

Sticking to the Long Road of Participatory Democracy: Replies to my Critics

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Krisis 40 (1): 144-164.

Abstract

This essay is part of a dossier on Cristina Lafont's book *Democracy without Shortcuts*.

Keywords

Deliberative democracy, Participation, Democratic legitimacy, Expert knowledge, Mini-publics

DOI

[10.21827/krisis.40.1.37053](https://doi.org/10.21827/krisis.40.1.37053)

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Sticking to the Long Road of Participatory Democracy: Replies to My Critics

Cristina Lafont

An author can ask for no greater gift than excellent challenges and criticisms from colleagues who are deeply engaged in the same topics. I am extremely grateful to have the opportunity to think through the reactions and critiques posed by these contributions. While I cannot provide a full response to each critic I will focus on some of the central questions that underlie their criticisms. I shall address these central questions in the order in which they show up in the book.

1. The Book's Aims and Audiences

Pieter Pekelharing adopts the perspective of a citizen addressed by the book and skillfully uncovers some of the “hidden” messages that are directed at citizens but which are scattered throughout the book and often buried amidst scholarly discussions. In so doing, he takes the pulse of the book and makes its deepest motivations explicit. He gets them exactly right. Citizens who care about the future of democracy need to remember that being a democrat consists in accepting that all those who are subject to the law have equal rights to be co-authors of the law. We are stuck with one another and no one has the right to pick and choose who to exclude. For all their differences, what technocratic and populist attacks against democracy have in common is that they question this fundamental democratic commitment. They try to lure citizens into the antidemocratic trap of thinking that they can get better outcomes faster by leaving their fellow citizens behind. Citizens must resist this temptation and stick to the long democratic road even if doing so is “no fun.” Convincing citizens of the importance and urgency of this message is the deepest aim of the book. But how is my book supposed to help achieve this? Pekelharing asks whether it is simply the understanding of citizens themselves that the book aims to change. The answer is “Yes and No”. Let me explain.

First, we do need to “change the understanding” of citizens who believe that populism, technocracy, or lottocracy can help us tackle urgent problems without endangering democracy. With respect to these threatening tendencies, the parallelism to Wittgenstein’s quote is apt. At a fundamental level I very much hope that we can keep current democratic institutions and practices as they are! If the attacks on democratic institutions that we are currently witnessing

in the US, Hungary, Poland, Brazil, India, Russia, and so on, succeed and continue spreading, then we risk losing the democratic institutions and practices that Pikelharing seems to confidently assume we can continue to count on. But, one may ask, if the book's argument is roughly right, why would citizens believe that populism, technocracy, or lottocracy offer democratic solutions to current problems? This question points to yet another aim and audience of the book. The most straightforward way to describe this aim is as a critique of ideology. The three conceptions of democracy I criticize in the book are quite widespread across the social sciences. Many democratic theorists and practitioners vigorously defend these conceptions. However, on closer inspection, it turns out that these are not conceptions of democracy at all, but rather conceptions of something else. Each of these conceptions expects or requires citizens to blindly defer to the decisions of others. To the extent that they do so, they fail to offer a defense of the democratic ideal of self-government under any minimally plausible interpretation of that ideal. Indeed, since all of these conceptions expect or require blind deference from citizens, their democratic claim is ideological. Now, ideology critique aims at "changing our understanding," but it would be odd to equate this to Wittgenstein's aspiration of "leaving everything as it is." My hopes are certainly higher. This particular critique addresses not only ordinary citizens but, above all, influential scholars and practitioners who defend the democratic credentials of deep pluralists, epistocratic, and lottocratic proposals for institutional reform. I am trying to redirect their institutional imagination and influence towards proposals for reform that will bring about genuine democratization.

This points towards the negative part of my answer to Pikelharing's question. The book does not *only* aim to change citizens' understanding of democracy. It has practical and institutional aims as well. First, it aims to show that a participatory conception of deliberative democracy does not have to be "utopian"—at least not in the bad sense of the term. To the contrary, it can guide action. The *participatory* conception of deliberative democracy the book articulates is an alternative to a purely *epistemic* conception of deliberative democracy. The latter conception understands the importance of political deliberation in terms of the epistemic benefits of identifying 'better' policies 'faster,' which will then lead to better political outcomes. On the basis of this understanding of deliberation the functions and significance of the various political institutions, the public sphere, and the deliberative system as a whole, are interpreted from an exclusively epistemic perspective. By contrast, a participatory conception of deliberative

democracy understands the importance of political deliberation in terms of enabling citizens to participate in a project of self-government. By grounding my account in a participatory understanding of deliberation I can articulate an interpretation of the significance of main political institutions and democratic sites which is significantly different from that of rival conceptions. This approach also allows me to judge the likely democratic import and efficacy of institutions that may be created in the future. For instance, I offer an alternative interpretation of democratic innovations such as minipublics, and a democratic interpretation of the institutions of judicial review. The book hopes to shape citizens' attitudes toward these and other democratic institutions so that they can identify with them and endorse them as their own.

