

COMMENTARY

Commentary on, Cristina Lafont, *Democracy Without Shortcuts*

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In this article, Jürgen Habermas provides a critical reflection of Cristina Lafont's book *Democracy Without Shortcuts*, with a specific eye on the epistemic and social-integrative dimensions in deliberative democracy.

Keywords: democratic self-legislation; epistemic deliberation; moral realism; public opinion formation

(1) Let me begin with a confession: I am proud to be the dedicatee of such a brilliant book. The author offers a powerful reconstruction of the systematic content of a participatory conception of deliberative democracy, which she justifies with metacritical arguments that exhibit an equal measure of analytical acumen.

A focus of this magnificent composition is her detailed and cogent critique of two competing conceptions of the democratic process that arrive at contrary results but are not so different in their starting points. The *radical pluralistic* image of a many-voiced mass public riven by irreconcilable dissonance, similar to the contrasting *expertocratic* image of an apathetic electorate with a limited attention span and mired in ignorance, justifies a profoundly skeptical view of the requirement that as many citizens as possible should participate in political deliberation as an unreasonable demand. According to both conceptions, albeit on different grounds, to expect that a public sphere generated by the currents of communication in the mass media will facilitate the generation of informed, directive and problem-related public opinions is to make excessive demands on civil society. The radical pluralistic view justifies this skepticism by appeal to the deep-seated conflicts of interests and values and the corresponding irreconcilable diversity of opinions in functionally differentiated societies marked by inequality. In other words, it grounds its skeptical conclusions on conditions that, it claims, prevent the formation of opinions oriented to consensus and therefore of *rationaly motivated* majority decisions, and allows at best procedurally correct majority decision. The expertocratic view, on the other hand, bases its criticism on the dearth of information, the attention deficit and the incompetence of voters. It argues that these deficiencies permit at best plebiscitary decisions about candidates

and platforms, so that addressing and solving political problems calls for the knowledge of experts.

In her meticulously argued study, Cristina Lafont brings out what is lost in both cases, namely the central idea of democratic self-legislation. The deliberative reading of the democratic process, by contrast, combines the Rousseauian idea that democratic citizens obey only the laws they have given to themselves with the persuasive power of political opinions that have been filtered through discourse. The diversity of the interests and opinions among a heterogeneous public and the limited budget of time and attention that private citizens can set aside for their public commitments mean that only good reasons can contribute to reasonable decisions and problem solving and to generating shared convictions, and that means to political integration. The objections against the contradictory notions of the radical pluralists and the expertocrats support the conclusion that both approaches curtail the political autonomy of the citizens and thus betray the core of the democratic idea: 'An expectation of blind deference is quintessentially incompatible with the democratic ideal of self-government' (8).

The model of elite democracy originally introduced by Josef Schumpeter, which, in the meantime, has appeared in numerous variants in political sociology but is still regarded as descriptively adequate, treats the subjugation of citizens to the expert knowledge of political professionals as something obvious. By allowing themselves to be restricted to the *plebiscitary* choice between competing offers in the guise of candidates and sloganeering programs, the citizens abdicate their judgment on the issues to the experts of their choice. Things are not so clear in the case of the radical pluralism of opinions. The claim is that this does not allow for any reasonable contribution to the solution of problems, regardless of whether voters subjectively orient themselves to the goal of a more or less rational public opinion or not. From this perspective, the legitimization of the exercise of political rule is not supposed to be measured by the support for personalized slogans as expressed in elections,

but by the justice of a democratic procedure that guarantees the inclusion of all those affected and ensures that their voices receive equal consideration. Again, democratic legitimacy does not depend on the rationally grounded presumption that decisions have been reached in a rational manner. However, the pluralistic conception allows that the participants have a false conception of what they are doing and can achieve in the public sphere. Instead, it explains from the observer perspective that, regardless of what they may think themselves, they in fact submit to a democratic majoritarian voting procedure that is unaffected by the cogency of the reasons that are circulating in public. Here the heteronomy of the citizens who renounce their autonomy is embodied in the delegation of their opinions, not to professional politicians who make competent and independent judgments, but to a *merely formal* procedure that is impervious to the kind of reasons that motivate voters' choices. For according to the radical pluralistic view, the rough statistically formed majorities do not reflect the reasons that may have played a role in the widespread dissonances. However, the voters would hardly fail to notice that, again and again, the results of elections are independent of the disputes over facts, normative judgments, preferences and value orientations. But then, as Cristina Lafont rightly objects, it is hard to explain why, despite this constantly repeated frustrating experience, they should persist in engaging in the dispute, as it is assumed, indefinitely.

