



The Fine Art of Conversation

A constructivist conception of deliberative democracy.

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Abstract

This thesis investigates the claim that deliberative democracy has epistemic properties – properties which help it track the truth about the moral questions at hand in deliberation. Rather than presupposing the existence of a procedure-independent standard of correctness that deliberation can track, this thesis expounds a social constructivist account of deliberation. In this account, built on John Rawls’s method of reflective equilibrium and Hans-Georg Gadamer’s concept of authentic conversation, deliberation is seen as constructing the standard of correctness. What justice or the common good truly demands, should be determined in a democratic fashion.

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1. Introduction

1.1. Democracy, deliberation, and the difference

In recent years, the amount of countries that are becoming less democratic has increased around the world (Bermeo, 2016; Haggard & Kaufman, 2021; Jakli et al., 2019). On one end of the spectrum, previously developing democracies, such as Myanmar and Tunisia, have seen their institutions overturned through military and constitutional coups d'état. On the other end, established democracies in the global North see political violence increasing (the United States), the separation of powers disappearing (Poland, Hungary), and generally, a rise in polarisation along with faith in democratic institutions decreasing rapidly. Politicians are seen as either dangerous demagogues or self-serving globalist elites, while half the population is blind or closed-minded. Scientists, journalists, and politicians alike allege: democracy is in crisis.

At the same time, there are initiatives for democratic innovation in the hope that this might rekindle the democratic flame in the hearts and minds of politically disinterested or disappointed citizens. In Ontario, Canada, a citizens' assembly discussed the necessity of constitutional reforms (Rose, 2007). Both France and Ireland let a group of randomly selected citizens come up with suggestions for battling climate change, with Ireland also having them issue advice on abortion, dealing with an aging population, fixed-term parliaments, and a procedure for referenda (Farrell et al., 2019; Torney, 2021). All of these initiatives were experiments involving deliberative democracy, meaning democratic processes that also include "mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern" (Bächtiger et al., 2018, p. 2). Deliberation can also mean the weighing of reasons by oneself, but for the rest of this thesis, "deliberation" will refer to the public variant.

Democracy need not involve deliberation and debate. We could cast, count, and aggregate votes on every matter and call it a day. However, even now, public deliberation does feature heavily in most democracies: representatives debate each other in parliament as an institutionalised form of deliberation, and discussing politics with your neighbour or in a café is a relatively unorganised form of deliberating as well. Deliberative theorists, as a subset of democratic theorists, generally argue for the (increased) institutionalisation of citizen deliberation in politics, creating a democratic system where the aggregative, representative, and deliberative aspects complement each other (Mansbridge et al., 2012).

There are several arguments for why deliberation is a superior form of democratic engagement. Some of these arguments are intrinsic, meaning that the deliberative process has inherent qualities that make it a worthwhile system; for instance, it gives citizens an equal voice, and it is fair (Cooke, 2000). The problem with strictly intrinsic arguments for deliberation (or for democracy as a whole), is that flipping a coin *also* gives citizens an equal voice, and is also fair. A different class of arguments, then, defend

deliberation on instrumental grounds: “why we actually want people’s views taken account of by the process is that we expect people’s views to be intelligent – maybe not to any high standard, but better than a coin flip” (Estlund, 2008, p. 6). These instrumental arguments claim that deliberation is not only fair, but that it also leads to good results.

Those results could be ethical in nature – Aristotle already argued that a republican (at the time relatively democratic) system of government and participation in politics produces virtuous citizens (Klosko, 2012, p. 126) – or they can be political, if deliberation leads to better decisions. Estlund is a proponent of the latter argument for deliberative democracy: deliberation is good, because it helps us find the *right* answer. Because this argument for deliberative democracy is concerned with its ability to discover the truth, or to generate knowledge, it is termed the *epistemic* argument for deliberative democracy. If deliberative democracy turns out to have such an epistemic function, the deliberative experiments described above could be the start of something great.

1.2. The epistemic nature of deliberative democracy

The epistemic argument for deliberative democracy has gained so much traction that Hélène Landemore speaks of ‘the epistemic turn’ in deliberative democracy (Landemore, 2017). According to Landemore, the epistemic function of deliberation is undeniable, since “the intuition that there are better and worse answers and that those can be known is already validated by the fact that there would be no point in reasoning about politics if it wasn’t the case” (Landemore, 2017, p. 284). In this thesis, I challenge this claim. I do not think that deliberation is able to ‘track’ what the right decision is, but rather that deliberation creates what the right decision is. If my argument succeeds, the epistemic turn in deliberative democracy may prove to be misguided, and yet deliberation might still have an instrumental function.

One of the core concepts in this thesis is the idea of a procedure-independent standard of correctness. What this means, is a standard for determining whether a decision, in this case a decision resulting from a deliberative democratic process, is correct, and which arguments are better and which are worse. The term, as far as I can tell, comes from Joshua Cohen, who described it as “an account of justice or of the common good that is *independent* of current consensus and the outcome of votes” (1986, p. 34, emphasis in original). Such a standard of correctness might exist independently of the decision-making process – think of solving a puzzle, where we can check our result against the picture on the box. Alternatively, there might be a standard for correctness, but no other way for us to access it other than the democratic process – an analogy here is a math problem, which has a correct answer, but the only way to check one’s answer is to do the math again. Lastly, there are situations where the standard of correctness is not procedure-independent. An example here would be a game: beforehand, there is no correct winner.

Instead, the correct winner is determined by actually playing the game. Halfway through the next chapter, these three different options for proceduralism will be discussed in some more detail.

The outline of this thesis

Since this thesis is at its core a reply to Landemore, chapter two is dedicated to an analysis of her work on the subject of epistemic deliberation. Why does Landemore believe there is a procedure-independent standard of correctness in politics? The chapter largely proceeds along the same lines as her 2017 article “Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy,” in which she argues that John Rawls’s *Political Liberalism* (2005a) wrongly shies away from epistemic questions – Rawls’s attitude towards the truth is “an unambiguous, intentional, and fully assumed dodge” (Landemore, 2017, p. 281). In some detail, the criticisms that Joshua Cohen and David Estlund levelled against Rawls, which feature in Landemore’s article, are discussed. Cohen and Estlund take somewhat different approaches, but both create space for epistemic arguments in deliberative democracy. The chapter ends with Landemore’s own views on the collective intelligence of deliberating groups.

Since Landemore argues that her epistemic argument for deliberative democracy is based on the work of Jürgen Habermas, the third chapter is dedicated to his views on the subject. While Habermas’s writing is ambiguous at best – and self-contradictory at worst – I believe that Landemore is wrong to distil from him support for the objective, epistemic function of deliberation that she promotes. In the fourth chapter, I argue that Landemore’s argument eventually fails, and that there can be no such thing as an objective, epistemic, procedure-independent standard of correctness by which we can evaluate political decisions. There is no moral puzzle box authoritatively showing us a picture of how our just decisions should look. In order for the standard to actually *serve as a standard*, there needs to be agreement on what the standard is and, more importantly, *what it substantially entails*. That sort of agreement can only really be the result of a prior consensus, in which case the standard is not procedure-independent.

In the fifth and final chapter, then, I elaborate my own view of deliberative democracy, which does not rely on a procedure-independent standard of correctness. In large part, it is based on the pragmatic deliberation that is found in parts of Habermas’s work. Rather than finding or “figuring out” the right decision according to some standard of correctness, deliberation aims to both construct such a standard *and* make decisions according to it. As a collective effort, deliberation continuously goes back and forth, giving meaning to ideas like ‘justice’ or ‘the common good,’ while using those ideas as standards for political decision-making. A legislative process that incorporates deliberation is not only writing the legal facts, but is – to a certain extent – creating moral facts as well. The core concepts of this ‘deliberative constructivism’ are Rawls’s method of reflective equilibrium and Hans-Georg Gadamer’s concept of authentic conversation. Combined, these ideas show how it is possible to come to a consensus with limited epistemic properties without relying on any objective, universal truths.

2. Landemore: arguing for a standard of correctness

In this chapter, I introduce the work and thought of H  l  ne Landemore, who is a strong defender of an epistemic conception of deliberative democracy. Landemore’s work focuses on collective intelligence, which is the idea that a group of people, specifically *as* a group, demonstrate a form of distributed intelligence which can make them smarter, wiser, or better at problem-solving than purported experts. She offers a defence of deliberative democracy on account of its ability to utilise this collective intelligence in practical, political, and moral issues.

Before I discuss Landemore’s work itself, it is important to know what she is building on and replying to. For that reason, the first half of this chapter is taken up by a discussion of John Rawls, Joshua Cohen, and David Estlund. Landemore fervently argues against the epistemic position that Rawls takes up in his *Political Liberalism* (2005a),¹ which has been described as a position of “epistemic abstinence” (Raz, 1990). Step one, then, is to explain what epistemic abstinence is and why and how Rawls argues for it. The second step consists of investigating several replies to Rawls’s position that Landemore incorporates in her own arguments. Here, I will discuss Joshua Cohen, who sympathises with Rawls but thinks he misses his mark, and David Estlund, who distinguishes between the epistemic function of the justification and the (non-epistemic) legitimation of political decisions. Estlund’s conception of deliberative democracy offers a nice opportunity to discuss the difference between perfect proceduralism, imperfect proceduralism, and pure proceduralism.