An additional aim of the book is to get democratic practitioners to shape their proposals (e.g. for institutionalizing minipublics) in a genuinely participatory direction. While this is something I am quite invested in, it is not the book's central aim. Above all, the book hopes to offer some guidance to citizens in their political struggles towards institutional reform and democratization. The book aims to help citizens identify those proposals that would *eliminate* anti-democratic shortcuts that are currently preventing the political system from being properly responsive to their interests and values, and distinguish them from proposals that, if implemented, would *add* antidemocratic shortcuts and thereby disempower them even further—albeit with the best of democratic intentions.

2. Substantive and Interpersonal Concerns

In her incisive contribution, Dorothea Gädeke raises the question of whether my distinction between substantive and interpersonal concerns ignores the extent to which both dimensions are inextricably linked. As she puts it, “the substantive concern with considerations of justice is rooted in the interpersonal concern with just relations among citizens.” (p. x). This gives me an occasion to clarify further what I am trying to get at with this distinction, which I admittedly discussed too briefly. There are several issues at stake here: the distinction between domination and alienation, between political equality and democratic control, and between political equality and substantive justice. Regarding the latter, Gädeke assumes that when I talk about political equality I mean merely “formal equality” and she argues that “substantive equality” cannot be distinguished or separated from substantive justice. However, this is not the distinction that I am aiming at in that context. I agree that an interpersonal concern with political equality is a concern with substantive (effective) and not merely “formal” equality. What I am arguing is

that, when citizens evaluate the substantive content of laws, concerns about substantive political equality (or non-domination) are not the only concerns that they have. Citizens may think that either they or others are wronged by certain laws for any number of reasons—not only because such laws enable unjust relations of domination between citizens. Laws may be utterly inefficient, they may be too risky, they may violate God’s commands, they may harm future generations, and so on. Notice that this may be the case even if these laws are passed in the absence of substantive inequalities in political power among either the decision-makers or the decision-takers. Indeed, in theory laws that citizens take to be wrong on their substantive merits may have come about through processes that neither involved nor generated any substantive inequalities of political power or domination—and all citizens may agree about this. I certainly do not dispute that most republican accounts of non-domination require substantive and not merely formal political equality (p. x). Nor do I dispute that the concern with substantive equality “includes a substantive concern with the content of laws and policies.” (p. x). What I am claiming is that the latter concern is broader than the former and is therefore not exhausted by it. This is why political alienation is a broader phenomenon than non-domination and cannot be reduced to it. My argument aims to show that the concern with political alienation explains why the democratic ideal of self-government is not only an ideal of substantive political equality or non-domination, but also an ideal of democratic control. In that context, republican accounts of non-domination like Pettit’s seem insufficient to justify the democratic ideal of self-government. As I argue in the book, democratic control may be *sufficient* to prevent non-domination, but the problem is that it does not seem to be *necessary*. Lottocracy offers the perfect counterexample for highlighting the difference between non-domination and democratic control. A political system in which decision-making on most political issues was delegated to a multiplicity of randomly selected groups of citizens that changed over time could exhibit (substantive) political equality or non-domination but it would still yield political alienation and thus a lack of democratic control. This would be the case regardless of whether the political decisions in question involved substantive inequalities or other forms of injustice. As I argue in detail in the book, no matter how good these political decisions would be, citizens would be alienated from them if they had no way to tell whether these decisions were based on reasons that they could reasonably endorse. They would not be able to identify with them and endorse them as their own.

The distinction between substantive and interpersonal concerns is also relevant for some of the issues that Just Serrano raises in his contribution. Let me begin by correcting something that is inaccurate. Contrary to what Serrano claims, I do not reject “the idea that the notion of truth (or of good outcomes) should play any role in justifying the scope and the procedures of democratic decision-making.” (p. x). I do reject *purely* epistemic justifications of democracy but that does not mean that I endorse *non-epistemic* ones. Like the overwhelming majority of deliberative democrats, I value democratic deliberation for its epistemic virtues. I also consider the concern for good outcomes to be essential for the justification of any political system. However, in my view *monist* justifications of democracy cannot succeed. What is needed is a *pluralist* strategy of justification (though, given my ecumenical aims, in the book I do not dwell on this point). I am not sure if this is what Serrano means by a “mixed model” (more on this below). My own view is that democratic procedures cannot be successfully justified simply by referring to either the epistemic value of their outcomes or their intrinsic political value. *Both* dimensions must be considered. In a nutshell, the pluralist justificatory strategy that I endorse runs as follows: Democratic procedures have both epistemic and non-epistemic value, and precisely because they can promise to simultaneously deliver on both (i.e. reasonable outcomes and political equality) their legitimacy is superior to that of political systems which sacrifice one for the sake of the other (e.g. authoritarian regimes that exclusively rely on ‘good outcomes’). It is precisely because democracies do not expect or require citizens to accept a trade-off between their epistemic and democratic aspirations (i.e. to give up on substantive correctness for the sake of democratic legitimacy or vice versa), that citizens can reflectively endorse the democratic ideal of self-government, at least as it is interpreted by a participatory conception of deliberative democracy. For democratic deliberation, in virtue of tracking the mutual justifiability of political decisions, assuming it does, can promise to secure the substantively best outcomes from among those that can achieve the free and reasoned assent of their members. A pluralist strategy along these lines does not need to prioritize either substantive or interpersonal concerns, as monist strategies of justification do (e.g. those that are defended by deep pluralists or by epistocrats), because democratic deliberation by its very nature simultaneously addresses both concerns.