The convincing critique of the price that the two opposing conceptions of democracy pay in the coin of the renunciation of an autonomous self of democratic self-legislation leads Lafont to make an interesting distinction between different roles played by deliberation: the *epistemic aspect* of deliberation oriented to the goal of *discovering the truth* does not coincide with the *socially integrative aspect* of the shared convictions that make the inclusive *project of self-legislation* possible in the first place. This can be seen particularly clearly, as she shows, from the limits of the representative information value of so-called *minipublics*. The members of these small experimental groups are chosen at random and are provided with information in advance on the topics to be discussed. The results of their consultations demonstrate the measurable epistemic impact of the deliberative level of opinion and will formation. On the other hand, while such vicarious groups can indeed play a political and pedagogical pioneering role in virtue of the epistemic superiority of their convergent views and discursively shaped majority decisions, as *samples* they cannot replace the decisions of the population, that is of the electoral public as a whole. What counts in the democratic process is not only the epistemic process of forming opinions through deliberation, but also the socially integrative function of *shared* convictions; for the collective self of self-legislation consists of individuals whose 'yes' and 'no' decisions must count equally in the process of forming a common will: 'By reducing the epistemic function of deliberation to the aim of tracking the truth, another epistemic function of deliberation is disregarded, namely,

tracking the justifiability of policies in question to those who must comply with them' (98).

(2) Taking her orientation from the intrinsic meaning of deliberation as a search for truth, therefore, Cristina Lafont distinguishes between the epistemic role of the deliberative procedure and the socially integrative function of agreement in the convictions arrived at through deliberation. Political deliberations are intended to lead not only to *true* or *correct* beliefs but also to the commonality of intersubjectively *shared* convictions. This is the resource from which binding policies and laws, and ultimately the political order as a whole, derive their legitimacy. In contrasting the internal logic of this dimension of *mutual justification* with the epistemic aspects properly speaking, the author appeals to the Rawlsian reading of the notion of the 'public use of reason,' which she characterizes as the citizens' efforts to engage in respectful and sensitive persuasion in their deliberative interactions *with each other*. She even invokes the not particularly convincing pedagogical example of a stubborn exchange between a mother who knows better *a fortiori* and her obstinate and recalcitrant son to illustrate the distinction between the *justification* of a policy from the effort *to justify* it in the sense of persuading others of the merits of a policy one takes to be correct (165ff.). This distinction is immediately evident with regard to disagreements over facts. But does it also apply to normative disputes? But can the socially integrative effect of an agreement over what should be done be separated at all from the epistemic act of insight into what it is morally right to do—since that means *eo ipso*: right for all of us?

The sweeping juxtaposition of the deliberative search for truth and problem solving, on the one hand, and the agreement effected through deliberation in the process of citizens' self-legislation, on the other, suggests an overgeneralized interpretation of the truth of empirical-theoretical statements that extends to and includes the validity of moral-practical statements. When Cristina Lafont speaks of 'truth tracking,' she is actually referring in a *sweeping* way to the examination of the truth of all statements—except for conflicts of interest, which call for compromises—belonging to the domain of political deliberation. Without differentiating further, she assumes that the deliberative search for truth applies to the broad spectrum of statements that feature in political deliberation. In other words, she assumes that it extends not only to empirical and theoretical statements of facts, but also to moral and legal statements concerning justice, ethical statements about the good life and ethical-political statements that express a collective self-understanding. This suggests that, notwithstanding the differences between types of normative questions, they are all a matter of statements about facts, at any rate in the case of moral and legal questions of justice. However, with this the author broaches central questions of practical reason. The disciplinary division of labor may explain why she does not thematize these issues. The fact that she does not do so is nevertheless unfortunate insofar as radical

pluralistic objections to the deliberative conception are also aggravated by a line of argument broadly anchored in the empirical tradition. The problem is that her elegant application of the metacritical procedure has a drawback: it measures the competing conceptions summarily against a deliberative ideal that some critics reject as unattainable because they dispute in the first place that normative statements are capable of being justified at all. But if moral statements, which constitute the controversial core of political questions, were not capable of being true at all, every deliberative exchange of reasons for and against normative statements in political debate would become pointless.