After establishing this base, the second half of this chapter turns to Landemore herself. She argues for the existence of a procedure-independent standard of correctness and gives a number of possible characteristics for such a standard, as well as examples of how deliberation helps us achieve this standard through the use of distributed, collective intelligence. To close off the chapter, I discuss Landemore’s argument for the existence of such a standard.

2.1. What is Landemore replying to?

2.1.1. Rawls: “Epistemic Abstinence” and “Political, not Metaphysical”

To fully understand what Rawls is trying to achieve in *Political Liberalism*, and thus to understand what Landemore is arguing against, it is helpful to take a step back and look at what Rawls was trying to

¹ *Political Liberalism* was originally released in 1993, although many of the chapters (or “lectures,” as Rawls calls them) are revisions of earlier publications. The 2005 expanded edition includes some revisions and some additional material. These additions, “Reply to Habermas” (2005b) and “The Idea of Public Reason Revisited” (2005c), are included as separate references throughout this thesis.

achieve in his earlier *A Theory of Justice* (1971). Although it is not necessary to summarize it in its entirety, Rawls hangs on to some of the core ideas, namely the priority of the right over the good, the conception of justice as fairness, and the representative device of the original position. I will briefly introduce these three ideas in the aforementioned order, so their role in *Political Liberalism* will be more clear.

A Theory of Justice

Rawls starts off *A Theory of Justice* by saying that he intends to work out a theory of justice as an alternative to utilitarian ideas of justice. A utilitarian considers a society just when it achieves the greatest net balance of satisfaction summed over all the individuals belonging to it (Rawls, 1971, p. 22). This means that justice is dependent on what people consider their own good, balancing the pleasures and displeasures of all individuals against each other. The right choice for an individual and the right choice for society as a whole is that choice which produces the most good overall.

One of the problems that Rawls sees with utilitarianism, is that justice or individual rights and liberties are not inherently valuable. There is no longer any reason to protect them if it turns out they do not lead to the greatest net balance of happiness. To give an example, if an individual takes a great enough deal of pleasure in torturing others, his satisfaction might just offset the misery his torture causes. To Rawls, this is not acceptable and thus he emphasizes the priority of the right over the good: “in justice as fairness one does not take men’s propensities and inclinations as given, whatever they are, and then seek the best way to fulfill them. Rather, their desires and aspirations are restricted from the outset by the principles of justice which specify the boundaries that men’s systems of ends must respect” (Rawls, 1971, p. 31). Anyone with a disposition to torture understands that this pleasure is wrong in itself and adjusts their goals and ideas of the good life accordingly. Later, we will see this inclination of individuals to prioritise the right over the good return in a reasonable person’s ‘sense of justice.’

The right which takes priority over the good is codified in the principles of justice. What Rawls calls justice as fairness is the idea that the principles of justice, which would be agreed upon by all in the original position, are to regulate all further agreements (Rawls, 1971, p. 11). He develops two principles of justice that “are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages” (1971, p. 61). This is what he calls the basic structure of society. In short, the principles of justice he ends up with are equal basic liberties, fair equality of opportunity, and a moderate redistribution of wealth to prevent excessive economic inequalities (Rawls, 1971, p. 302). These principles ensure that everyone is free and able to live a good life, whatever their reasonable conception of such a life might be.

In arguing for these principles, Rawls proposes a thought experiment that aims to “nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage” (Rawls, 1971, p. 136). In this thought experiment, participants must choose

principles of justice for the basic structure of society, without them having any idea what their place in that society is. They must choose from behind a “veil of ignorance,” which obscures from them the particularities of their own situation and those of their society at large. From this original position, Rawls believes, we would end up with the principles of justice of justice as fairness. These principles, then, are to be fixed in perpetuity (Rawls, 1971, p. 135).

The deliberation that produces these principles of justice is nothing more than a thought experiment, “a purely hypothetical situation characterized so as to lead to a certain conception of justice” (Rawls, 1971, p. 12). Based on this purely hypothetical deliberation and its unquestionable result, one would be inclined to agree with the critics that either pose that Rawls is not a *deliberative* democrat (Benhabib, 1996; Dryzek, 2000; Manin, 1987) or that Rawls is not a deliberative *democrat* (Chambers, 2003; Mouffe, 2005).

Political Liberalism – comprehensive doctrines

Rawls’s goals and approach in *Political Liberalism* are a little different than in *A Theory of Justice*. While justice as fairness still occupies a central role, Rawls now defends a theory of political liberalism that focuses on how the principles of justice can come to be accepted in a modern, pluralist society where different people can (and must) be expected to adhere to different fundamental religious or philosophical doctrines. This theory of political liberalism is broader than his theory of justice in the sense that it spends more time on the justification of the principles of justice from a wide variety of viewpoints, while at the same time limiting its scope to the political sphere. To explain Rawls’s qualification that his theory of liberal justice is “political and not metaphysical” (Rawls, 2005a, p. 10), I will first go into his explanation of how rational and reasonable citizens can affirm different comprehensive doctrines – and what that means, exactly – before looking at Rawls’s solution of overlapping consensus on political principles of justice.

In a modern, pluralist society, people affirm different religious, philosophical, and moral doctrines. These doctrines can be called comprehensive when they cover “the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner” (Rawls, 2005a, p. 59). Comprehensive doctrines prioritise certain values and/or duties over others, generally drawing on a tradition of thought that remains relatively stable over time. Everyone affirms a comprehensive doctrine in one way or another and Rawls adds the assumption that reasonable people only affirm reasonable doctrines.

For a person to be rational, it is sufficient that they adopt, affirm, and prioritise ends and the means thereto according to some conception of the good (Rawls, 2005a, p. 50). Reasonableness is a bit more demanding: citizens are reasonable when they are ready and willing to propose and abide by principles and standards of fair cooperation – in other words, when they have a sense of justice. Secondly, they must be willing to recognize the “burdens of judgment” and accept the consequences these burdens have

for the use of public reason (Rawls, 2005a, pp. 49, 54). The burdens of judgement are the sources of disagreement that can arise between different rational and reasonable persons, without either of them necessarily being unreasonable. We might have difficulty evaluating complex or conflicting evidence or assign different weights to them; we might come to different judgements or interpretations, perhaps depending on the entirety of our life experiences; or we might have to choose between conflicting norms or values, resulting in hard decisions with no clear answer (Rawls, 2005a, pp. 56–57).

Over time, the free use of public reason and the burdens of judgement have led reasonable people to affirm different reasonable comprehensive doctrines. Reasonable people all agree that the right has priority over the good, but their beliefs are not determined beyond that. This, then, is the fact of disagreement, which is not only an empirical statement but also has normative implications: “many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion. (...) These burdens of judgment are of first significance for a democratic idea of toleration” (Rawls, 2005a, p. 58).

Political Liberalism – overlapping consensus

After acknowledging the fact of disagreement – or rather, the fact of reasonable disagreement – Rawls repeats the thought experiment of the original position. From behind the veil of ignorance in the original position, parties must select the principles of justice that will determine the order of the basic structure of society. The parties are rational, but leave behind all knowledge of specific comprehensive doctrines – that is, they know such comprehensive doctrines exist, but they provide no ground for selecting the principles of justice. The conception of justice constructed through deliberation in the original position is freestanding in the sense that it does not rely on a prior order of moral values. The procedure “represents an order of political values proceeding from the values expressed by the principles of practical reason, in union with conceptions of society and person, to the values expressed by certain principles of political justice” (Rawls, 2005a, p. 95).

The fact that the principles of justice do not rely on any comprehensive doctrine does not mean that they are incompatible with them. In fact, Rawls attempts to achieve the exact opposite. The principles of justice constructed through the thought experiment of the original position are compatible with *all* reasonable comprehensive doctrines. Because both the principles of justice and reasonable comprehensive doctrines are the result of the free application of practical and public reason, it is possible to derive or affirm this political conception of justice from each of these comprehensive doctrines. This is what Rawls calls overlapping consensus. “An overlapping consensus, (...), is not merely a consensus on accepting certain authorities, or in complying with certain institutional arrangements, founded on a convergence of self- or group interests. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides.”

(Rawls, 2005a, p. 147). The overlapping consensus is not an uneasy compromise, but a stable consensus where people truly affirm the principles of justice on reflection, even if they do not all do so on the same grounds.

This is what Rawls means with “political, not metaphysical:” a political conception of justice does not insert itself into metaphysical debates about which comprehensive doctrine is true and which are false. It does not use any concept of truth, nor does it deny the existence of any such concept either. It simply does without it, leaving discussions about the truth of comprehensive doctrines to further debate, outside the realm and scope of political philosophy. For political liberalism, the concept of reasonableness suffices as a standard of correctness. “The advantage of staying within the reasonable is that there can be but one true comprehensive doctrine, though (...) many reasonable ones. Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth. Holding a political conception as true, and for that reason alone the one suitable basis of public reason, is exclusive, even sectarian, and so likely to foster political division” (Rawls, 2005, p. 129).

Here, we see Rawls’s epistemic abstinence, then. Political deliberation on the meaning of justice has no epistemic value; it does not help us determine the truth of comprehensive doctrines, nor does it rely on it. Where, in *A Theory of Justice* Rawls developed and defended a comprehensive moral and/or philosophical doctrine of justice, *Political Liberalism* only provides a political conception of justice, freestanding from any comprehensive doctrine (Rawls, 2005a, p. xvi). If at some point in the future, it turns out that one of the reasonable comprehensive doctrines is true, then the principles of political liberalism will be too. If it turns out that none of the comprehensive doctrines are true, then the principles of political liberalism will still be reasonable. While Rawls admits that the concept of the reasonable needs a more thorough investigation, to the critics who maintain that political liberalism cannot avoid questions of the truth, he simply replies “I do not see why not” (Rawls, 2005b, p. 395).