Regarding the mixed model of justification that Serrano proposes, I have the impression that it does require prioritization. He seems to think of it as two independent justifications that are

complementary. He calls his model a “Dewey-based *epistemic* justification of democracy” (p. x; my italics). But, if I understood it correctly, the non-epistemic justification for democratic procedures is supposed to take priority over the epistemic value of social inquiry. This seems plausible. In order to determine *which* problems require social inquiry we first need to know *whose* problems are at stake. And, since constituencies that are defined differently would yield a different definition of the relevant problems to be solved, experimental social inquiry seems necessarily parasitic on a previous determination of the scope of the political community in question. I do not have enough information to evaluate the strategy of justification that Serrano proposes. But having two logically independent justifications that complement one another seems likely to yield precisely the problem I identify with Landemore’s strategy. When both justifications pull in opposite directions one would have to choose which one to prioritize. By contrast, the pluralist strategy of justification that I favor is not built from independent components. The epistemic and the democratic value of participatory deliberation are two sides of the same coin and cannot be pulled apart.

3. Transnational Courts and Mutual Justification

Gädeke fears that this may not be the case. In particular, she wonders whether the fact that I endorse transnational courts does not present precisely the sort of case where I am forced to choose between epistemic and democratic values, and where I end up prioritizing the former over the latter. According to this construal of my view, the legitimacy of “transnational courts that may subject national rulings to further scrutiny and even prompt legislative changes” (p. x) would be based on epistemic grounds, i.e. “on the truth-tracking epistemic dimension of political deliberation and the enriching potential of diverse points of view” (ibid.). But, as Gädeke rightly notes, such a view “risks losing track of the democratic criterion of demarcation that includes all citizens and excludes all non-citizens,” and which stands in tension with the book’s “emphasis on the (partial) contextuality of mutual justifiability to fellow citizens” (ibid.). Let me explain why this is not my view.

At the end of the book my very brief defense of the legitimacy of transnational human rights courts is not supposed to be based on epistemic grounds, although I do not deny or wish to underplay the epistemic value of enlarging public spheres beyond national borders. As Hauke Brunkhorst rightly points out in his contribution, “public debate must be *anarchic* and *borderless* [...] To come to the right decision, all arguments are equally important, and all arguments

available wherever and by whomever articulated, should be considered equally. The foreigner's voice matters as much as every other voice." (p. x). However, when it comes to determining everyone's fundamental rights, the main reason everyone's voice counts is not simply the potential epistemic benefits of cognitive diversity and inclusion that accrue to discourses generally. Instead, the main reason everyone's voice counts is that everyone is a member of an international human rights practice that aims to secure the protection of everyone's human rights worldwide. This global practice is predicated on the assumption that anyone's human rights violations are a matter of concern for everyone. This is why, whenever fundamental human rights are at stake, the proper scope of the obligation of "mutual justifiability to our fellow citizens" is *maximally inclusive* against the background of a *global community* constituted by international human rights law and practice. However, this claim is compatible with acknowledging that different political communities (e.g. local, national, and transnational) have some leeway with respect to how they interpret fundamental rights in light of their differences in cultural and historical experiences, the standard threats within those communities, how path dependencies have played out, and so on. The "margin of appreciation" doctrine of the European Court of Human Rights (ECtHR) is an explicit legal recognition of the legitimate room for variation in the interpretation of fundamental rights by different democratic communities and, consequently, of "the (partial) contextuality of mutual justifiability to our fellow citizens" (Gädeke, p. x) within that legitimate margin of appreciation.

This brings me to an important issue that Brunkhorst points out in his piece. In the book I emphasize how the institutions of judicial review can make an important contribution to the constitutionalization of political discourse about rights. However, this should not be taken as a blanket endorsement of all political projects where "ordinary legislation [is] replaced increasingly by the constitutionalization of legal norms." (p. x). Obviously, the constitutionalization of legal norms can only be as good as the content of the constitutional project itself. My discussion in the book focuses on the bills of rights that we typically find in democratic constitutions and my reference to transnational courts focuses on regional and international human rights courts. However, a transnational court like the European Court of Justice (ECJ) is a different case. As Brunkhorst rightly indicates (and, as many legal scholars have noted), constitutionalizing the primacy of competition law and market freedoms is a questionable political project precisely because it hinders the constitutionalization of political discourses about the

fundamental rights (especially social rights) of all European citizens.¹ Brunkhorst is right to point out that, “in this case, it makes not much sense to implement constitutional legislation as a trigger for deliberative learning before the constitutional and societal structure changes.” (p. x). As a European citizen myself, I certainly agree that we can only “enable evolutionary deliberative learning within a full-fledged European democracy” (p. x) if we first forge a new foundation of the Union that is grounded in a constitutional project which prioritizes the fundamental social and political rights of European citizens over competition law and market freedoms.