The distinction between the epistemic task of justification and the socially integrative effect of mutual justification prompts a reflection on moral realism, which extends a semantic concept of truth to normative statements. This is not only counterintuitive, but also fails to do justice to the difference in meaning between assertoric and normative validity claims. The participants in practical discourses borrow the meaning of the claim to validity that they raise for statements concerning justice from the meaning of the validity of moral and legal norms that prescribe social modes of action. The norms *themselves* are in a sense already composed of the symbolic material of linguistic utterances; however, they exist not only as the symbolic embodiment of meanings, but also as social reality. To be more precise, they exist in the mode of being recognized as valid or legitimate by their addressees, who therefore also comply with them on average. Valid norms are *binding* precepts, statements that owe their socially binding character to the intersubjectively shared conviction of the addressees that such norms *deserve* recognition. This mode of validity is thus by its very nature not only a social fact, but at the same time has the epistemic meaning of a *justified* social obligation. In cases of doubt, valid norms must be able to appeal to plausible explanations or narratives, that is to narrative or other kinds of reasons. Insofar as such normative justifications are no longer encapsulated in authoritative traditions and shed their character as rigid dogmas, they can be subjected to discursive examination from the *moral point of view*, which forms the rational core of all claims to legitimacy and makes *the equal satisfaction of the interests of every potentially affected person* into a duty.

Although the procedure of the discursive examination of truth claims serves as the model for this operation, there are obvious differences. Because truth as a mode of validity is a semantic property of statements, the truth claims raised in discourse are examined with reference to natural states of affairs in the world, where by 'natural' we mean that these objects of experience—unlike the social components of the symbolically structured lifeworld—do not already possess the character of validity. In contrast, the obligatory meaning of normative validity claims that have become problematic is in a sense first *imported from society* into practical discourse with corresponding normative assertions. In this transfer, the normative claims to validity are treated *like* binary truth claims

under the hypothetical aspect of the susceptibility to truth or falsehood. As a result, they lose the essentialist character of a fact that they owe in society to the power of the social binding force that steers interactions. From this origin, however, they retain the inherently epistemic meaning of deserving intersubjective recognition, even from the point of view of participants in discourse who are testing that claim as a hypothesis. We can therefore assert that, contrary to the moral realist conception, normative validity claims can be understood only as *analogous* to truth because, compared to the realist meaning of truth, they have an *inherently* epistemic meaning. Nevertheless, they can be understood as *analogous to truth* because, in contrast to the non-cognitivist view, they are open to discursive justification.

Another consequence follows from the difference between the two-place realist meaning of the truth of statements that express facts, on the one hand, and the three-place epistemic meaning of the validity of a norm, on the other. Because moral and societal norms not only call for a certain behavior, but are also directed to addressees from whom they demand the behavior in question, the binding validity of such a normative obligation has a *pragmatic meaning*—and not only a semantic one, like factual statements. And this is the key point for me when it comes to the deliberative concept of democratic self-legislation. The successful deliberative *justification* of a norm culminates *already* in the shared *conviction* of all those involved that the corresponding norm is in the equal interest of every one of them. But then the deliberative controversy over normative questions—unlike disputes over questions of fact—cannot be separated as a purely epistemic affair from the issue of reciprocal conviction.

(3) This critical reflection by a reviewer admittedly carries little weight, because all it has to criticize in the rigorous train of thought of a brilliant metacritical argument is that it fails to address the additional questions of moral cognition, which would in any case have required another book. Something similar can be said about the fact that the final chapter raises issues that shift the focus away from the democratic process of opinion and will formation by the citizens to the structure of the constitution. For example, the notion of 'citizens in robes' brings subjective rights into play to which active citizens can lay legal claim in pursuing general political goals by way of a constitutional complaint, a route that is anyway given undue prominence by the US-American slant of the book. A normative theory of democracy can be forgiven for failing to address the socio-structural, legal and organizational prerequisites for a functioning public sphere steered by mass media, not to mention the erosion of the states' political capacity to act by a globally unfettered financial capitalism—even if we admit that the post-democratic disintegration of these structures of the public sphere has meanwhile reached proportions that are jeopardizing the viability of Western democracies. But without a *systematic consideration* of the constitution, which institutionalizes the principle of popular sovereignty with the means of modern law and

in this way first reconciles it with the principle of the rule of law, a radical democratic reading of deliberative democracy remains *incomplete*. Under the aspect of self-legislation in particular, the recourse to basic rights and human rights and to a constitutional court that oversees their implementation renders a systematic treatment of the reflexive stage of democratic constitutional foundation indispensable. The self-application of the democratic idea to the process of drafting and enacting a democratic constitution was, after all, the most innovative aspect of the two constitutional revolutions of the late eighteenth century: the constitutional shape that democratic self-legislation assumes in modernity must at least be *conceivable* in turn as the result of a democratic process. For the historical moment of the constitutional founding is *perpetuated* in the constitution with the two-stage process of simple and constitution-amending legislation; it is *made permanent* through the ongoing process in which the unsaturated potential of human rights is progressively exhausted. This dynamic of the founding process is, as it were, the fire that flares up in all acts of self-legislation.

