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A militant defence of democracy: A few replies to my critics

Cristina Lafont
Northwestern University, USA

Abstract

In this essay, I address some questions and challenges brought about by the contributors to this special issue on my book '*Democracy without Shortcuts*'. First, I clarify different aspects of my critique of deep pluralist conceptions of democracy to highlight the core incompatibilities with the participatory conception of deliberative democracy that I defend in the book. Second, I distinguish different senses of the concept of 'blind deference' that I use in the book to clarify several aspects and consequences of my critique of epistocratic conceptions of democracy and their search for 'expertocratic shortcuts'. This in turn helps me briefly address the difficult question of the proper role of experts in a democracy. Third, I address potential uses of empowered minipublics that I did not discuss in the book and highlight some reasons to worry about their lack of accountability. This discussion in turn leads me to address the difficult question of which institutions are best suited to represent the transgenerational collective people who are supposed to own a constitutional project. Finally, I address some interesting suggestions for how to move the book's project forward.

Keywords

deliberative democracy, democratic legitimacy, disagreement, judicial review, participation, pluralism

First and foremost, I would like to thank Regina Kreide for organizing this symposium, as well as the workshop at the University of Giessen from which this initiative sprang. I am also extremely grateful to all the participants for providing such interesting comments on and challenges to the main ideas of my book. A high-calibre engagement with one's book like that here is the best that an author can hope for. Given the space

Corresponding author:
Cristina Lafont, Department of Philosophy, Northwestern University, Kresge 3441, 1880 Campus Drive, Evanston, IL 60208, USA.
Email: clafont@northwestern.edu

constraints, I cannot address all the important issues raised by each of the contributors. But, I hope that my brief replies are just the first step in an ongoing dialogue. I will proceed by clustering the overlapping issues brought up by different contributors and then will discuss them in the order that they arise in the book.

1. Confronting the deep pluralist challenge

In her contribution, Seyla Benhabib takes the pulse of the book and sumps it up nicely. The book is a militant defence of democracy in hard times. But it is not a defence of democracy against sceptics or oligarchs. Rather, it is a restatement of what democracy is all about. It is a message from one democratic citizen to other democratic citizens that tries to remind us of what is at stake for democracy in these critical times. It aims to help ensure that we are not fooled by non-democratic alternatives and that we keep our eyes on reaching the democratic goal. After four decades of neoliberal technocratic rule that led to the 2008 financial crisis, austerity politics and an unprecedented increase in inequality, we are now witnessing the backlash of rising populism and ethnonationalism. Populist leaders are promising electoral majorities that they will give control back to 'the people' by taking it away from political elites and other 'enemies of the people'. The current situation suggests that democracies are stuck between populism and technocracy, between the rule of experts and mob rule. In their crudest forms, it is easy to spot how both alternatives exclude people from and thereby threaten democratic rule. However, this dynamic becomes harder to see with more sophisticated varieties of populism or technocracy, especially those that are defended in the name of democracy itself.

In the book, I focus on three such conceptions of democracy: deep pluralism, epistocracy and lottocracy. I argue that all three fail to live up to the democratic ideal of inclusion in political decision-making. Deep pluralism endorses the 'rule of the majority', whereas epistocracy and lottocracy endorse a 'rule of the minority'. To the extent that all of them fail to vindicate the 'rule of the people' their claims to be democratic are ideological. The first part of the book identifies the exclusionary implications of each of these conceptions. However, this is done only at the theoretical level without making explicit all their problematic political implications. In her contribution, Jean Cohen takes this additional step with regard to deep pluralism. With a sharp eye, she digs out the worrisome political implications of deep pluralism by showing its internal affinities with populism. The theoretical support that deep pluralism offers to populism motivates my critique of deep pluralism but it remains inchoate in the book. Cohen gets it exactly right:

> populism predicated on blind deference to the populist leader, shows, paradoxically, where an anti-deliberative, deep pluralist and agonistic purely majoritarian conceptions of democracy are likely to end up. Lafont's remedy for the political alienation that populists rightly criticize is far more feasibly democratic than all of the alternatives she cogently criticizes, including populism itself. (p. 5)

Now, this is what the book aims to defend against deep pluralism's claims to the contrary. But Cohen also suggests that my defence of democratic deliberation would have been stronger if I had avoided giving the impression that political consensus is

supposed to be permanent. This assumption would amount to 'construing norms like facts, as objectively valid independent of our own and others' considered judgments' (p. 4). More strenuously emphasizing both the indeterminacy and fallibility of the process in which we interpret political decisions would have made it clearer that 'we can learn from our mistakes regarding the stakes, implications and logic of our settled positions over time' (ibid). In a similar vein, Benhabib points out that my criticism of pure proceduralism seems to rest on a commitment to some substantive criteria of correctness from which the legitimacy of procedures can be judged. This tacit substantivism overlooks how 'the safeguards of the procedure are themselves open to interpretation and disagreement recursively and iteratively . . . We are always already in the midst of a conversation about our fundamental rights' (p. 4).