However, I think that a potential disagreement is looming in the background, given the two routes that Brunkhorst thinks we could use to implement the participatory conception of deliberative democracy that I articulate in the book. In cursory fashion he characterizes these implementation strategies with the formula “NGO’s + judges = democracy” or “people + parliaments = democracy.” I find both options equally insufficient. Pitting “parliaments” against “judges” suggests that we have to choose between either judicial or legislative supremacy, and Brunkhorst seems to favor the latter over the former. This preference is also suggested when he remarks that the US Supreme Court made a very small contribution in the comprehensive legislative reforms brought about by the New Deal in the 1930s and 40s, and in the civil rights movements of the 1960s and 70s. Perhaps the best way to show what is wrong with the two strategies that Brunkhorst offers is by focusing on the tripartite combination that he mentions earlier in his contribution, when he claims that “Lafont-style deliberative democracy should be implemented on all three levels of (1) will-formation, (2) law-making and (3) norm-creation by concretization of law.” This shows precisely what is wrong with endorsing either legislative or judicial supremacy, namely, that both routes fail to recognize the fundamental role of *the process of opinion and will-formation among the citizenry*. This process is the source of democratic legitimacy of political decision-making within both the legislature and the judiciary, and it cannot be equated with either body. My participatory interpretation of the legitimacy of judicial review focuses precisely on the way in which that procedure can contribute to generating an inclusive process of opinion and will-formation when majorities would not listen to the demands of disempowered minorities. In other words, it is the contribution of judicial review to level (1) that my interpretation highlights, and this does not fit with either of the two options that Brunkhorst offers (i.e. replacing level (2) with level (3) or vice versa). His claim

that the role of the Supreme Court in the process of legislation is “not comparable with that of Congress” (p. x) is trivially true but it gets the analysis exactly backwards. For the question is how to get Congress to act in the first place when the demands of disempowered minorities are excluded from the process of opinion and will-formation and, as a consequence, never become part of the legislative agenda in the first place. Social movements play an essential role here and legal contestation is an important tool that they can use to garner the requisite attention from consolidated majorities.

This claim leads Liesbeth Schoonheim to ask a very interesting and difficult question. Is there a criterion for distinguishing between legitimate and illegitimate uses of the right to legal contestation? In the book, I focus on cases in which non-profit civil rights organizations legally contest rights violations of vulnerable minorities on the basis of normative claims to justice. But what about strategic uses of judicial review by lobbying groups that represent the vested economic interests (which are often in *direct conflict* with the rights of many citizens) of big corporations? This is not a purely theoretical question. To the contrary, as I have shown elsewhere, big corporations can and do use judicial instruments, even human rights instruments and regional human rights courts, to defend their vested economic interests against the fundamental rights of citizens. This strategic use of the judiciary is on the rise and poses a very worrisome threat.² Indeed, in the case of the US Supreme Court this dynamic started even earlier.³ But there is a major difficulty in defending a normative criterion for distinguishing legitimate from illegitimate uses of the right to legal contestation. As Schoonheim rightly points out, in light of persistent disagreements, any proposed substantive criterion is likely to be rejected by some citizens. Thus, its defense would seem to require embracing an error theory that renders these citizens as “dupes” who are “mistaken about their views.” (p. x). Can this circle be squared?

I think so. In my view, the ideal of deliberative democracy contains the resources to answer this challenge. As I argue in the book, the proper criterion to judge the legitimacy of any form of political action in general—legal contestation included—is whether the actions in question support laws and policies that *can withstand public deliberative scrutiny*. Since this is not a substantive criterion its defense does not involve embracing an error theory. Yet, for that very same reason, it does not *a priori* rule out the possibility that the citizenry might, after public

scrutiny, take the economic interests of big corporations to be legitimate. However, from a democratic perspective, this is precisely as it should be. Political decisions are legitimate if they track considered public opinion, not “true opinion” according to some constituency or another. From a democratic point of view, mutual justifiability among those who will be subject to the decisions is what matters. In the book I focus on the example of organizing mini-publics on contested political issues, but the argument equally applies to any other use of democratic institutions (e.g. judicial review). If these institutions are functioning as intended, then the political actors who make use of them must meet two important conditions. First, they must be willing to subject their political agenda to deliberative scrutiny by their fellow citizens. Second, instead of simply ignoring or bypassing the results of this scrutiny, they must be sufficiently committed to democratic values such that they shape their political actions in response to what this scrutiny reveals, even if they are disappointed by the course of public deliberation. As we all know, many powerful political actors do not meet these conditions. Indeed, big corporations are increasingly bypassing domestic democratic institutions (e.g. using international arbitration procedures instead), precisely because they know that decisions which are made beyond national borders can more easily escape the public scrutiny of the affected citizenry.⁴ This is why it is all the more urgent for democratic citizens to recognize and fight against anti-democratic shortcuts before it is too late.

4. Agonism and the Force of the Better Argument

In her contribution Schoomhein also takes issue with the book’s criticism of agonism. I think that a major source of her misgivings has to do with the fact that I do not analyze or reconstruct the agonistic approach. I only focus on the variety of deep pluralism represented by authors such as Waldron, Bellamy, and Urbinati, but I do not analyze two other varieties: agonism and interest-group pluralism. These three varieties of deep pluralism share the fundamental assumption that is the focus of criticism in my book, namely, that political disagreement cannot be reasonably overcome. However, these approaches share that assumption for very different reasons and each approach is motivated by fundamental differences in how they understand the currency of politics. I only engage with a specific criticism of deliberative democracy made by agonist authors that I aim to rebut, namely, that deliberation which aims at reasonable agreement of political conflicts is at best naive and at worst a tool for the ideological subjection of oppressed minorities. Against this negative agonist assessment, I argue that political