2.1.2. Cohen: political truth

In this section and in the following, I will discuss two lines of argument against Rawls’s inclination to exclude all questions of truth from political debate. First is Joshua Cohen’s, which argues that the concept of truth is not what causes political disagreements, that truth need not have a despotic character, and that public reason requires, at the very least, a political conception of truth. Second is David Estlund, who differentiates between the justification of a decision, in which the truth can very well play a role, and the legitimation of authority, which cannot rely on any such truth. The section ends with some ruminations on the difference between perfect, imperfect, and pure proceduralism, which is linked to Estlund’s defence of “epistemic proceduralism.”

As a former student of Rawls, Cohen endorses much of the same principles as found in political liberalism. However, before *Political Liberalism* was first released in 1993, Cohen had already released an article titled “An Epistemic Conception of Democracy” (1986). Here, Cohen draws a picture of “epistemic populism,” – a specific conception of democracy I will discuss below – based on Enlightenment ideas such as the general will and Condorcet’s Jury Theorem. He does not endorse this form of populism, but does wish to consider it in some detail (Cohen, 1986, p. 26). In the background, epistemic populism is compared against a minimal liberalism that defends democratic elections because they have the ability to get rulers out of office, and thus serve as a check on power. However, argues Cohen, this does not distinguish elections from “random assassinations, select bombings, threats of revolution, and military coups” (1986, p. 30).

An epistemic conception of democracy *can* argue that its procedure provides a better result than a coin flip. Condorcet’s Jury Theorem does so by providing the mathematical proof that the probability of a majority voting for the right option increases with the number of voters, as long as each individual is just ever so slightly more likely to identify the correct decision (and vote accordingly) (Condorcet, 1785). As long as enough people vote, the procedure has some epistemic result. Cohen’s epistemic interpretation of voting, then, has three elements:

“(1) an *independent standard* of correct decisions – that is, an account of justice or of the common good that is independent of current consensus and the outcomes of votes; (2) a *cognitive* account of voting – that is, the view that voting expresses beliefs about what the correct policies are according to the independent standard, not personal preferences for policies; and (3) an account of *decision making* as a process of the adjustment of beliefs, adjustments that are undertaken in part in light of the evidence about the correct answer that is provided by the beliefs of others. Thus, the epistemic conception treats processes of decision making as, potentially, rational processes of the formation of common judgments.” (Cohen, 1986, p. 34).

The third element of this interpretation shows an important aspect of deliberative democracy, namely that people are capable (and willing) to adjust their beliefs after interacting with others and deliberating and reflecting on their beliefs. Policy preferences are not fixed, but can change as a result of the use of public reason. The second element shows similarities to what Rawls called a sense of justice, in that people are willing to act on more than pure self-interest. It is the first element, the independent standard of correct decisions, that is the subject of our attention, though. For epistemic populists, a “general will” works as an independent standard. This general will simply requires that the members of a group share a conception of the common good and know this about each other. Furthermore, “the conception is consistent with the members of society regarding themselves as free and equal” (Cohen, 1986, p. 34).

Taken this way, the epistemic conception shows much similarity to the ideas of political liberalism. It is not required that the standard of correctness is *true* in any way; it is required to adhere to some implicit standard of reasonableness and be consistent with people seeing themselves and each other as free and equal. The only difficult condition is that the account of justice or the common good is independent of current consensus, especially in conjunction with the third element of the epistemic account. After all, if people adjust their beliefs based on deliberation with others, would the shared conception of the common good not also be liable to change? Cohen does not answer the question here, but a possible way around it would be to argue that beliefs about the standard of correctness itself do not change, but only the way specific policies relate to the standard do. So while members of a group all picture the same common good, whether free education (for example) would advance that common good can still be the subject of debate.

In a later essay, Cohen takes more distance from Rawls when it comes to the standard of correctness in political liberalism. He agrees that deliberation on fundamental questions should happen from a common ground, such as values that can reasonably be shared by people who see themselves as free and equal, despite affirming different comprehensive doctrines. “Although I find the idea of public reason compelling, I disagree with Rawls’s claim that the concept of truth finds no place in it. That claim makes the idea of public reason unnecessarily contentious, as if it were committed to the view that the truth about justice does not matter” (Cohen, 2009, p. 5). Cohen wants to argue that it is not the concept of truth that causes our disagreements, and that what *does* cause our disagreements also features in political liberalism.

Cohen distinguishes different kinds of scepticism regarding the role of truth in politics and morality. Rawls’s view is different from the idea that normative assertions *cannot* be true or false. After all, it is possible for them to be true according to comprehensive doctrines. Thus, even if Rawls does without the concept of truth, normative statements are truth-apt (Cohen, 2009, pp. 17–18). It is also not the case that truth is neither a necessary nor a sufficient argument in public deliberation about fundamental political issues – after all, that would mean that the concept of truth is available, while Rawls argues that political liberalism does entirely without the concept (Cohen, 2009, pp. 19–20). The same counterpoint goes for the legal-positivist idea that truth plays no role because what is just is determined by laws made through the use of authority – again, Cohen argues, the concept is then still available to assess propositions about justice (Cohen, 2009, pp. 21–22).

Keeping in mind that Rawls wants to avoid the concept of truth altogether to avoid exclusionary, even sectarian practices (Rawls, 2005a, p. 129), Cohen points to the fact that Rawls’s alternative of reasonableness can be just as divisive: “while there are a variety of different political conceptions of justice, and though reasonableness is plural, only one can be the *most reasonable* conception; “most reasonable” is as singular as “true.” Indeed, even “more reasonable” might be seen as divisive, since

conflicting views can both be reasonable, but each cannot be more reasonable than the other” (Cohen, 2009, p. 30). However, Cohen does not think that the predicate of truth or of reasonableness is what *causes* the disagreement. If the argument is whether a right to privacy is among the basic liberties required by justice, then the disagreement is not “simply about which view is ‘most reasonable,’ but also about what justice requires” (Cohen, 2009, p. 30). Eliminating the concept of truth is akin to shooting the semantic messenger, says Cohen.

The second part of Cohen’s critique of Rawls comes from the latter’s fear that truth, if included in public deliberations, will be seen as a sufficient basis for public reason. Cohen is not afraid of this: an argument against accepting a certain proposition does not need to rely on proving it false. Instead, Cohen argues that true (or false) claims can just as well be dismissed on account of them not being relevant. If a certain reason or proposition is already irrelevant, then the claim that it is true does not add anything to lift it into relevance. In such a case, “it will not make any difference to insist, ‘But I am telling you the truth.’” (Cohen, 2009, p. 33). A role for truth can be maintained if one keeps in mind that any particular truth must be supported by additional reasons that make it an appropriate basis for public justification.

Cohen proposes a conception of truth that fits with political liberalism’s idea of public reason. This ‘political truth’ does not claim to be a philosophical theory of truth. Similar to Rawls’s attitude to different comprehensive doctrines, Cohen tries to stay abstinent in order to avoid asserting or denying any one metaphysical, full account of truth. Thus, he describes political truth as having four limited characteristics: believing, for example, that stealing is wrong is believing that this is a true statement. A statement being true comes down to corresponding to “how things are,” although political truth does not add or deny that these things really are in themselves, determinately, or mind-independently. It is not reliant on any sort of moral realism. Furthermore, political truth is different from warrant in the way that a belief may be warranted, but not true. And lastly, truth is important (Cohen, 2009, p. 27). This last characteristic is what ultimately matters, and why public reason cannot do without the concept of truth: “We are concerned to do what justice requires: (...) [n]ot simply what we think justice requires, or what we warrantably believe it to require, but what justice requires. But caring about justice, as the political conception indicates, requires caring about the truth about justice” (Cohen, 2009, p. 42).

2.1.3. Estlund: justification, legitimation, and proceduralism

Just like Cohen, David Estlund is sympathetic to Rawls’s political liberalism to some degree, while rejecting his epistemic abstinence. Estlund believes that we *can* still appeal to the full, comprehensive truth – not just a political conception of truth – all the while avoiding the exclusive and sectarian practices of which Rawls is so afraid. Estlund’s strategy consists of differentiating between the legitimacy of a rule and its justification.

The legitimacy of a rule – especially laws, which can be coercively enforced by the state – depends on the procedure through which it is produced (Estlund, 2008, p. 41). This short description does not specify what that procedure ideally looks like, nor does it make any reference to the content of the rule. It just says that a rule is binding (i.e. we ought to follow it) if it is produced a certain way. Here, Estlund sticks to a Rawlsian idea of general, reasonable acceptability: “I defend a certain sort of necessary condition on the legitimate exercise of political power: that it [the procedure] be justifiable in terms acceptable to all qualified points of view (where “qualified” will be filled in by “reasonable” or some such thing)” (Estlund, 2008, p. 41).

It should be noted that Estlund uses the term ‘justification’ to refer to both the justification for a certain procedure *itself*, as well as the justification for a certain rule *within* a certain procedure. Although he uses the word correctly, I think this is confusing, since the one form of justification has epistemic properties, according to Estlund, while the other does not. For clarity’s sake, I will use the term ‘motivation’ to refer to the (non-epistemic) choice of a legitimate procedure, with the term ‘justification’ being reserved for the epistemic process of arguing in favour of a certain rule within a legitimate procedure.

