselves or abstain from voting with their party's line. Anecdotal evidence suggests that public dissent against the party is exceedingly rare. Intriguingly, backbench legislators from the ruling, Bharatiya Janta Party rue the weak strength of opposition parties. Rochana Bajpai (personal communication, October 15, 2017) states that 'Off the record, current and previous MPs from ruling coalitions say that they wish there was stronger Opposition to hold their own governments to account'. Unable to voice dissent against their own government, such backbenchers are left to rely on Opposition parties to raise their own concerns.

Finally, it is unlikely that the deliberative costs imposed by the anti-defection are mitigated within the party. Although there are no studies on intra-party discussion in India[xii], the picture appears bleak at the very least. Existing commentators emphasise that there is little space for discussion within the party, with decisions taken in a top-down manner (Hassan, 2017). Further, we could draw some inference about intra-party deliberation from electoral mechanisms within the party—or lack thereof, in this instance. Insofar as intra-party elections serve as occasions where incumbent leaders have to defend their platform, they can enable greater deliberation within the party. In the absence of evidence on deliberative processes, we could use intra-party elections as loose proxies for spaces of discussion within the party. As previously noted, commentary on steps towards intra-party democratisation in other parts of the world suggests that these are inadequately deliberative; rather, they remain too closely wedded to an aggregative conception of democracy. In India, however, even this limited participatory measure appears largely out of reach. Parties' executive committees are constituted through dubious, if not non-existent procedures (Singh, 2015, pp. 19-21). The opaqueness of intra-party processes rules out, in the first instance, their ability to advance

public justification, and mitigate the deliberative costs of parliamentary discussion in this respect. Further, the little we know about intra-party procedures in India makes it unlikely that they are able to compensate for the epistemic costs of the anti-defection law on legislative deliberation.

It is worth mentioning that centralised control of parties characterised by dynastic leadership is an important feature of countries like India, Pakistan and Bangladesh which have cross-voting anti-defection laws (Chandra and Umaira, 2011; Ahmad, 2011; Ruud and Islam, 2016). These laws can contribute to the entrenchment of dynastic leaders' powers by helping them ward off dissent from legislators within their party. They place obstacles in the path of individuals who could seek to use the platforms provided by legislative offices to break ranks and highlight shortcomings in their policy positions. Further scholarship on this subject could benefit by placing rules like anti-defection laws in a comparative context and looking more closely at the party systems within which these are embedded.

(6) Conclusion

Despite legislating for the largest democracy in the world, the Indian Parliament and its discursive process has received little attention. Commentators on this subject point to two distinct challenges that the Parliament faces. First, they have focused on its failure to adequately represent all citizens. These critics emphasise its under-representation of certain demographic groups, such as Dalits and women, and the over-representation of others, such as persons with criminal antecedents, or above-average wealth (Shankar and Rodrigues, 2011; Tiwari, 2014). A second set of critics have focused on the extraordinary nature of parliamentary disruption in India (Spary, 2010; Spary 2013; Khaitan 2013). This critique is expected given the extremity of these disruptions: Between 2009 and 2014, both houses of parliament lost over a third of their scheduled time due to frequent adjournments forced by disruptions (Malik and Kala, 2014). My argument in this article suggests that the problem lies much deeper. Even if the demographic profile of Parliament were more representative, and legislators did not disrupt proceedings, the anti-defection law would continue to impose significant deliberative costs on the Indian legislature.

The analysis outlined here, however, is theoretically significant for assessing party discipline outside India as well. I have argued that even systems without anti-defection legislation, which

rely excessively on party discipline to unite legislative parties, are likely to incur significant deliberative costs. Fortunately, discipline is not the only available method for parties to organise in a united manner. This article emphasises the significance of encouraging party leaders to pursue unity in ways that do not damage the epistemic quality of legislative deliberation and its capacity for advancing public justification.

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[i] Party leaders in systems with confidence conventions are more likely to push for mechanisms that allow them to control backbenchers. On the other hand, backbenchers are also more like to accept these mechanisms in order to avoid collective action problems (Coman, 2015).

[ii] See Nikolenyi (2011). Nikolenyi suggests that 40 constitutions have anti-defection provisions in their national constitutions but fails to distinguish between the two types I have emphasised.

[iii] It is worth clarifying that legislators often care about forming the right opinions regardless of the incentives they have in doing so. However, given the epistemically demanding nature of legislation, they are likely to limit their attempt to get things right to a limited number of issues; for instance, issues central to their political project, or those considered salient by their constituency. Since several legislative issues would still fall outside this domain, we should not rely on legislators' individual motives for forming valid judgments. We ought to pay attention to how institutions are structured in ways that deter or promote this practice.

[iv] This problem is particularly pressing when party leadership also travels with other demographic features like age, gender and socio-economic wealth. For more on this, see Allern and Karlsen (2014); Kenig and Rahat (2014).

[v] Among other things, this case would have to confront Robert Goodin and Kai Spiekermann's (2012) argument that second chambers constitute 'epistemic bottlenecks' by funnelling decisions taken by a large group through a smaller group of persons. Also see Vermeule (2011) and Schwartzberg (2014, pp. 182-204).

[vi] Knowledge of backbencher dissent can also lend greater urgency to intra-party deliberation. Robert Jackson (1968, pp. 59-60). offers the example of the impact of backbencher votes against the Second Reading of the Labour Government's 1947 bill on conscription. This instance led the Parliamentary Party to pass a resolution stating that backbenchers ought to be consulted through special meetings before legislative debates on significant subjects.

[vii] André Bächtiger and Dominik Hangartner (2010, pp. 623-4) demonstrate how the relaxation of party discipline in Germany resulted in greater respect towards partisan adversaries, and enhanced the productivity of legislative debate on a controversial topic like abortion.

[viii] Philip Norton (2003, p. 70), for instance, demonstrates that even in the absence of mechanisms of disciplinary control, partisan lines of opposition do not altogether disappear. Instead, fellow partisans tend to show unity, which relies ultimately on 'emotional or intellectual commitment to a particular party'.

[ix] I am grateful to Andrei Poama for discussion on this point.

[x] Christopher Kam's (2009, p. 183) research demonstrates how party leaders prefer punishing dissenters in less public ways since applying sanctions publicly make discord even more visible and suggest that they are 'dictatorial'.

[xi] As I argued above, deliberative costs could also obtain in the absence of anti-defection laws when party leaders can apply sanctions tacitly. Formally permitting legislators to vote against their party, then, constitutes a necessary but insufficient step towards addressing the deliberative costs outlined in this article.

[xii] Admittedly, the task is not easy. Consider the following paragraph from a recent article on this subject: 'Sometimes…it becomes difficult to even identify who occupies which post. The state president of one well-known regional party, for instance, when asked for a list of his party's office-bearers, was outraged at being asked for information he considered secret…Even when available, lists of 'official' office-bearers often do not reflect the true chain of command within the party'. (Chandra and Umaira, 2011).

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