deliberation *can* be empowering to those on the weaker side of power inequalities. Moreover, the way in which deliberation can be empowering cannot be accounted for within agonism, since it essentially depends on “the unforced force of the better argument” working its way into public deliberation among those citizens who do not see themselves as partisans within the existing conflict but who could in principle “join the cause” (and add their own share of power to it) if they could be convinced of the rightness of the cause through deliberation (with evidence, arguments, reasons, etc.). A perfect example of this dynamic is the extraordinary increase of recent support for the ‘Black Lives Matter’ movement among whites in the US following the nationwide protests touched off by the killing of George Floyd. I argue that this specific way of winning over the ‘common sense’ of a heretofore “uninvolved” or generally oblivious audience cannot be accounted for within the agonist model where political adversaries exploit their power differentials through bargaining and compromise (or are subject to an ‘irrational conversion’). Be that as it may, the aim of my argument is not to defend a specific interpretation of agonism but to show that agonism’s negative assessment of the politics of deliberative agreement is unjustified.

Now, with respect to my reconstruction of the conditions of the possibility of deliberative agreement, I would like to briefly clarify a point that Schoomhein raises which I suspect is based on a misunderstanding. She seems to interpret my *transcendental* claim about the conditions of the possibility of reaching agreement as a *predictive* claim about future outcomes. It is a condition of possibility of meaningfully engaging in a practice that their participants believe that it is *possible* to reach the practice’s aims. In other words, in order for the practice to make sense, participants must believe that they are not hopelessly trying to do something impossible. But this is not a predictive claim about the future. That something is possible does not mean that it will eventually happen, let alone that it will inexorably occur! I believe that reaching a settled view on rights is possible and that, with respect to some rights, it has in fact occurred in the past. But I certainly do not believe that this has happened by magic or through the sheer unfolding of history! I make very clear in the book that rights are hardly ever given away, that they must almost always be taken, and that such taking requires constant political struggle against those who are unwilling to give up their privileges. The outcomes of such struggles are uncertain and open-ended precisely because those who are fighting for their rights are starting from an already disempowered position. However, that does not mean that these

outcomes cannot be judged as more or less reasonable or unreasonable. One does not have to assume that progress is inevitable in order to criticize the view that the assumption of progress is *meaningless*, i.e. that any settlement on rights is as good as any other, since what is at stake is not reasons but rather sheer power.

5. Accommodating Expertise without Expertocratic Shortcuts

Lisa Herzog's contribution is a wonderful invitation to expand on and deepen my participatory interpretation of deliberative democracy so that it can address two crucial questions which are bracketed in the book, namely, the proper role of experts in politics and the proper scope of democracy beyond the political system. Let me briefly address the second question so that I can give a more detailed response to the first. As Herzog anticipates, the reason I bracket the question of the proper scope of democracy beyond the political system is by no means because the participatory conception I defend is optimally applied to a narrow view of democracy that is exclusively concerned with political institutions. To the contrary, as far as my own view is concerned, I completely agree with Herzog that we need to democratize the workplace, enable citizens to acquire the skills and political knowledge they need to participate in democratic deliberation, to create a regulatory framework that supports a genuinely democratic public discourse and, above all, to rein in the global capitalist economy so that all citizens can make effective use of their political rights to freely determine their priorities and objectives in a context of genuine political choices. The reason I leave the question of the proper scope of democracy open is to more effectively address two other questions that the book aims to put to rest for good. First, deliberative democrats may disagree on which social institutions and dimensions to include within their approaches to democracy, but they cannot take citizens' deliberation in the public sphere as ancillary to their approach. Given the conception of democratic legitimacy that deliberative democrats endorse, they cannot embrace purely epistemic orlottocratic approaches that bypass macro-deliberation in the public sphere and which only focus upon micro-deliberation among experts. Second, focusing on the political system helps to undermine the widespread assumption that participatory democracy is a species of direct democracy and that it is therefore only applicable to "local" contexts (such as the family or the workplace) but not to representative political institutions.

This connects with Herzog's second question: what is the proper relationship between expert deliberation and public deliberation among the citizenry when complex scientific and

technical questions are inextricably involved in crucial political decisions—for example, decisions related to the current pandemic or to climate change? Needless to say, this is a very complex issue that I cannot properly answer within the space of this essay. But I can try to give at least the gist of what I consider the right approach to the role of expert knowledge in politics on the basis of the participatory conception that I defend in the book.

As I argue in the book, we need a more complex picture of the division of labor between experts and ordinary citizens than the simple model that Christiano articulates on the basis of the ends / means distinction. However, the more complex picture I envision does not reject Christiano’s model. It includes it. The model I have in mind distinguishes *two* (mutually irreducible) dimensions of political projects in constitutional democracies: on the one hand, the constitutional commitment to the equal protection of the fundamental rights and freedoms of all citizens and, on the other, the specific collective goals, or, as Christiano puts it, the “bundles of aims” that each political community would like to pursue at a given time. Whereas the ends / means distinction is helpful with regard to the second dimension, it is not helpful once we take the first dimension into account. Taking the equal protection of fundamental rights and freedoms as just another political ‘end’ to be balanced alongside, say, ‘economic prosperity,’ ‘ecological sustainability,’ ‘low inflation’, etc., gives the wrong picture of the relationship between constitutional rights and policy aims. However, if the equal protection of everyone’s fundamental rights and freedoms is a constraint on policy aims as much as on legislative means, then, contrary to what seems to be suggested by Christiano’s division of labor, citizens cannot leave decisions about legislative means for reaching collective ends entirely up to experts. For, even if such legislative means are actually efficient at achieving the ends in question, they may nonetheless violate the fundamental rights and freedoms of some citizens.