In any case, the choice for a legitimate procedure through which to produce laws does not depend on the truth, but rather on there being a motivation for it that no qualified person could reject. Even if we assume that Roman Catholicism is true, an atheist could still reasonably reject a legislative procedure that lets the pope decide what is law (Estlund, 2008, p. 4). The question then becomes whether there is some procedure that no qualified person could reject. Estlund thinks that such a procedure must have more than just intrinsic value. As already mentioned in the introduction, a procedure based on flipping a coin is also fair and treats people just as equally as a democracy – so why not flip a coin? (Estlund, 2008, p. 6). The answer, of course, is that we want the legislative procedure to have some epistemic value.

Estlund thinks Rawls made a mistake in introducing a non-epistemic political conception of justice that would be acceptable because it does not assert itself as true: “the road not taken, would have been to give an account of how a process in which people address true justice could justify the laws in a way acceptable to the wide variety of contending reasonable comprehensive conceptions (of justice, among other things)” (Estlund, 2012, p. 270). According to Estlund, it is a mistake to assume that a legislative procedure having epistemic features would make the legitimacy of a law dependent on the truth. In parliament, members might argue for a law on the basis of its good results or its just features, but the legitimacy of the law ultimately depends on it receiving a majority of the votes, regardless of the justification members have to vote one way or the other. “One natural way to proceed would be to appeal to the epistemic value of appropriately structured discussion on a common topic. If (in a familiar formula) free and vigorous debate under equal and favorable conditions would tend to lead toward the

correct answer, then this is one strong reason for implementing such a discursive procedure. Moreover, the origin of a political decision in a procedure with this epistemic value might be a significant source of its moral legitimacy – the moral permissibility of its enforcement” (Estlund, 2012, pp. 270–271).

The separation of justification and legitimation comes with the benefit that the epistemic function in the legislative process does not need to be perfect. If a mistake is made in the process, the justification for the law is incorrect or unjust, but the law itself is still legitimate. “Epistemic proceduralism holds that in that case you ought, rationally, to believe that the majority is mistaken, but you ought, morally, to obey the mistaken law” (Estlund, 2008, p. 108). This is not as strange an idea as it might seem at first, according to Estlund: it is the same idea on which the legitimacy of a jury’s verdict rests in a criminal trial. The verdict is legitimate because its legitimacy is grounded in the general acceptability of the procedure, not in its actual correctness within that procedure, so the legitimacy of the verdict stands even if the justification is incorrect in some way (Estlund, 2008, p. 108). “At that stage, in other words, the question of the real truth about, say, substantive justice is bracketed” (Estlund, 2008, p. 23).

Perfect, imperfect, and pure proceduralism

The comparison Estlund makes between the democratic process as a whole and jury trials provides a nice opportunity to talk about the distinction between perfect procedural justice, imperfect procedural justice, and pure procedural justice. Rawls already made the distinction in *A Theory of Justice*, where he gave the examples of dividing a cake, a criminal trial, and gambling. A number of people dividing a cake is an example of perfect procedural justice, where there is an independent standard for the right outcome (i.e. equal division) and a procedure which is sure to lead to this outcome: “the obvious solution is to have one man divide the cake and get the last piece, the others being allowed to pick before him. He will divide the cake equally, since in this way he assures for himself the largest share possible” (Rawls, 1971, p. 85). Imperfect procedural justice also has a standard of correctness, but the procedure is not guaranteed to lead to the right outcome. Both Rawls and Estlund give the example of a criminal trial. “Even though the law is carefully followed, and the proceedings fairly and properly conducted, it may reach the wrong outcome. An innocent man may be found guilty, a guilty man may be set free” (Rawls, 1971, p. 86).

Pure procedural justice, however, does not have an independent standard by which the outcome can be judged. In pure procedural justice, the outcome is just if the procedure has been carried out correctly. Here, Rawls mentions gambling as an example: if the betting is fair, then the distribution of money afterwards will also be fair, whatever that distribution may be. Importantly, though, the fairness of the outcome depends on the procedure actually having been carried out: “Clearly we cannot say that a particular state of affairs is just because it *could* have been reached by following a fair procedure” (Rawls, 1971, p. 86, emphasis added). In *Political Liberalism*, Rawls describes the original position as a case of pure procedural justice (2005a, p. 73). Since the original position is not a procedure that is

actually carried out – not that it was ever Rawls’s intention to somehow carry it out – this makes it difficult for him to maintain that the principles of justice as fairness are *the* principles that would be chosen in such a situation (the thesis of *A Theory of Justice*), which is why he weakens the status of his principles of justice as fairness to principles that “*may* be shared by citizens” (Rawls, 2005a, p. 9, emphasis added). In any case, the reason why Rawls paints the original picture as a case of pure procedural justice, is so that “in their rational deliberations the parties do not view themselves as required to apply, or as bound by, any antecedently given principles of right and justice” (Rawls, 2005a, p. 73).

Estlund, on the other hand, is not concerned about the idea of being bound by prior standards of right: “not everything, not even everything about what we should do, is up to us” (Estlund, 2012, p. 252). The ideal of democratic self-legislation is not threatened by any antecedently given principles of right if the distinction is made between the authority of morality itself and the (political) authority of another’s will: “Morality’s claim to rule moral agents is not the same thing as one person’s claim to rule another, and it cannot be assumed that the two different claims ought to be judged by similar criteria” (Estlund, 2008, p. 29). For Estlund, dictatorial rule by “the wise,” or *epistocracy* is not avoided by denying that there are true, procedure-independent normative standards for political decisions, nor by denying that some people know these standards better than others (Estlund, 2008, p. 30), but by denying that normative political knowledge grants the knower legitimate (political) authority: “a [motivation] from the fact – or truth – that someone is an expert is not yet admissible according to the acceptability criterion. In addition, his status as an expert must be beyond qualified rejection” (2008, p. 35).

2.2. Epistemic deliberation according to Landemore

Hélène Landemore argues that epistemic abstinence does not follow from the fact of reasonable pluralism. She references both Cohen’s plea for the inclusion of political truth-claims, which shows that epistemic abstinence is not required to avoid divisiveness and even fails in doing so, and Estlund’s distinction between justification and legitimation, which shows that references to the comprehensive truth do not lead to any sort of epistemic tyranny. However, the fact that Rawls did not succeed in epistemic matters, does not mean that deliberative democracy has epistemic properties, admits Landemore. At the same time, she argues that it does have these properties: she argues for “political objectivism – the view that there must be some kind of procedure-independent standard of correctness in politics – and political cognitivism – the related view that this standard can be known” (Landemore, 2017, p. 284). The first part of this section is devoted to Landemore’s explanation of the different characteristics a procedure-independent standard of correctness might have. The second part delves into her defence against epistocracy, which depends on the collective intelligence of citizens. The section (and chapter) then ends with Landemore’s simple argument for the existence of a procedure-independent standard of correctness.

For Landemore, a procedure-independent standard does not necessarily refer to a universal moral truth, although she keeps the option open. Of course, one possible conception of a procedure-independent standard is that it is similarly independent from everything else and consists of a Platonic absolute, but she also gives examples of less taxing standards (Landemore, 2013, p. 210). A “weak political cognitivism” relies on a thin standard of correctness that simply specifies that decisions must not cause harm. The goal of deliberation, in such a case, is not to track the truth, but rather to avoid mistakes. Thicker standards of correctness are more substantive, pointing towards (a range of) desired outcomes (Landemore, 2013, pp. 212–213).

To give an example, Estlund uses a weak standard of correctness in arguing that democracy tends to make good decisions. He argues that it is not enough to get things right most of the time, if deliberation does not manage to avoid what he calls “*Primary bads*: war, famine, economic collapse, political collapse, epidemic, and genocide” (Estlund, 2008, pp. 163, 160). Epistemic proceduralism works well enough if it manages to avoid these primary bads better than a random arrangement (i.e. a coin flip), not much worse than any non-democratic arrangement, and the above can be argued in a way acceptable to all qualified points of view (Estlund, 2008, p. 168).

A second distinction can be made between a culturalist view of political cognitivism and an absolutist one. According to the culturalist view, the standard of correctness is determined by a given context and acknowledged as such. It is dependent on the history and culture of the group for which it serves as a standard. This means that the standard of correctness only determines what is correct at the level of the group. Alternatively, an absolutist conception of a standard of correctness takes the standard to be universally valid. Policy decisions, then, are correct insofar they are coherent with a set of transcendental moral norms (Landemore, 2013, pp. 217–218).

Landemore makes a further distinction between different kinds of questions for which there are different kinds of standards. The simplest questions are of the factual type. “Questions such as “Are there weapons of mass destruction in Iraq?” or “What was the rate of unemployment at the end of 2006?” may raise disagreement among citizens and experts alike, but we assume that they ultimately have a verifiable answer” (Landemore, 2013, p. 214). The standard of correctness here is the factual truth, which can (theoretically) be checked and verified in some way. If an epistemic conception of democracy can convincingly argue that it is able to answer such factual questions accurately, that would already be a major achievement according to Landemore (2013, p. 215).