These are complex philosophical topics and I cannot address them properly here. But, let me make a few remarks about how I understand the approach articulated in the book. I do not endorse a correctness view of legitimacy. In my view, substantively incorrect decisions may nonetheless be legitimate. My reconstruction of deliberative practices assumes that citizens endorse different substantive criteria of justice and that they believe that grave substantive injustices can undermine procedural legitimacy. This may involve believing that the validity of norms is independent of our considered judgments about them. Because of my ecumenical approach, I do not offer a meta-ethical account of 'normative rightness' in the book. However, I think that a variety of such accounts may be compatible with the account of 'democratic legitimacy' that I defend in the book. Here is why. Irrespective of the specific substantive criteria of rightness that democratic citizens endorse, they *also* accept that all those subject to the law have equal rights to be co-legislators. Since citizens disagree on the substantive criteria they endorse, they need to distinguish between reasonable and unreasonable decisions and accept that some collective decisions that they find substantively incorrect may nonetheless be reasonable and thus legitimate. If all citizens have equal rights to be co-legislators, democracy cannot be the 'rule of true opinion, according to someone or other'. Rather, it can only be the 'rule of considered public opinion'.

However, if deep pluralism is right and disagreements among citizens run so deep that they cannot be reasonably overcome, then the aim of reaching a considered public opinion is *impossible*. Any temporary agreement is therefore as good as any other and, from a substantive point of view, citizens cannot judge them as more or less reasonable or unreasonable. This view is incompatible with fallibilism. The assumption that we can learn means that we can also distinguish between what is right and what is wrong and that reasons, arguments, evidence and so forth *can* make a difference in our judgments about what is reasonable and what is not. However, to defend this position, we neither need to assume that some substantive criteria for judging the quality of reasons or the deliberation processes are 'correct' such that they are immunized from challenge or criticism nor do we need to assume that a *permanent* consensus is reached when citizens finally hit upon these criteria. I am not sure where Cohen gets this impression. In fact, it is deep pluralism that offers the possibility of a permanent settlement in the midst of deep disagreements through the procedural shortcut of majority rule. By contrast, the *recursive* principle of modified majoritarianism that I defend takes away the *finality* of pure proceduralism. This is precisely the point of endorsing an institutional approach. This

approach requires that institutions be in place that enable the possibility of opening and reopening debate and further scrutiny as an open-ended process. As I indicate in the book, this approach is *only* compatible with an *iterative view* of the kind that Benhabib also defends. There is no space (or theoretical need) for vacillation towards substantivism here.

David Rasmussen worries that my institutional approach may rest on a hypothesis of progress, finality or directionality of the kind that would require endorsing a philosophy of history. This hypothesis would ground the expectation that, once the right institutions are in place, our legal consensuses would also be rational ones. This expectation would be grounded merely on the assurance that reaching such consensuses is something that has succeeded in the past. Relying on history to do the hard, political work for us would be a monumental shortcut. Judged against the standard of avoiding shortcuts set by the book, Rasmussen contends that ironically 'the institutional move based on a hypothetical is itself a shortcut' (p. x). I think that this reading is based on a misunderstanding. Rasmussen 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 aims to reach a reasonable agreement that their participants believe that reaching that aim is *possibl*e. 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 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 a disempowered position. My inclusion of condition (3), namely, the assumption that public justification is an aim that 'can succeed (and it has in fact often succeeded in the past)' is required to specify the meaning of 'possibility' that is relevant in the context of institutions. It is 'feasibility' and not just 'logical possibility' that is required. Participating in an institution does not make sense unless one can assume that it is feasible, and not merely logically possible, to succeed. As I indicate in the book, litigants need some evidence from past successes to believe that the institutions of legal contestation that are open to them are not simply a 'farce' as it is often the case in authoritarian regimes with a democratic facade. They need to know that they have *effective* rights to legal contestation and not merely 'manifesto rights'. The assumption of feasibility is not an assumption of (inexorable) progress and is certainly too weak to amount to a shortcut. Yet, it is too strong to be satisfied by merely the existence of a moral duty of civility that citizens may or may not fulfil. I do not deny that citizens have a *moral duty* of civility nor do I downplay its importance. I simply point out that this is not enough to provide citizens reasonable assurance that their claims and arguments will be properly taken up by their fellow citizens. To solve the problem of assurance, the

moral duty of civility needs to be complemented with an effective *legal right* to contestation.