However, the claim that citizens need to keep an eye not only on the political ends themselves, but also on the technical means employed to reach them because they may negatively impact their fundamental rights, does not impugn the claim that the proper political role of experts is to inform the public of the available technical means to achieve citizens’ political ends, the different levels of risk associated with these means, and their potential impact on citizens’ rights and well-being. Granted, in political debates that involve expert knowledge, questions

about means may be difficult to disentangle from questions about ends—even more so when experts disagree among themselves on the proper advice or the best strategies. However, the *normative justification* for the division of labor between experts and the citizenry alongside the ends / means distinction is straightforward. No matter how difficult selecting the best experts may be in particular cases, especially when contested political issues are at stake, what is clear is that experts are selected exclusively for their expert knowledge, not for their political preferences or personal values. Experts can offer technical advice but have no particular right to impose their values and preferences upon their fellow citizens. Current political debates concerning the global pandemic offer an excellent example. Doctors, epidemiologists, economists, and other relevant experts can inform us of the difficult choices we are likely to face in light of a scarcity of medical resources or the potential collapse of different sectors of the economy, but they cannot make these choices for us. The citizenry as a whole must make the tough choices of deciding which economic risks are worth taking in order to save lives, which fundamental rights and freedoms are worth limiting in order to keep the economy going, how much personal risks first responders can be asked to take on, what the proper social compensation is for taking on that risk, and so on. The input of experts is necessary for answering these questions but it is obviously not sufficient. Citizens must take *their own risks* in light of *their own values and preferences*.

Even if this is granted in general, a vexing question remains. If lay citizens lack the competence required to understand and process the highly technical knowledge involved in complex political issues, then how can experts properly “inform” citizens so that they can make sound political decisions? The problem is compounded when the experts themselves disagree on the proper information and advice. How can lay citizens adjudicate among conflicting bodies of expert knowledge and advice if they themselves lack expertise in the areas in question? These are very complex questions and I cannot provide exhaustive answers here. Herzog’s suggestions about increasing the level of scientific education throughout the citizenry or creating stronger accountability structures for scientific organizations and the media seem like essential and urgently needed policy aims. But I would also like to highlight the important contributions of other political actors that Herzog does not mention. I am thinking of the division of labor between lay citizens and political organizations such as political parties. Focusing on them will also allow me to address the very important questions that Ronald Tinnevelt raises in his

contribution.

6. Political Parties and Public Reason

Among the many crucial functions that political parties have traditionally fulfilled, an essential one that is particularly relevant in our context is providing the kind of “translation mechanisms for highly specialized expert knowledge” that Herzog rightly insists are needed. In contrast to lay citizens, political parties have the organizational capacity and strong incentives to access, process, and translate specialized expert knowledge into plain terms that bear upon key political issues which they need to include in their political programs to make them attractive to the citizenry. One utterly essential component of the unique role that political parties play in mediating between the citizenry and the political system consists precisely in their ability to articulate feasible political programs that can be translated into public policy which effectively addresses citizens’ demands and expectations. On the one hand, parties must be able to reliably identify the interests, needs, values and policy objectives of the citizenry and, on the other, they must have reliable access to the expert knowledge which they need in order to articulate feasible public policies that can successfully address citizens’ demands. In the book, I do not offer an analysis of political parties. However, as Tinnevelt rightly guesses, by endorsing Habermas’ feedback loop model of political deliberation my participatory conception of deliberative democracy recognizes the substantive role that political parties *can* play in the process of political opinion and will-formation due to their unique characteristics. In fact, I agree with Tinnevelt’s characterization of political parties’ key functions. At their best political parties (1) offer ongoing opportunities for political participation; (2) structure and focus public deliberation by identifying salient problems, needed solutions, etc.; (3) articulate and defend competing political visions that help citizens identify what is at stake in each case, what is feasible, and so on; and they do so by (4) articulating diverse conceptions of the public good which can appeal to a wider public.

One of the reasons I do not address political parties in the book is because at our current historical juncture it is unclear whether we can still rely on political parties to actually fulfill these essential functions in the foreseeable future. It is no secret that national political parties are in crisis for precisely this reason. They seem to be woefully unable to provide citizens with meaningful political choices. Catch-all parties have become ideologically indistinguishable from one another and are consequently in alarming decline. Populist parties that openly

advocate for factional political choices and explicitly defend policies in terms of the interests of a narrow base they cater to—a base characterized as “the real people”—are on the rise. If political parties are to fulfill their essential functions once again then they would need to be able to offer actual solutions to the many transnational and global problems that threaten the fundamental interests and needs of citizens. Given the constraints imposed by the global economy within which states are embedded, it is far from clear whether the declining ability of national parties to shape autonomous policies can actually be overcome.⁵ I certainly hope that political parties manage to overcome the current crisis and can once again fulfill their essential functions. Working from the assumption that they will do, let me address two important questions that Tinnevelt raises in his piece: one concerns my institutional account of public reason and the other the similarities and differences between political parties and deliberative minipublics.