More difficult questions deal with values rather than facts. Landemore distinguishes between context-dependent values and basic values. Context-dependent (or ‘fact-sensitive’) values are those which are or can be “at least partially justified by certain facts when those are verified” (Landemore, 2013, p. 215). The correct answer to such questions depends on both a certain value (e.g. criminals should be punished so as to prevent recidivism) and certain facts (in this example, whether stricter punishments lead to more

or less repeat offences). According to Landemore, a lot of apparent “‘value pluralism’ (...) can arguably be explained by a disagreement about facts” (Landemore, 2013, p. 216).

However, those values that do not depend on any further fact and cannot be deduced from any higher-order value, those are basic values. Unfortunately, Landemore does not indicate what a standard of correctness might be in case of disagreement about basic values. She simply thinks “it safer to remain agnostic as to whether the foundational norms of our political systems – constitutional principles – are fact insensitive in the way (...) that basic value judgments are” (2013, p. 217).

The absence of a plausible description of a procedure-independent standard in case of disagreement on basic values is, I think, telling. In chapter four, I continue this line of argument and try to show how such a standard cannot exist. For now, however, I will focus on Landemore’s argument against epistocracy, since it nicely shows how deliberation helps find the (factual) truth.

Cognitive diversity

Recall that Estlund argued in favour of true, procedure-independent normative standards for political decisions and in favour of the fact that some individuals know these standards better than others. Ultimately, however, political authority does not depend on this expertise. Landemore, on the other hand, denies the existence of individual normative experts: “when it comes to matters of the common good, the group itself is the best and really the only knower” (Landemore, 2017, p. 288). She supports this claim by pointing to Lu Hong and Scott Page’s ‘Diversity Trumps Ability Theorem,’ which is the idea that “a randomly selected collection of problem solvers outperforms a collection of the best individual problem solvers” (Hong & Page, 2004, p. 16388). This is because a randomly selected group has much more cognitive diversity, allowing them to approach the problem from different perspectives, combine different interpretations and heuristics, and use different predictive models (Landemore, 2013, p. 102).

As an example of how deliberation is able to tap into this collective intelligence, Landemore summarizes the jury deliberations taking place in the 1957 film “Twelve Angry Men” (Estlund & Landemore, 2018, pp. 120–121; Landemore, 2013, pp. 98–99). In this film, the diverse backgrounds of the jurors allow each of them to contribute unique pieces of information and interpretations of evidence that the others did not know or missed. Eventually, it is determined that the suspect on trial could not have stabbed the victim in the way the prosecution claimed and that the witnesses who claimed to have seen the suspect fleeing the scene are unreliable. “Finally, deliberation in this example leads to a unanimous consensus on the “better” answer, namely the decision to consider the young convict “not guilty” given the doubts raised by deliberation” (Landemore, 2013, p. 99).

Still, all these possible characteristics of a procedure-independent standard of correctness do not yet establish the actual existence of such a standard. Landemore’s argument that it exists is simple, though:

if there was no procedure-independent standard of correctness, if we are not trying to get at some objective, epistemic nature, then there would be no point in deliberating or reasoning about politics. “The existence of a procedure-independent standard and the possibility of knowing it are inscribed in, and presupposed by, the very nature of our discursive exchanges and, specifically, our ways of engaging with each other’s reason in political arguments” (Landemore, 2017, p. 284). It is simply an unacknowledged assumption and an implicit element of most theories of democracy, even those that appear procedural (Landemore, 2013, p. 220).

Making this assumption explicit makes deliberative democracy more coherent with its own premises and enables theoretical and empirical investigations of deliberative democracy’s epistemic workings. Additionally, Landemore argues, it allows a defence of democracy on something more concrete and tangible than intrinsic qualities as a commitment to equality. These benefits come with admitting that deliberative democracy has an epistemic function, all the while leaving Rawls’s conception of public reason intact (Landemore, 2017, pp. 286–287).

3. Habermas and ideal discourse

The previous chapter investigated the different visions on epistemic abstinence, with Rawls shying away from epistemic claims, Cohen and Estlund leaving some room for it, and Landemore fully incorporating procedure-independent standards of correctness. Her argument is simple enough – if there was no such standard, there would be no point in deliberating – but does not immediately convince. Landemore, however, argues that this argument for the existence of a procedure-independent standard of correctness goes back to Jürgen Habermas (Estlund & Landemore, 2018, p. 113; Landemore, 2017, p. 284). Habermas himself, however, emphasizes that he takes a “‘Postmetaphysical’ approach” (1996, p. xiii). Before I explain what Habermas meant with that statement, it must be mentioned that Habermas has written a tremendous amount of books and articles over the past seventy or so years. To keep this chapter under book-length, I will use some of Habermas’s work from the 1990’s, which is when he famously entered a debate with Rawls on *Political Liberalism*.

In distinguishing his post-metaphysical approach from Rawls’s political, not metaphysical approach, Habermas makes some comments that seem to support the idea of an objective, epistemic, procedure-independent standard of correctness in political deliberation. At the same time, these comments seemingly contradict some of the most central ideas of his own discourse theory. This chapter begins with Habermas’s reply to Rawls. Following that is a short summary of Habermas’s theory of deliberation and how Landemore – mistakenly, in my opinion – distils support for her own position from it. The second half of the chapter turns to the pragmatic, context-bound nature of reason in Habermas, pointing out the tensions he himself saw, and the apparent contradiction he did not.

3.1. Reasonableness and validity

To begin with, Habermas’s criticism of Rawls takes a different avenue than Landemore’s. Where Landemore tries to show that reasonable pluralism does not lead to epistemic abstinence, Habermas chooses to critically examine the concept of the reasonable. As we have seen, Rawls believes that there can be many reasonable comprehensive doctrines, but only one true doctrine (Rawls, 2005a, p. 129). Habermas summarizes this by saying that a “political conception of justice is reasonable in the sense that it can afford a kind of tolerance toward worldviews that are not unreasonable” (Habermas, 1995a, p. 125). Reasonableness has more to do with civil demeanour towards each other than with truth. The problem with this idea of reasonableness is that it defines which comprehensive doctrines can count as reasonable from an impartial standpoint, but this impartial standpoint cannot be occupied by individual citizens because they are constrained by their own comprehensive doctrines. Habermas questions whether citizens would ever reach a reasonable overlapping consensus, “deciding simultaneously, but each individually and for herself, whether the proposed conception fits into her own comprehensive

doctrine” (Habermas, 1998, p. 91). The alternative he proposes relies on citizens adopting a shared, impartial perspective in order to deliberate on which conception of justice to adopt.

Similar to Rawls, Habermas rejects religious or metaphysical foundations for the moral and legal norms that guide our behaviour. In an increasingly secular world, with increasingly pluralist societies, “moral commands can no longer be publicly justified from a transcendent God’s eye point of view” (Habermas, 1998, p. 7). At the same time, they can no longer draw on discarded metaphysical concepts of essences that previously put normative and factual statements on a similar plane. Instead, the cognitive validity of moral statements and judgements must be justified in a different way (Habermas, 1998, p. 11).

When Habermas uses the term ‘cognitive validity,’ he does not mean the same thing as Landemore’s political cognitivism. Where Landemore uses ‘cognitivism’ to point to the idea that the procedure-independent standard for political decisions can be known, Habermas uses it in the more traditional sense. Very broadly speaking, in this traditional sense, cognitivism is the idea that morality has content that is different from, or independent of, emotional attitudes and preferences. Noncognitivists argue that “stealing is wrong” does not have any more substantive content than “I disapprove of stealing” or “stealing makes me sad.” Cognitivism, on the other hand, argues that ‘wrongness’ *does* have independent meaning. This type of cognitivism does not necessarily rely on an objective or procedure-independent standard of correctness, and is thus different from the more epistemic form of cognitivism Landemore is defending.

In searching for a justification for the cognitive validity of moral statements, Habermas rejects a fair number of explanations. Both moral realism and moral scepticism are out of the question. Moral realism either runs into the problem of being unable to explain *what* the normative standard is that we have intuitive access to, or the problem of being unable to explain *how* this ideal intuition works. Scepticism about the cognitive validity runs into the problem that it cannot explain the phenomenological experience of morality, namely that people find themselves bound by it in everyday practices (Habermas, 1998, pp. 11–12). Although it receives more attention, the idea that moral feelings are based on solidarity with members of our community does not stand up to the objection that we also act morally towards strangers: “Complex societies cannot be held together solely by feelings like sympathy and trust, which are geared to the local sphere” (Habermas, 1998, p. 14). Social contract theory, which tries to explain morality as a form of instrumental reason where accepting the general norms is the rational thing to do for each individual, gets shot down because it cannot explain why moral norms have such obligatory force in terms of simple preferences (Habermas, 1998, p. 16).

In the end, Habermas finds the ground of morality’s cognitive content in Kantian ideas of self-legislation. However, unlike Rawls, Habermas extends this self-legislation from the individual to the community: “Each person participates in the role of co-legislator in a *cooperative* enterprise and thereby adopts an intersubjectively extended perspective from which it can be determined whether a

controversial norm can count as generalizable from the point of view of each participant. (...) Because a legislative practice can only be undertaken jointly, a monological, egocentric operation of the generalization test in the manner of the Golden Rule will not suffice” (Habermas, 1998, p. 31). What this means, is that moral rules must be the subject of a universal consensus, achieved by being generalizable from a collective point of view that incorporates every one’s individual perspective, which is the moral point of view.