Going back to my critique of deep pluralism, Sara Gebh takes issue with my claim that deep pluralists cannot explain substantive disagreement after a decision is settled. My argument may not be sufficiently clear in the book so let me explain. Deep pluralists do not deny that citizens can distinguish between the procedural legitimacy of decisions and the substantive correctness of their content. Based on this distinction, it is obvious that after legitimate decisions are made citizens in the minority will continue to disagree on the substantive merits of the decision. But, as Bellamy puts it, 'the point is that they do not disagree that it was rightfully made'. My critique is actually directed against *this* claim. I argue that precisely because citizens are not deep pluralists, they believe that the substantive wrongness of decisions can undermine their legitimacy. In such cases, *pace* Bellamy, citizens actually disagree that the decision was rightfully made *precisely and only because of its wrongful content* and not for any procedural reason. This is the type of disagreement that does not make any sense if one accepts deep pluralism' 'procedural shortcut' and is therefore the type of disagreement that I claim deep pluralists cannot explain. The paradigm example I discuss in the book is legal contestation of the constitutionality of statutes that litigants believe violate their constitutional rights or freedoms. If citizens find it appropriate to legally contest the constitutionality of some law or policy, then this means that they do not think the decision is legitimate (or legal), even if it was made through impeccable majoritarian procedures. Indeed, they are taking legal actions that are geared to demonstrate the illegitimacy of the decision to their fellow citizens so that it can be struck down. Therefore, this practice cannot be properly explained as a case in which citizens disagree on the substantive merits of the law in question but agree that the decision is legitimate, that is, rightfully made. If they did agree that the decision was rightfully made, then they would find it inappropriate to strike it down through legal contestation.

Of course, deep pluralism is a revisionary approach that proposes that we take the 'procedural shortcut' and reject the legitimacy of judicial review, so I am not trying to convince them simply by showing how things stand before their proposed revision. The point of restating my argument here is only to clarify that the reason citizens have substantive disagreements *with one another* and continue *being entangled in such public disagreements* is *precisely and only* because what is at stake is the legitimacy of being coerced by laws that are substantively wrong. These high stakes mean that the disagreement is everyone's concern and needs to be resolved. By contrast, if everyone agreed that the imposition of coercion is legitimate, those in the majority would have every right to refuse to get entangled in substantive disagreements with the dissenting minority. If the legitimacy of imposing the decision in question on everyone were not at stake then there would be no reason for citizens to continue arguing with one another. Each citizen can simply continue to hold their own mutually incompatible beliefs.

We can see the difference if we focus on issues whose legitimacy is taken to be purely procedural such as electing candidates for offices. In contrast to judicial review of the constitutionality of legislation, there is no similar institution in democratic societies that would enable citizens to legally contest the outcome of an election on substantive grounds, that is, because the winning candidate has the wrong ideas or political program.

This is also why there are no persistent disagreements (on non-procedural grounds) on the legitimacy of elections after they take place. Although such decisions can have an extraordinary impact, no one questions an election's legitimacy on substantive grounds and this is *the specific sense* in which there are no persistent disagreements among citizens on these issues. It is not that citizens do not have different beliefs on the substantive merits of the decision and, in that sense, 'disagree'. Rather, it is that they do not have to continue arguing with one another to figure out who is right, since they all agree that the decision stands regardless. It is only *when the legitimacy of collectively binding decisions is itself in question* that citizens have no choice but to try to come to a substantive agreement on the merits of the decision in question. This issue connects with Paul Sörensen's concern with the emphasis on deliberative agreement of my approach. He worries about the ideological consequences of privileging deliberation over other forms of political action in a conception of democracy. This worry is based on two assumptions that I actually do not share. Let me discuss them in order.