With respect to the first issue, Tinnevelt wonders whether my participatory conception of deliberative democracy can incorporate the mediating functions of political parties in a coherent institutional approach to public justification. A key question here is whether my account of public justification is capable of lifting some of the burdensome constraints on partisan advocacy that are entailed by Rawls’ and Habermas’ conceptions of public reason. I do think that my account can do this. The key to responding to this question lies with the fourth function that Tinnevelt ascribes to political parties. In contrast to factions, political parties are supposed to make claims regarding the public good, i.e. to propose policies that are in the public interest and that precisely *for that reason* can in principle be endorsed by all citizens. Although different political parties represent different ideologies and conceptions of the good, in constitutional democracies they are all committed to the equal protection of the constitutional rights and freedoms of all citizens. To the extent that this is the case, their partisan advocacy is subject to the same accountability proviso to which all forms of public political deliberation are subject. According to my account, political parties can advocate for any partisan policies they favor and can justify them on religious or otherwise comprehensive grounds *provided that* they can show, against objections, the policies in question are compatible with the equal protection of the fundamental rights and freedoms of all citizens. In contrast to Rawls’ and Habermas’ conceptions of public reason, my conception does not require any *a priori* demarcation between different “types” of public discourse or institutional

contexts in which the use of different types of reasons is appropriate. Whether public reasons or comprehensive reasons are needed or appropriate in a given context does not depend on *the type of actor or institution* that is deliberating, but on *the question* that is the focus of public deliberation at any given time. This is what Rawls' exclusion model and Habermas' translation model both get wrong. In contrast, the prioritizing model that I propose is perfectly compatible with recognizing that political advocacy cannot and need not be neutral towards (religious or secular) conceptions of the good. To the contrary, it seems quite clear that a *crucial* element of advocating for the adoption of a specific policy is that one offers arguments and reasons that purport to show why the practices the policy regulates are good, beneficial, worth protecting, or whatever the case may be. Indeed, so long as there is no particular reason to assume that a policy under discussion is incompatible with the protection of some fundamental rights and freedoms, public deliberation will typically be about whether or not the policy's enactment would be beneficial, desirable, advantageous, valuable, and so on. Political parties participating in these sorts of debates will offer reasons that draw upon their partisan commitments, values, and goals, as articulated by whatever (religious or secular) conceptions of the good they happen to hold. However, as soon as some citizens object that the policy in question violates a fundamental right or freedom, then political parties—like any other participants in public deliberation—will have to follow suit and prioritize the settlement of *that* question before they can resume their deliberation on any of the other issues related to that policy.

The second question concerns the similarities and differences between political parties and deliberative minipublics. Tinnevelt points out that both institutions “seem to fulfill similar functions” (p. x) in terms of contributing to improve the quality of deliberation in the public sphere. It is true that my analysis of the participatory uses of minipublics focuses on their potential contribution to facilitate and improve public deliberation among the citizenry. However, in my view this is the only function that they share with political parties. The fundamental difference between political parties and deliberative minipublics is that parties are capable of articulating and pursuing comprehensive political programs, whereas randomly selected citizens lack the ability, the expert knowledge, and the continuity over time that is needed to do so. Minipublics can offer no alternative to political parties because they lack the capacity to articulate well-informed, comprehensive, and feasible political programs that can

be translated into binding public policies which successfully address citizens' demands. This is what we need political parties for, and what deliberative minipublics cannot meaningfully accomplish. This brings me to the challenges that Bill Talbot poses to my approach to minipublics in his very interesting piece.

7. Lottocracy Revisited

The current crisis besetting political parties makes it sensible to consider whether institutional innovations such as minipublics may offer feasible alternatives to the status quo. Minipublics may not compete well against *ideal parties* that fulfill their essential mediating functions, but the more relevant question is whether they may outcompete the highly dysfunctional political parties which we currently find in democratic societies. Among other reasons, political parties fail to fulfill their mediating functions because they are out of touch with the citizenry. Party officials have stronger incentives to cater to the interests of a wealthy minority in order to secure their re-election than to be responsive to the interests and needs of the citizenry. Thus, if establishing stronger "links" between the citizenry and the government is a key concern, then eliminating the 'middleman' (parties) would seem to be a good solution. The lottocratic alternative seems more promising, as parties and elections would be eliminated altogether and assemblies of randomly selected citizens would directly implement citizens' demands. Instead of having to constantly counteract parties' oligarchic tendencies, why not establish deliberative minipublics as the institutions that mediate between the citizenry and the government? Talbot offers a plethora of examples from the US which vividly illustrate the extent to which political parties fail to be responsive to the interests, needs and demands of the citizenry. Indeed, even policies that are supported by a large *supermajority* of citizens cannot make it through the legislative process. As a solution, he proposes to establish a lottocracy through a step-by-step process. In a gradual process of empowering minipublics the first two steps would be to charge them with passing legislation which focuses on two specific types of political issues: 1) issues "on which a large majority of public opinion favors one alternative" (p. x), for example 2/3 (66.6%) of the citizenry; and 2) issues on which the general public has no opinion (either because they are too technical or because there is a lack of salience).