It is important to note that Habermas is describing the deliberation leading to a universal consensus as a form of pure proceduralism, and not imperfect proceduralism. “The scope of citizens’ public autonomy is not restricted by natural or moral rights just waiting to be put into effect, nor is the individual’s private autonomy merely instrumentalized for the purposes of popular sovereignty. Nothing is given prior to the citizen’s practice of self-determination other than the discourse principle, which is built into the conditions of communicative association in general” (Habermas, 1996, pp. 127–128). What, then, is this discourse principle?

The discourse principle

The discourse principle is the central idea of Habermas’s deliberative justification. It states that that “[o]nly those norms can claim validity that could meet with the acceptance of all concerned in practical discourse” (Habermas, 1998, p. 41). Validity, for Habermas, is a sort of moral equivalent of truth. He finds the idea of truth inapplicable in the moral realm, but, as we have seen, does not deny the cognitive claim of normative statements. The solution is to “conceive ‘rightness’ as rational acceptability under certain idealized conditions. When we consider a normative proposition to be valid, we are claiming that it can be justified in argument” (Habermas, 1995b, p. 1507).

Justification in argument consists of a “noncoercive but regulated contest for the better arguments based on the best information and reasons” (Habermas, 1996, p. 228). The regulations surrounding deliberation are not normative, but pragmatic: there is no moral imperative to allow all those who could make a relevant contribution to do so, but if you are looking for the best reasons, then it would not make sense to exclude those who could contribute. These pragmatic rules show some similarities to Rawls’s idea of public reason, which is “the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution” (Rawls, 2005a, p. 214). For Rawls, public reason requires citizens to imagine themselves as legislators and to give those reasons for their political actions that they sincerely deem sufficient and they reasonably think other citizens might also reasonably accept (Rawls, 2005c, pp. 444–447). In addition to requiring inclusivity and equal opportunity to contribute to the deliberation, Habermas’s ideal discourse situation also requires participants to be sincere and requires the elimination of all forms of coercion, so only the rational force of better reasons motivates the acceptance of a norm (Habermas, 1998, p. 44).

On the one hand, this ideal discourse situation does seem to have epistemic properties. “Political disputes would forfeit their deliberative character and degenerate into purely strategic struggles for power if participants do not assume – to be sure, fallibilistically, in the awareness that we can always err – that controversial political and legal problems have a correct solution. If they were not oriented toward the *goal* of solving problems by giving reasons, participants would have no idea what they were *looking for*” (Habermas, 1995b, p. 1493). At the same time, it would be too quick to conclude that Habermas hereby admits the existence of a procedure-independent standard of correctness. Almost in the same breath, he adds that “in the democratic process no criteria of rightness *independent* of the procedure are available; the correctness of decisions depends solely on the fact that the procedure has actually been carried out” (1995b, p. 1495). It seems more likely, then, that Habermas means to say that participants must assume that it is possible to come to an agreement, where this agreement can be seen as rational when the conditions of the ideal discourse situation have been met, or at the very least closely approximated. There is no procedure-independent standard, because the process itself is the only standard.

3.2. ‘Good reasons’ and context

3.2.1. *The facticity of law*

The validity of the norms guiding our behaviour thus depends on them being discursively redeemable – us having good reasons for them – from a collective point of view. At the same time, it would be impossible to continuously deliberate on every single aspect of our lives. This is where law comes in: “in complex societies, morality can become effective beyond the local level only by being translated into the legal code” (Habermas, 1996, p. 110). Law, according to Habermas, artificially creates a layer of social reality, of ‘facticity,’ which makes it that not every action has to be defended through deliberation. Where public autonomy consists of the participation in lawmaking and practical discourse, private autonomy consists of being able to “*drop out* of communicative action” (Habermas, 1996, p. 120), to not have to substantively defend one’s reasons, but simply to say “this is my right.”

At the same time, this artificially produced facticity is vulnerable, because its *legitimacy*, the legitimacy of laws depend on “the discursive redeemability of their normative validity claim” (Habermas, 1996, p. 30). A law that makes stealing illegal is only legitimate as long as the underlying normative claim that one should not steal can be discursively defended. The redeemability of validity claims, in turn, depend on “the context-dependent acceptability of reasons that are constantly exposed to the risk of being invalidated by better reasons and context-altering learning processes” (Habermas, 1996, p. 36).

There is a tension here, admits Habermas. Laws are only legitimate if we have good reasons to defend their normative content; what counts as a good reason is dependent on the context and on background assumptions, both of which can change. Such change would then seemingly necessitate the re-deliberation of the law, but the point of law is to *not* have to deliberate everything – the artificial layer of facticity serves to remove “tasks of social integration from actors who are already overburdened in their efforts at reaching understanding” (Habermas, 1996, p. 30). I will return to this tension in chapter five; first, I want to point out another tension that makes Landemore’s and Habermas’s claims to epistemic authority for deliberation questionable.

3.2.2. Ideally expanded audience

As explained, Habermas sees deliberation as a purely procedural way of reaching a consensus on moral questions. There is no prior order of moral norms and values waiting to be put into effect, but through rational deliberation, a consensus on the validity of normative statements can be reached. In a collective endeavour, the people create legislation supported by good reasons. This rational deliberation is highly pragmatic: “what counts as a ‘good reason’ manifests itself only in the role it has in an argumentation game” (Habermas, 1996, p. 227). Thus, whether the participants in deliberation reach a consensus based on good reasons – and what the content of that consensus would be – is heavily dependent on the particularities of their situation and of their society at large.

Recall that Habermas is looking for a universal consensus. The dependence of reasons on particularities makes this universal consensus rather hard to achieve. In order to make his theory of justice universal, Rawls tried to avoid such dependence on particularities by hiding them behind a veil of ignorance, but Habermas finds this approach too complicated. Instead, Habermas argues that the process of argumentation, which is a process of ideal role taking, enlarges the perspectives of its participants, so that the intersubjective, first-person plural perspective becomes a universal perspective (Habermas, 1995a, pp. 116–117).

“[W]hether norms and values could find the rationally motivated assent of all those affected can be judged only from the intersubjectively enlarged perspective of the first-person plural. This perspective integrates the perspectives of each participant's worldview and self-understanding in a manner that is neither coercive nor distorting. The practice of argumentation recommends itself for such a universalized ideal role taking practiced in common. As the reflexive form of communicative action, argumentation distinguishes itself socio-ontologically, one might say, by a complete reversibility of participant perspectives that unleashes the higher-level intersubjectivity of the deliberating collectivity. In this way, Hegel's concrete universal is sublimated into a communicative structure purified of all substantive elements.” (Habermas, 1996, p. 228)

In his exchange with Habermas, Rawls points to this passage when calling Habermas's discourse theory metaphysical, thereby distinguishing it from his own political (not metaphysical) liberalism (Rawls, 2005b, pp. 378–379). Habermas, however, was trying to formulate a post-metaphysical ground for morality, based on pragmatic process conditions. The question is whether he still succeeds if he incorporates this ideal role taking. My answer is that he does not.

Habermas's entire deliberative theory is based around actual deliberation: it is not a monological process, that we can undertake in an egotistical fashion (Habermas, 1998, p. 31). The intersubjective perspective only arises through actual communicative interactions between citizens. There is still a big gap between an intersubjective perspective and a universal one, however. Habermas tries to close this gap by adding another presupposition: “[a]nyone serious about participating in a practice of argumentation cannot avoid pragmatic presuppositions that require an ideal role taking, that is, presuppositions that require one to interpret and evaluate all contributions from the perspective of every other *potential* participant” (Habermas, 1996, p. 230, emphasis added).

There are two problems here that I wish to discuss: first, Habermas adds the word “potential,” which suddenly and severely changes the dynamics of the deliberation. In deliberation with actual participants, going back and forth on whether the arguments offered count as good reasons is what creates the intersubjective perspective from which such judgements can be made. In Habermasian terms: “we bring argumentation to a de facto conclusion only when the reasons solidify against the horizon of unproblematic background assumptions into such a coherent whole that an uncoerced agreement on the acceptability of the disputed validity claim emerges” (Habermas, 1996, p. 227). But how does this work if we must include all *potential* participants as well? How can an intersubjective perspective emerge? How can we have a conversation with someone who is not here? And how do we know the background assumptions of their perspectives, which are fundamental to their judgement of the arguments brought forth in the deliberation? For all its flaws, Rawls's original position tries to resolve this dilemma by imposing on every participant the same perspective. How Habermas hopes to achieve the same remains unclear.

The second problem is that Habermas tries to pass off the change from an actual to an ideally expanded audience as a pragmatic presupposition, similar to the pragmatic rules of deliberation discussed earlier. To reiterate the discourse principle: “[o]nly those norms can claim validity that could meet with the acceptance of all concerned in practical discourse” (Habermas, 1998, p. 41). The pragmatic process conditions required by the discourse principle aim to ensure “that all the relevant reasons and information for a given issue at a particular time are in no way suppressed” (Habermas, 1996, p. 227), i.e. to make sure the entire context is taken into account when collectively deliberating on contentious norms. It makes sense that, from a pragmatic point of view, the acceptance of all concerned is premised on sincerity and non-exclusion. The same cannot be said of this extension of argument to a potentially

universal audience. Having to address a universal audience in fact denies the context-bound nature of reasons and thus undermines the entire pragmatist underpinning of Habermas's discourse theory.