First, I do not agree that my participatory conception of deliberative democracy *privileges* argument or deliberation *over other forms of political action* 'as the only adequate (i.e. legitimate) form of political action' (p. 3). I repeatedly defend the opposite view in the book. But let me briefly explain why this is so. In my opinion, a conception of deliberative democracy is committed to the claim that, to be legitimate, political decisions must be responsive, not to actual but to considered public opinion. It is for this reason that the qualities of the processes of opinion and will formation in which citizens participate are of special significance for deliberative democrats. However, this has nothing to do with privileging some form of political action over others. Forming a considered opinion about something requires a lot of steps and components: first of all, one needs to pay attention to the subject matter in question – so, the issue must have become salient in the first place; second, one needs access to some evidence on which to base one's opinion; third, one needs to figure out what the relevant alternatives are, what is at stake, and so on. None of these steps are typically achieved by stating arguments in favour of or against a position on the issue in question. As I argue in the book, to make issues salient to the public and put them on the political agenda, political actions such as slogan, chants, demonstrations or sit-ins are obviously more suitable political actions than stating arguments. This is also the case with respect to providing or gathering evidence in favour of or against opinions. No argument in the world could have achieved what watching the video of the killing of George Floyd did in terms of convincing white Americans that police brutality against Blacks is a frightening and ubiquitous reality. But this does not mean that, according to deliberative democrats, any form of political action is as good as any other. It is just that, in general, one cannot tell whether a specific form of political action is compatible or incompatible with the deliberative ideal just by looking at the type of action that it is. What matters is *whether the action in question aims to support laws and policies that can withstand deliberative public scrutiny* or whether it is incompatible with such scrutiny.

This brings me to the second assumption, namely, that giving a central role to public deliberation can have ideological consequences. Sörensen assumes, without providing any argument, that discursive practices (language games, orders of justification, space of reasons, etc.) are necessarily *invariable* so that participating in them can only bring about

their perpetuation. This is a counterintuitive assumption. If anything, the opposite would seem to be the case. The dynamism of discursive practices in which millions of citizens participate with different experiences, different cultural and socio-economic backgrounds, and so on, makes it *impossible* to keep communicative background assumptions invariable over time. Even more counterintuitive is the claim that only non-discursive action can be used to question what is generally considered 'normal and acceptable'. It is one thing to claim that it is possible to criticize generally accepted views or assumptions by non-discursive means. It is quite another to claim that this cannot be done at all with discursive means and that only 'non-discursive politics' can bring about 'new norms', 'new vocabularies' or 'new ways of seeing in the domain of practical reason' (p. 4). It is hard to see how 'new vocabularies' can be coined without participating in public discursive practices. It is precisely by participating in such practices that world-disclosing changes in conceptual frameworks, critique of ideologies, articulation of alternatives ways of thinking and challenges to hegemonic assumptions can be brought about in the first place. It is true that such changes are very difficult and that, for the most part, coming up with genuine conceptual alternatives to assumed ways of thinking and seeing the world is hard – such that by sharing a lifeworld we are for the most part all 'unintentionally contributing to the perpetuation of potentially ideologically veiled, unjust conditions' (p. 5). But the best way to avoid this perpetuation is not to withdraw from discursive practices and let them go unchallenged. To the contrary, what is needed is critical participants with the ability, determination and creative imagination to successfully challenge them by articulating better alternatives and, in so doing, changing existing discursive practices for the better.

2. Epistocracy and expertocracy revisited

In his contribution, Peter Niesen questions whether the requirement of deliberative justification that my participatory conception of deliberative democracy endorses is too narrow to fully capture all the epistemic advantages of democratic procedures. In particular, he wonders whether my approach can endorse what he calls 'semi-transparently epistemic' relations of justification as compatible with democratic self-government or whether it must necessarily reject them as cases of blind deference. To tackle this important question, I first need to introduce some distinctions.[1]

I use the term 'blind deference' to refer to a case in which a person deferring to some agent has no reason to expect that the agent's decisions will coincide with the decisions that she herself would have made if she had thought about it with access to the relevant information. For all she knows, the agent's decisions could go either way. Thus, the 'blindness' in question has to do with the potential lack of alignment between the agent's decisions and those that the person deferring to the agent would endorse upon reflection, based on her political interests, values and policy objectives. Let's call this type of case *politically* blind deference.

However, the term 'blind' can be used to mark other aspects of deference. It could be used in a more general sense to refer to cases in which one has *no reason at all* to defer to a particular agent. Under this understanding of the term, as soon as one exercises some judgment to choose a particular agent, deference is not strictly 'blind'. Yet, notice that

this use of the term has nothing to do with the first one. I may exercise judgment in choosing a specific agent without my judgment having anything to do with the likelihood that the agent's decisions coincide or align with those I myself would make upon reflection, based on my interests, values and policy objectives. I may choose an agent because I think that the agent is more likely to make correct (or better) decisions than I am. I will call having no reason at all, alignment to the side, *reflectively* blind deference.