However, the *foundational* meaning of the democratic self-legislation of the citizenry for the political community remains latent in everyday life and comes to the fore only in exceptional situations of constitutional revision or revolutionary upheaval. Normally, however, it is reduced to the informal monitoring of the legislative and executive powers, which operate on the basis of a division of labor, through the process of opinion formation among the voting public armed with the sanctioning power of general elections, hence with the power to vote ruling majorities out of office. We must examine the organizational portion of the constitution and the structure of the political system, together with the underlying division of labor, as a whole and read it like a flow chart. Only in this way does it become intelligible how the democratic stream of the citizens' opinion and will formation in the public sphere branches out beyond the threshold of their electoral decisions and—besieged by the lobbying of the functional systems—is directed into the channels of party politics, legislation, jurisdiction, administration and government. It ultimately flows into the decisions resulting from compromises between functional necessities and deliberatively shaped votes within the framework of the laws. These results are in turn evaluated and criticized in the political public and then prompt new voter preferences. It is only from this system perspective that one can grasp the proportions of the *limited contribution* that the public opinion and will formation of democratic citizens normally can and should make under normative aspects to the legitimate exercise of political rule. Against the background of a vague constitutional *consensus*, this contribution consists solely in the issue-specific production of a maximally well-informed and justified *dissensus* that is reflected in election results. The political public should form *competing public opinions* on relevant issues and justified programs based on sufficiently informed contributions, so that each

citizen can make the most rationally motivated voting decision possible. Then the result of general elections determines the composition of parliaments, that is of the members of an assembly who deliberate and decide *with each other*. In these representative bodies, the rules of procedure are tailored to a deliberative format of opinion and will formation which justifies the presumption that majority decisions are more or less rationally acceptable.

A consideration of the structure of the constitution as a whole explains the forcefulness of the critique of the fundamental defeatism of the radical pluralists that Cristina Lafont develops under the heading, 'Hermeneutic Platitudes: Disagreement presupposes Agreement' (60ff.). At least an implicit background consensus among citizens about the simple *meaning* of democratic self-legislation is necessary if the dynamics of the legislative process are to be left entirely to the regulated discursive dispute and to the temporary subjugation of minorities to rationally motivated majority decisions, which is acceptable insofar as the deliberative decision-making process has the power to generate legitimacy. After all, the constitution merely spells out the citizens' will to obey only the laws that they give to themselves. Against the background of such a constitutional consensus, the political process itself can then consist of a flood of disagreements, which is stirred up again and again by the search for rationally acceptable decisions oriented to truth. The deliberative character of the voters' political opinion and will formation *in the public sphere* is in any case not measured by the consensus reached, but by the orientation of the participants to truth and the discursive level of an open-ended conflict of opinions out of which *competing* public opinions emerge. The dynamics of an enduring disagreement in the public sphere also shape the competition between the political parties and the antagonism between government and opposition, although these lead to binding decisions in parliament. All that is needed to institutionalize the unfettered anarchic power of saying 'no' in public debates and election campaigns, in the conflict between the political parties, and in the negotiations of parliament and its committees is simply the prior political integration of the citizens in the consensus over the basic intention of their constitution. But we must not forget the other side of the coin: this consensus must in turn be able to confirm and regenerate itself in the *experience* of the rationalizing power of a conflict of opinions that remains recognizable as a dispute about the better reasons. The political regression into which the Western democracies have been drawn today can be measured by the decline, and in some countries already almost the disappearance, of this rationalizing power of public debates.

This book has the merit of working out convincingly precisely this intention of the constitution *against selective readings of the democratic process*. The meaning of liberal democracy is certainly to guarantee all citizens the same private and public freedoms. But the point of the 'equal value' that these subjective rights must be able to generate for everyone, as Rawls emphasizes, calls for

the actual use of the political participation rights, because only rights that arise from democratic self-legislation can acquire equal value for everyone. The point that Cristina Lafont wants to make is that democracy should be understood as the shared project of the citizens to achieve continued *political self-empowerment*, and this consists

in active participation in the joint deliberative process of self-legislation.

Translated by Ciaran Cronin Commentary

Competing Interests

The author has no competing interests to declare.

How to cite this article: Habermas, J. (2020). Commentary on, Cristina Lafont, *Democracy Without Shortcuts*. *Journal of Deliberative Democracy*, 16(2), pp.10–14. DOI: <https://doi.org/10.16997/jdd.397>

Submitted: 09 March 2020

Accepted: 16 June 2020

Published: 14 October 2020

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