4. Against a procedure-independent standard

We have seen that the presupposition of an ideally expanded audience is not a pragmatic process condition required by the discourse principle, as Habermas tried to argue. There is still a gap between the intersubjective and the universal. Still, we saw that Landemore allows for the procedure-independent standard of correctness to be historically and contextually determined. What I argue in this chapter is that, properly conceived, a standard of correctness for political decision-making cannot be procedure-independent. My argument against the existence of a procedure-independent standard of correctness in deliberative democracy does not deny the existence of *all* procedure-independent standards of correctness. I do wish to deny its existence in politics, especially if it takes the form of moral realism. To show the difference between political and non-political standards of correctness, I return to an example Landemore uses: the jury deliberations in “Twelve Angry Men.”

To recapitulate: the jury is arguing whether or not the suspect is guilty of stabbing the victim. Eventually, through thorough thought and deliberation, the jurors come to the conclusion that there are serious doubts whether or not he actually committed the crime. The jury is discussing a question of the factual type, with a clear right answer – either the suspect did it, or he did not do it. If we anachronistically imagine that the victim had installed a doorbell camera which captured the culprit, the jury deliberation would not have made a great film.

If we change the kind of question the jury is trying to answer, it becomes less obvious that there is a clear right answer. Consider a jury that has to come to a verdict on a stabbing, but now there is no question whether or not the suspect stabbed the victim. He did. The question the jury is trying to answer, is whether the stabbing was an act of self-defence. What constitutes a legitimate act of self-defence is usually specified by law. The requirements can differ between legal codes, but say that an action must be proportional to the threat in order to count as legitimate self-defence. In that case, the law provides a procedure-independent standard of correctness for the outcome of the jury deliberation: if the stabbing was proportional to the threat, the suspect should be set free; otherwise, he should be found guilty.

The jury now has to apply the concept of proportionality to the case at hand. This is an entirely different question than whether or not the suspect stabbed the victim. Still, the concept of proportionality might be interpreted and elaborated in jurisprudence. However, pointing to legal precedents as a procedure-independent standard of correctness is dubious. Legal precedents are formed by the outcomes of court cases, and the case at hand might well create a new legal precedent. We can rightfully question the standard provided by previous rulings is procedure-independent in the way Joshua Cohen defined it: “independent of current consensus” (1986, p. 34). I will return to this point shortly.

Ignoring the role of jurisprudence for the moment, the law unobjectionably provides a procedure-independent standard for the outcome of the jury deliberations. Like I already mentioned, however,

Landemore is not trying to argue the existence of a procedure-independent standard of correctness in court, she is trying to argue the existence of an epistemic, procedure-independent standard of correctness in *politics* (Landemore, 2017, p. 284). We can then turn to the question of what inspired the legislator to make proportionality the criterion for legitimate acts of self-defence. In asking this question, we assume that the legislator (or legislators) had reasons for their choice. That is not at all an unreasonable assumption. But it would go too far to assume that those reasons are objective, epistemic, and procedure-independent, or that they depend on a standard with those properties.

To illustrate the point, we can assume that our hypothetical legislator argues that proportionality as a criterion for self-defence is a just decision. In that case, justice serves as the standard for the decision. The strongest possible form this standard could take is in the form of a Platonic, immaterial, perfect Idea of 'Justice,' which exists mind-independently. Every just act or just person amounts to an imperfect, material instance of the perfect idea, in the same way that every table is a manifestation of the Idea of 'Table' and every leaf of the Idea 'Leaf.' Habermas already rejected moral realism, which posits the existence of such a mind-independent order of 'rightness,' because it is unable to explain what such an order of rightness is made from, and how we are able to access it (Habermas, 1998, p. 11). Another fervent opponent of Platonic dualism is Nietzsche:

“We call a person ‘honest.’ We ask, ‘Why did he act so honestly today?’ Our answer usually goes: ‘Because of his honesty.’ Honesty! that means once more: the ‘leaf’ is the cause of the leaves. For we know nothing of an essential quality called honesty; what we know are numerous, individualized, hence dissimilar, actions which we equate by omitting the dissimilar and then referring to them as honest actions. Last of all, we formulate out of them a *qualitas occulta* with the name ‘honesty.’” (Nietzsche, 1989, p. 249)

The point that Nietzsche makes, is that it is people who construct concepts, such as 'leaf,' 'honesty,' or 'justice' in order to categorise, order, and arrange the world (Nietzsche, 1989, p. 254). There is no supreme, prior, perfect idea of honesty, justice, or the common good that we can track through deliberation. Trying to figure out which conception of justice is objectively true is like trying to figure out which leaf most objectively adheres to the idea 'Leaf'; the effort is not only futile, but absurd even.

Not every argument for procedure-independent standards relies on a Platonic or moral realism, however. Taking a different approach, we might say that justice, as the standard for political decision-making, does not necessarily exist mind-independently, but that it is still objective and universally valid. We thus assume with Landemore that such an objective, procedure-independent standard of correctness exists, even if we leave open the question *how* it exists, exactly. Landemore cites Sean Ingham (2013), who admits that “[w]hat makes epistemic justifications problematic is not that they presuppose the existence of procedure-independent standards for evaluating collective decisions. Anyone who forms a judgment

about the merits of a decision before learning its political fate concedes as much.” (p. 139). According to Landemore, this concession is part of the reason why “it seems impossible to resist that there is something of an objective, epistemic nature that we aim to figure out when we vote or deliberate with each other about politics.” (2017, p. 285). The contentious point then becomes how we can *know* this standard, i.e. whether Landemore’s political cognitivism holds any water.

Reflective equilibrium

Before continuing, it is helpful to introduce Rawls’s idea of reflective equilibrium. Reflective equilibrium is a state of affairs for our moral judgements that occurs when our considered judgements and our conception of justice match, upon reflection (Rawls, 1971, p. 20). When trying to discover moral principles or principles of justice, we might start out with some firm, but considered intuitive convictions, such as ‘murder is wrong.’ At the same time, we might try to formulate a number of premises or background theories from which we can develop a set of principles. If there is a discrepancy between our considered judgements, our principles, and the background theories, we can choose to revise any one of them. We might say that the premises we started with are inadequate, since they can be used to, say, justify murder, or if our premises and reasoning appear solid, we might have to revise our considered judgements. If we make quick revisions and settle for a good fit – “the smoothing out of certain irregularities” (Rawls, 1971, p. 49) – we have reached a *narrow* reflective equilibrium. If, instead, “we advance philosophical arguments intended to bring out the relative strengths and weaknesses of the alternative sets of principles (or competing moral conceptions)” (Daniels, 1996, p. 22), we might more substantially revise our convictions and principles and reach a *wide* reflective equilibrium. The point is that, by going back and forth, we eventually reach a reflective equilibrium in which our principles and judgements not only align, but form a system of strong mutual support – at least, until we are prompted by circumstances or a Socratic urge to reflect once again.

What is important, is that a discrepancy between our considered judgements and our reasoned premises and principles does not tell us *which* of these we have to adjust to achieve equilibrium: “[w]e can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision” (Rawls, 1971, p. 20). That does not mean the adjustments we make are arbitrary. There might be reasons or arguments to adjust one rather than the other. If our principles align with all our firmest convictions except one, it might be advisable to reconsider that one conviction; if, on the other hand, we find flaws in the reasoning on which we decided our principles, it could be the case that our conception of justice is the problem. Neither has any epistemological priority or privilege; the simple fact that there is an incongruence, that our principles and our judgements do not align, does not tell us anything except that we have some reflecting to do.

The process of reaching reflective equilibrium does have epistemic properties, but they are severely limited. Most importantly, the epistemic conclusions that can be drawn are conditional. ‘*If* our conception of justice includes respecting life, *then* murder is wrong.’ ‘*If* the common good revolves around providing fair equality of opportunity to all, *then* we should invest in accessible education.’ This is the same kind of conditional epistemic value as provided by my earlier example of jury deliberation on legitimate self-defence: ‘*if* legitimate self-defence is legally defined as a proportionate response to an immediate and actual threat, *then* one is justified in hitting someone who is waving a knife around.’ The difference is that the participants in jury deliberation are provided with a single, procedure-independent standard by which they have to make a decision – in this case, the legal definition of proportionality. In political deliberation, however, no such standard is provided.

This is further illustrated by the ‘Diversity Trumps Ability Theorem’ used by Landemore to show how a randomly selected group of deliberators can outperform a group of experts, due to the former’s greater cognitive diversity. I do not want to question the soundness of the research; what I want to point out is that, in the research and in the examples given, the problem to be solved and the standard of correctness are already given. Landemore admits that “[c]ognitive diversity is not diversity of values or goals, which would actually harm the collective effort to solve a problem” (Landemore, 2013, p. 102). Politics, however, is more than just efficient problem-solving. Determining which problems should be solved (agenda-setting) and whether they should be solved in an economically efficient, quick and easy, or morally just way are essential elements of the political process. Those elements are characterised by a wide variety of diverse values and goals. Denying that diversity of values and goals would be akin to denying the entire reason political conflicts arise in the first place. Again, we end up with a form of conditional epistemic value: *if* we want this problem solved efficiently, *then* a group of randomly selected problem-solvers will outperform a group of the best individual problem-solvers.