Yet another aspect of deference for which the term 'blind' could also be meaningfully used is to indicate the level of information that the person deferring to an agent has about the issues to be decided upon. If the person knows nothing about the issues in question, the person is deferring 'blindly' in that sense. However, this would not necessarily be a case of blind deference in my sense of the term. Even if I know nothing at all about some highly technical decisions, I still wouldn't be blindly deferring if I had some reason to believe that the decisions the agent I am deferring to will make would be aligned with my own interests, values and policy objectives. Let's call knowing nothing about the issue *informationally* blind deference.

In the book, I am exclusively concerned with the first sense – *politically* blind deference. But let me briefly summarize how the other two senses of 'blind deference' bear on the question of democratic control. *Reflectively* blind deference is sufficient for a lack of control. But its absence is not sufficient to establish control because it is compatible with politically blind deference. By contrast, *informationally* blind deference is compatible with control in the absence of politically blind deference. This is why informational shortcuts can be perfectly compatible with participatory deliberative democracy.

The 'semi-transparently epistemic' forms of justification that Niesen discusses involve either reflectively or informationally blind deference. With regard to the uses of science for justifying political decision-making I would say that, if they involve only informationally blind and not politically blind deference then they are perfectly compatible with democratic self-government. I'll return to this issue when I address Rene Gabriels' questions regarding the proper political role of scientific expertise. By contrast, justification of political decisions based on considerations such as the Condorcet Jury theorem or the theorem of Hong and Page present a different case. The assumption of such mechanisms is that citizens share the epistocratic goal of getting the correct (or better) decisions enacted, regardless of whether or not those decisions are aligned with their own interests and values. Since they have some (epistemic) reason to endorse the procedures in question, their deference would not be *reflectively* blind. However, it would be *politically* blind, since they would be consenting to obey decisions regardless of whether *they can evaluate them as aligned with their own values, interests and policy objectives*. To the extent that this is the case, these citizens would no longer be engaged in a democratic process of self-government. Against my claim here, one could perhaps argue that, if citizens endorse the goal of reaching correct political decisions, then they might be able to identify with majoritarian decisions and learn to endorse them as their own precisely because they are likely to be correct. I do not think that this is possible.

Making beliefs, values or norms your own means that you integrate them into the inferential network of beliefs, values and norms that you endorse. You cannot take yourself out of that process. Acquiring new beliefs typically requires adjustments and

revisions to other beliefs that are inferentially connected to them to keep overall consistency in our web of beliefs. To do this, one needs to identify *which* specific beliefs need adjustment or revision and *why*. Yet, this evaluative process is incompatible with blindly deferring to others. Knowing that the majority favours a view (e.g. legalizing gene editing for human embryos), and being willing to adhere to their verdict because it is likely to be correct is not sufficient to incorporate this belief into your web of beliefs and make it your own. To do *that* you need to assess which of your other beliefs and values are incompatible with it (and must therefore be rejected) and also which beliefs and values follow from it (and must therefore be endorsed on pain of inconsistency). Is gene editing of human embryos permissible because gene editing is harmless in general and thus a fortiori harmless for embryos too? Or is it permissible because the potential life-saving benefits far outweigh the risks? If so, who will be at risk and what are the risks? Are any risks to individuals justified for the benefit of the greater number? Is gene editing of human embryos permissible because utilitarianism is correct? If this is so, then one should, on pain of inconsistency, endorse utilitarianism when assessing other policies as well. Is the permissibility of human embryo gene editing compatible with believing that human life begins at conception? Or must this belief also be rejected on pain of inconsistency? Is belief in God incompatible with this endorsement? These questions can be multiplied indefinitely. The point is simply that endorsing such decisions and making them your own means *evaluating them as correct on the basis of your own beliefs and values* so that you can update the latter accordingly and make needed adjustments. No one else can do this for you. You may blindly obey decisions but you cannot blindly make them your own. Blindly accepting the verdicts of majority decisions, whatever they might be, is not a way of engaging in self-governance – it is an abdication of it.

Let me now go back to the question of the proper uses of science in political decision-making. I think that the distinction between informationally and politically blind deference can help address some of the difficult and very interesting questions that Gabriels raises in his contribution. I agree with him that my discussion of the 'expertocratic shortcut' is by no means exhaustive and that finer distinctions are needed to tackle all the questions related to this complex topic. I very much welcome further analyses that exploit the heuristic value of the concept along the lines that he proposes. As a first step, the distinction between informationally and politically blind deference is helpful. As mentioned above, citizens do not need to become scientific experts themselves to participate in a democratic project of self-government. Even if they do not know anything about the highly complex technical and scientific aspects of some political decisions, they won't be blindly deferring in the political sense of the term if they have some reason to believe that the decisions of the agent they are deferring to would be aligned with their own interests, values and policy objectives. So long as the political priorities that drive the decisions in question are aligned with those of the citizenry, citizens' scientific ignorance does not imply lack of democratic legitimacy in political decision-making.