Instead of rehearsing the general arguments against empowering minipublics that I already offer in the book, let me focus on some additional problems I see with this proposal. It is not

clear to me what specific function minipublics are supposed to fulfill in the first case. If their function is to simply pass legislation on every issue that is favored by 66.6% of the citizenry, it is unclear why they would need to deliberate or why a representative sample of the citizenry is needed at all. We might as well get that result by organizing binding referenda on each of these issues or by giving the mandate to pass the legislation in question to a committee organized for that purpose. In fact, if the goal is to pass legislation that is responsive to actual public opinion, then organizing deliberative minipublics would seem a particularly risky route to choose. It is well-known that participants in deliberative minipublics very often *change* their initial opinions quite dramatically as a consequence of deliberation. As such, it would often be the case that their considered judgements after deliberation no longer coincide with actual public opinion, and thus they would fail to pass the legislation that enjoys the support of 2/3 of the citizenry.⁶ But if they are empowered to pass the legislation in question according to their own considered judgments, regardless of whether it has the support of 2/3 of the citizenry, then we no longer have a criterion for determining which legislation they should take on. Moreover, if they are allowed to pass legislation that goes against the actual opinion of large majorities, then the legitimacy of their authority cannot be based on the democratic ground of an overall responsiveness to citizens' demands. At best it would be based on epistocratic, but not on democratic, grounds.

This problem is even more obvious if minipublics are in charge of passing legislation where the citizenry has no opinion. In contrast to the first case, in the second case we clearly cannot rely on the citizenry as an agenda-setter. Talbott does not tell us who the agenda-setter will be, although agenda-setting is a quintessential political function that needs to be subject to democratic control. Be that as it may, it is clear that a democratic concern is not what drives Talbott's proposal, since he justifies it precisely as a shortcut to avoid the long road of having to educate the citizenry so that they reach considered judgments on the issues in question (p. x). Against this type of proposal, I can only repeat the two arguments I offer in the book: this form of political decision-making won't be democratic and it won't work. Expecting citizens to blindly defer to the decisions of minipublics' participants without knowing whether they are based on reasons that they can reasonably accept would make it impossible for citizens to see themselves as participants in a democratic project of self-government. And only if citizens can identify with the decisions in question and endorse them as at least reasonable would they

be willing to do their part so that the expected ‘better outcomes’ actually materialize. But, in addition to these arguments I offer in the book, I would like to bring up another important argument against lottocracy that it is particularly relevant precisely in the context of comparing political parties and deliberative minipublics.

A major source of support for lottocracy is based on its potential to avoid the corruption and co-optation that characterizes parties and elections by using random selection procedures instead. In contrast to political elites, randomly selected ordinary citizens cannot easily be bought or co-opted and are likely for that reason to maintain an orientation towards the common good when making political decisions.⁷ However, to reap those benefits, it is essential that minipublics are organized to make only some specific decisions and that their participants keep changing over time so that they do not become professional members of a political elite. But this is precisely the reason why minipublics cannot fulfill the essential functions of political parties. Even if one sets aside the crucial question of who is supposed to be the agenda-setter in a lottocracy, that is, even if we assume that there is a democratically legitimate way of determining which political issues minipublics will be taking on, then we would still face the problem of a lack of policy coherence among the discrete decisions made by each minipublic without any mutual coordination among them. Even if each minipublic makes the optimal decision on the specific legislative issue at stake there is no guarantee that all the decisions made by different minipublics would add up to a coherent political program that could be implemented over time in a sustainable way (from an economic, fiscal, social or ecological perspective). Unless political *priorities* are set it would be impossible to determine the available budget. But without such a determination minipublics’ discrete and unconnected decisions on education, health, employment, energy, the environment, and so forth, are likely to be fiscally unsustainable, incoherent or in direct conflict with one another. Following the preferences of a large majority of citizens, it is easy to imagine some minipublics passing legislation that lowers taxes and other minipublics passing legislation that increases services. The discrete, uncoordinated, and short-term way of operation of minipublics that is supposed to shield them from the political vices which afflict political parties is also the reason why minipublics cannot fulfill political parties’ crucial function of articulating *coherent* political programs that can be implemented in a *sustainable* way over time. Political parties and professional politicians can articulate coherent political programs because they can set short- and

long-term priorities, take the resulting scarcity of resources into account, ensure a fair allocation of resources across different social groups, negotiate specific compromises, etc. In order to fulfill all these functions, lottocracies would need to reinvent political parties.

Notes

- 1] See Grimm (2015). I offer a critical analysis of the neoliberal constitutional project at the global level (i.e., as regards global economic institutions) in Lafont (2018).
- 2] See Lafont (2016).
- 3] For an excellent historical overview see Hartmann (2010).
- 4] I analyze this issue in Lafont (2018).
- 5] See e.g. Schäfer & Streeck (2013).
- 6] For an actual example of a dramatic change of opinion (a drop of support from 69% to 35%) among minipublics' participants regarding legislation to privatize the Japanese pension system see Fishkin (2018, 172-173).
- 7] For an interesting argument against these optimistic assumptions about lottocracy see Landa & Pevnik (2020).

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Biography

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