Yet, the other side of this coin is precisely what Gabriels focuses on: to prevent politically blind deference those making political decisions cannot be 'politically ignorant', that is, they cannot *ignore* the priorities, interests and values of the citizens they represent and in whose name they are supposed to make such political decisions if they

are to be democratically legitimate. However, whereas politicians are elected by the citizenry precisely on the basis of their political values, programs and policy objectives, scientific experts are selected exclusively for their expert knowledge and not for their political preferences or personal values. Experts can offer technical advice but have no right to impose their political preferences upon their fellow citizens. This means that, even if they are in charge of making important political decisions (e.g. setting interest rates or monetary policy), the goals, values and priorities that drive those decisions (e.g. preventing high unemployment and inflation) must first have been set through inclusive processes of political opinion and will formation among citizens. Current political debates concerning the global pandemic offer an excellent example. Doctors, epidemiologists, economists and other relevant scientific experts can inform us of the difficult choices we are likely to face in the 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 to save lives, which fundamental rights and freedoms are worth limiting to keep the economy going, how much personal risk 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 to answer these questions but it is obviously not sufficient. Citizens must take *their own risks* in the light of *their own interests, values and policy objectives*. This also indicates how important it is that investment in scientific research be driven by priorities that the citizenry can endorse instead of leaving the setting of such priorities to market forces. I very much share Gabriels' concern with what he calls the 'neoliberal shortcut' but this is too big of a topic to properly address here.[2]

3. Lottocracy and accountability

In his contribution, Hubertus Buchstein explores additional lines of defence for political uses of minipublics that are not covered by the discussion I offer in the book. He agrees with my general critique of lottocracy. He thus does not propose to introduce minipublics in the name of democratization. But he wonders whether there could be uses of minipublics that could complement and improve democratic institutions. In the book, I defend a variety of political uses of minipublics along these lines, but I take it that Buchstein is defending uses of *empowered* minipublics, that is, minipublics with the power to make binding political decisions that bypass the citizenry. This is something I reject. He restricts the type of issues that empowered minipublics would decide upon to those in which political representatives face a conflict of interest (such as electoral reform, redistricting, etc.). Even so, I am afraid that this restriction is not sufficient to avoid the criticisms that I articulate in the book.

On the one hand, Buchstein does not base his defence of the legitimacy of these uses of empowered minipublics on the allegedly democratic grounds that minipublics 'mirror the people', since he contends that courts or independent commissions could in principle be equally legitimate venues for making these types of decisions. On the other hand, though, he defends minipublics over independent commissions because the members of the latter 'run the risk of being too removed from the will and experience of citizens' (p. 3). This is, of course, a democratic concern. But if it matters that decisions are aligned

with the political will of the citizenry, then minipublics will run into the same problems as commissions.

As is well known, minipublic participants often change their minds drastically after deliberation. Thus, there is no particular reason to expect that a minipublic's decisions would be any more or less aligned with the will of the rest of the citizenry than those made by independent commissions or courts. This is especially the case with regard to issues such as 'electoral reform' about which citizens usually have no opinion whatsoever, as Buchstein himself points out. His proposal faces a dilemma: either it matters that the decisions in question are aligned with the will and experience of the citizenry or it does not. If it does not, then an independent committee could make such decisions in a more time-efficient and cheaper manner. Instead of having to educate a random sample of citizens on the complicated knowledge of electoral systems over a year or longer, while covering their expenses, organizing transportation and so on – as was the case in the Canadian examples Buchstein discusses – a few experts on electoral systems could make these decisions faster and cheaper. However, if it matters that such decisions track citizens' experiences and will – presumably because they can have important political consequences – then minipublics offer no 'shortcut' to get there. The citizenry needs to get informed and form both a considered opinion and will upon issues that have important political consequences. This difficulty is also relevant to the issue of minipublics' lack of accountability that Buchstein discusses.

Election-based political institutions rely on accountability, whereas sortition-based institutions rely on deference. Minipublic participants are selected by lot and participate as individual citizens with total freedom to express whichever views and opinions they have and to change them in whichever way they see fit. In sum, they represent only themselves. For that reason, they are not accountable to other citizens. Buchstein argues that this is not a big problem to the extent that participants are deliberatively accountable within the minipublic. In support of this claim, he points to the available empirical evidence from actual minipublics which shows that participants tend to behave in a deliberatively responsible fashion and that they feel accountable to their fellow citizens. I see two problems with these arguments. First, being accountable to other minipublic participants may increase the deliberative quality of decisions but this has nothing to do with democratic legitimacy. The democratic aim of making sure that elected officials are accountable to the citizenry is to secure *alignment* between their political decisions and citizens' interests, values and policy objectives. But this type of alignment is not possible if minipublics' participants are the only ones who are informed and deliberate whereas the rest of the citizenry is excluded from the process and remains ignorant. Second, the empirical evidence we have from actually organized minipublics is not sufficiently relevant to our context. Minipublics have mostly been organized for purposes of advising, not for making binding decisions on their own. Lack of accountability is not a big problem in the absence of actual political power. However, once the power to make important political decisions is added to the picture, the situation can be expected to change dramatically. As Landa and Pevnik convincingly argue in a recently published article, the combination of deference and pivotality without accountability is extremely dangerous.[3]

Buchstein offers an additional argument in favour of empowered minipublics. Precisely by not being directly accountable to their fellow citizens, minipublic participants could be in a better position to take the interests and needs of a larger constituency into account – for example, the interests of future generations. This important question is also at the centre of Sandro Ferrara's interesting contribution. If past and future generations are also part of the 'constituent power' that owns the constitutional project, as I think they are, then which institutional venues can best represent them? Whereas Buchstein proposes empowered minipublics, Ferrara defends the institutions of judicial review as particularly suited to that task. What both proposals share is the assumption that independence from the will of the electorate is the right principle to use in selecting the institution most suited to represent 'the transgenerational people'. On that basis, Ferrara defends the superiority of constitutional courts over the legislature. He argues that entrusting the latter to represent 'the transgenerational people' (and not just the electorate) would make them judges of their own case in a particularly worrisome way where they would have group-specific interests that would likely interfere with their independence and ability to reach impartial judgments. Note, however, that this argument would not work against proposals to institutionalize minipublics for constitutional review, since random selection rules out the presence of this type of group-specific interests.[4]

I do not know whether Ferrara or Buchstein would consider minipublics good candidates for constitutional review. From an *empirical* perspective, my own view is that there is no one-size-fits all answer to questions of institutional design. As I argue in the book, to answer such concrete questions, one needs to consider the specific circumstances of different democratic societies, their institutional history and so on. However, from a *normative* perspective, I am worried by the idea that we should search for a specific institution whose task will be 'to represent the point of view of the transgenerational people' (Ferrara, p. x). For it seems to let the current citizenry off the hook. It makes it seem as if the electorate does not have the democratic obligation of adopting a properly inclusive point of view in making political decisions. The idea of delegating this task to an institution that would bypass the citizenry to make sure that it gets accomplished, regardless of what the will of the electorate may be, would go against everything I defend in the book. As I argue regarding judicial review (but, the same point would equally apply to constitutional juries), if the citizenry endorses an institution then they should strive to meet the same standards that the exemplar they have instituted is supposed to meet. It does not make any sense for the citizenry to delegate the task of protecting the interests and rights of the transgenerational people to the courts (or to minipublics) while simultaneously undermining that task by letting themselves make political decisions that are only meant to protect the interests and rights of the current electorate. To the contrary, what is needed is *institutions that would help the electorate form a properly inclusive political will*.

The issue of inclusion is also relevant for the questions that Gianfranco Casuso raises in his contribution. He argues that if one adopts a pragmatist point of view and recognizes that the cognitive competence of citizens is due to their situated knowledge which allows them to differentially perceive certain problems more clearly, then it is 'contradictory to continue to sustain the strong difference between the knower . . . and the citizen' (p. x). If I understand him correctly, the point is that if all citizens equally

qualify as situated knowers, then they all would also seem to qualify as decision makers on epistocratic grounds. If this were so, then there would no longer be a need to worry about a separate category of the 'citizen' who is not a knower but only 'one with the political right to be heard, although she factually does not participate in the decision-making processes' (p. x). This is the argument from cognitive diversity that democratic epistocrats like Landemore make against elite epistocrats to justify democratic inclusion. However, as I show in the book, the fact that all citizens equally qualify as knowers is not a sufficient basis for full inclusion in decision-making because, as Landemore argues, a representative sample of the citizenry is sufficient to reap the epistemic benefits of situated knowledge and experience. The rest of the citizenry becomes superfluous and does not need to be included, not because they are not knowers, but simply because there are too many of them (often millions). The invention of the representative sample can ensure that the requisite competence is sufficiently represented in the random sample so that the intended outcomes can be reached. Against this argument, I argue that citizens must be included in political deliberation and decision-making not *as knowers* (of the pragmatist variety or of any other) but rather *as subject to coercion*. We must justify imposing coercion on others with reasons that *they* can reasonably accept. It is because they will be coercively subject to the law that they have the right to see themselves as its authors. Justifying *their* coercion to third parties, even if they are their epistemic counterparts within the random sample, would not do. Casuso also wonders whether my defence of effective rights to legal contestation is meant to be *sufficient* to secure self-government. It is not. I defend the claim that institutionalizing such effective rights is *necessary* for self-government, and I do so to counter the claims of those like Waldron who argue that, far from being necessary, the institutionalization of such effective rights to legal contestation can be detrimental to democracy and should therefore be rejected. Effective rights to legal contestation offer an important institutional help to minorities who may otherwise not be listened to by consolidated majorities. But, of course, to ensure that all those subject to the law have equal rights to be its authors, there is no substitute for an effective democratic commitment among the citizenry.

4. The way forward

It is encouraging to receive reactions that aim to move the book's project forward. In their own ways, the contributions by Maeve Cooke, Claudia Landwehr and Tilo Wesche each contain this type of impetus. A proper reaction would require the longest sort of answers. But, given the space constraints, I can only point towards the parts of their respective contributions that I see as inspiration for future work. Cooke's contribution offers an insightful reading 'between the lines' of the thick assumptions behind the participatory conception of democracy that I put forward in the book but which I do not explicitly thematize. This is partly due to my ecumenical aims. But let me clarify that my claims about the democratic ideal of self-government are meant to be ecumenical *only in the first part of the book*, that is, when I criticize deep pluralists, epistocratic and lottocratic conceptions. To avoid begging the question, I identify a minimal, necessary condition for self-government that I claim any conception of democracy must accept to qualify as such (namely, the absence of a requirement of blind deference on the part of

the citizenry) and criticize all three conceptions for failing to meet that minimal requirement. However, in the second part of the book, I defend a participatory conception of deliberative democracy in particular. This is no longer an ecumenical task. Although I do not offer a detailed account of how the democratic ideal is systematically connected to other ideals, I make it clear in the book that the concern with political alienation is essential to the ideal of self-government. This concern has a justice and an identitarian aspect and, although I draw different consequences from each of them, I agree with Cooke that acknowledging this concern requires us to adopt a conception of freedom that has both a communal and an individual component. As such, freedom should not be reduced to an individualist or non-political conception. In the not too distant future, I hope to be able to spell out the consequences that follow from endorsing the alternative conception of public reason at the core of my participatory conception of democracy. The point is well taken. I certainly do not intend to downplay these tacit but important aspects of my participatory conception of deliberative democracy.

Similarly, I take to heart Claudia Landwehr's invitation to think about how such difficult issues as the need to enable meta-deliberation and to re-constitutionalize political discourses in times of crisis can be tackled with the tools of the participatory conception of deliberative democracy that I propose. I think that the dynamic and holistic perspective that is distinctive of this conception should be able to provide interesting insights on these questions but this is something I need to address in future work. Last but certainly not least, Tilo Wesche's contribution puts its finger on a crucial topic that the book leaves open, namely, the proper scope of democracy beyond the political system. I totally agree with Wesche that economic equality is a prerequisite of effective political equality. Thus, we need to democratize the workplace, create a regulatory framework that supports a genuinely democratic public discourse and, above all, to reign in the global capitalist economy so that all citizens can make effective use of their political rights to freely determine their goals and priorities in a context of genuine political choices. Having said this, I also think that there can be a variety of economic models and property rights schemes that may enable different political communities to reach those goals. For that reason, such political choices should be left up to the outcomes of processes of opinion and will-formation in which the citizens of these different political communities participate.

ORCID iD


Cristina Lafont https://orcid.org/0000-0002-1029-9689

Notes

1. In what follows I draw from my "Against Anti-Democratic Shortcuts: A Few Replies to Critics," *The Journal of Deliberative Democracy*, 16, no. 2 (2020): 96-109. doi: 10.16997/jdd.367.
2. See my "Neoliberal Globalization and the International Protection of Human Rights," *Constellations* 25, no. 3 (2018): 315–28.
3. See Landa, D., and R. Pevnik. "Is Random Selection a Cure for the Ills of Electoral Representation?" *The Journal of Political Philosophy* (2020). doi: 10.1111/jopp.12219.
4. See, for example, Ghosh, "Deliberative Democracy and the Countermajoritarian Difficulty: Considering Constitutional Juries," *Oxford Journal of Legal Studies* 30 (2010): 327–59; H. Spector, "The Right to a Constitutional Jury," *Legisprudence* 3, no. 1 (2009): 111–23.