Of course, one could argue that all citizens are still interested in justice or the common good, despite the perceived lower-order diversity in values and goals. Habermas makes explicit the assumption that participants in deliberation confer identical meanings on the terms and expressions they use (1996, p. 19). This means that, when people refer to justice or the common good, they are referring to the same definition. But often, the meaning of justice or the common good is exactly the issue at stake and the definitions people adhere to vary wildly. Thus, for justice or the common good to serve as a standard of correctness, it must be more than a floating signifier, which would allow every member of the group to evaluate the merits of a decision according to their own, purely subjective standard. If we follow Landemore, who says that “when it comes to matters of the common good, the group itself is the best and really the only knower” (2017, p. 288), then the standard of correctness can only really come from a consensus within the group, either explicit or implicit.

The consensus is implicit when through multiple deliberative decisions, a shared definition of justice or the common good is revealed. However, the first decisions would be made without a clear, collective, substantive standard of correctness for the participants to refer to. Even if we follow Landemore in ridding the ‘fact of pluralism’ from its normative expectations, we must still admit that agreement on the exact meaning and the demands of justice does not happen automatically. The only option, then, is that the participants spend some time deliberating on what ‘justice’ or ‘the common good’ actually means. But if that is the case, we are forced to conclude that the standard is not procedure-independent, but in fact dependent on the very same procedure as the decisions it is supposed to evaluate.

Should the same group of deliberators ever come to a collective decision that conflicts with their collective standard for decision-making, we run into the exact same problem as when our considered judgements conflict with our reasoned principles. Absent any further considerations, it is unclear whether the group should adjust their conception of justice (or the common good, or whatever other standard they use), or whether they should see their more recent decision as mistaken. This is a problem for Landemore’s political cognitivism, since there is no way of telling which of the two collective decisions by the same group is better or “more right.” Rawls circumvents this problem by fixing the principles of justice in perpetuity once the veil of ignorance is lifted, but Landemore emphasizes the fallible nature of our deliberations (Landemore, 2017, p. 290). This means that collective decisions might be erroneous, and thus be subject to revision.

By making the group the “knower,” Landemore has simply shifted the process of reaching reflective equilibrium from the individual to the collective level, similar to Habermas’s first-person plural perspective. If the group is divided on which standard of correctness to use, or on the meaning of a shared standard, then the group does not know anything. On the other hand, if we assume the group has reached a consensus on the substantive standard of correctness they use, then this standard is not procedure-independent. Furthermore, its epistemic value is limited: just as with individual reflective equilibrium, the reasoning is conditional. If the group changes the standard of correctness – which might very well happen – there is no way of knowing which standard is correct. As much as Landemore would like to “welcome in the ‘truth’ again,” (Landemore, 2017, p. 290), it does not seem that there is any door for it to enter through.

5. What is left of deliberation?

Landmore rhetorically asked what the point of deliberating about politics would be if we did not assume the existence of a knowable, epistemic, procedure-independent standard of correctness. Without any reference to the previous chapters, we could cynically answer that there is no point. Alternatively, but equally cynically, we could answer that the point is simply to hear ourselves talk. A third option would be to provide a conception of deliberation that takes the lack of a procedure-independent standard into account, while still arguing that democracy is worth the effort. Rather than resorting to cynicism, this is the option I wish to explore.

The argument will proceed as follows: the first part of this chapter is dedicated to a constructivist account of democracy. Many elements of this constructivist account have already been touched upon in this thesis, although not in the way I combine them here. It is closely related to Habermas's pragmatic deliberative theory, while leaving out the ill-fitting idealisations; furthermore, it incorporates valuable insights from both Rawls and Landmore. The second section looks at Hans-Georg Gadamer's philosophy of conversation and understanding to provide an explanation as to why deliberation is uniquely suited to institutionalise the constructive function of democracy, while also prompting us to manage our expectations carefully. The third section explores this and other implications of the constructivist account of deliberative democracy. What are its benefits and downsides? What role, if any, is left for truth? How do values commonly associated with deliberative democracy, like inclusion, equality, and mutual respect, feature into the account?

5.1. Democracy as the social construction of norms

As we saw before, Nietzsche criticised the idea of Platonic dualism because it is humans who create the concepts and categories they then consider to be objectively true: “[i]f I define the mammal and then after examining a camel declare, ‘See, a mammal,’ a truth is brought to light, but it is of limited value” (Nietzsche, 1989, p. 251). In this example, the definition of a mammal is determined by a single person, and there would be little reason to assume that anyone else would immediately agree to that definition. But the construction of concepts and categories does not need to be an individual endeavour.

A relatively clear example of how facts can be socially constructed comes from the International Astronomical Union's 2006 General Assembly. The assembly passed, by vote, a resolution changing the definition of a planet. Because of this new definition, Pluto was no longer a planet, but a “dwarf planet” (IAU, 2006). It is hopefully clear that Pluto itself did not change between being discovered and being demoted from the planetary team. Rather, it was the discovery of other celestial bodies with similar sizes and orbits to Pluto that prompted a reconsideration of the definition of planets. Had the vote to change the definition not passed, our solar system would have eleven, thirteen, or even seventeen

planets, depending on which of the now-dwarf planets would be allowed to play in the big leagues. That is not to say that the decision by the IAU was arbitrary, in the sense that they might as well have flipped a coin. There were reasons and arguments put forth for abandoning the old definition with reference to (empirical observations of) the physical characteristics of the (dwarf) planets, and the proposal changed between its first draft and the final version which passed the vote. A better way to describe the decision is that it was *contingent*, specifically in the sense that it could have been otherwise. There is no *necessary* reason for the definition of planets to be thus – or some procedure-independent standard to check if the definition is correct – but apparently there were enough reasons in general.

The point is that even a simple factual statement as “Pluto is not a planet” has a serious degree of artificial facticity – artificial in the sense that its facticity ultimately depends on the outcome of a vote. According to social constructivist theory, the contingent and artificial nature of facts is not a problem. In fact, according to social constructivist theory, *that is just how it goes*: “what one takes to be knowledge of the world and self finds its origins in human relationships. What one takes to be true as opposed to false, objective as opposed to subjective, scientific as opposed to mythological, rational as opposed to irrational, moral as opposed to immoral is brought into being through historically and culturally situated social processes” (Gergen & Gergen, 2008, p. 818). Usually, these processes of social construction are a lot more diffuse than the IAU’s 2006 General Assembly, but it is exactly for that reason why Pluto is such a tangible example of how facts are contingent.

Now, if we think of a legislative assembly deciding on the proper definition of legitimate self-defence, or the definition of stealing, or the legality of abortion, we can see these decisions as the construction of legal facts. As Habermas said, law artificially creates a layer of social reality. This artificial facticity is based on reasons and arguments, so it is not arbitrary, but it is nonetheless contingent in the exact same way that the definition of a planet is – it could have been otherwise, because the reasons and arguments are context-dependent. Again, there is a very tangible constructive process: deliberation creates an intersubjective perspective, from which the reasons and arguments are weighed and a consensus is reached. For Habermas, deliberation works to determine the validity of moral norms just as much as the validity of legal norms. So if we acknowledge that a deliberative democratic assembly constructs an artificial layer of legal facts, which is based on reasons and arguments, but is still contingent, then the logical conclusion would be that moral norms too are an artificial layer of social reality, constructed through diffuse processes of social interaction, rational argument, and reasoned deliberation, but retaining an element of contingency.

Democracy, then, is a way of institutionalising the diffuse processes of social construction through which the facts of our social reality are created. Deliberation, which creates an intersubjective perspective, a collective point of view, is the most concrete form of social construction, although it is

not a necessary condition. While this deliberation cannot transcend its context, it *can* recognize the contingent nature of this context and reflect critically on it.

There are three important notes that need to be made in the wake of this conclusion. The first has to do with the importance of contingencies; the second note concerns the complex relationship between law and morality; the third note anticipates the critique that a social constructivist understanding of morality is (too) relativistic.

Contingent but not inconsequential

I have emphasized multiple times that the contingent nature of facts means that they *could* have been different. The first important note, then, is that this does not mean that they *should* be different, nor that they are inconsequential. The IAU's decision to define planets in such a way that Pluto was excluded could have been different, but I see no reason why it *should* be. Furthermore, any other definition would be just as contingent. To provide a different example, the fact that a week consists of seven days is contingent. There is no necessary reason for it to be seven days rather than six or eight. At the same time, the fact that a week is seven days is hugely influential in the way we live our daily lives, with five days of work and two days of rest as the general norm. Thus, the contingency of a fact does not make it inconsequential. Socially constructed facts, be they scientific, moral, or legal, are not a mirage – they are still very much *real*. This satisfies Joshua Cohen's condition that we acknowledge the importance of truth, even if it is a minimal version of truth, when we talk about justice. If we construct a common meaning of justice, we can state what it truly requires with the same certainty and fervour with which we can state that a week truly has seven days. Contingency does not mean that "anything goes."

It is the contingent artificial facticity that provides the background against which we can distinguish good and bad reasons in deliberation. Habermas tried to "eliminate even this last remaining moment of facticity" (Habermas, 1996, p. 227) by having participants in deliberation address an ideally expanded audience of all potential deliberators. If the idea of addressing an ideally expanded audience seemed impossible before, the contingency of our social reality makes this all the more so. The (relatively uncontroversial) moral norm that it is wrong to steal, for example, depends on the existence of (private) property. Many authors have tried to argue that the world was and will be better off without (private) property, and while one can debate the merits of that claim, it is difficult to deny that a world without property *could* exist. A universally valid consensus would be just as valid in that situation – otherwise, it would not be universal. Anyone then trying to address an ideally expanded audience on the (im)morality of stealing, to consider all reasons and arguments from the perspective of every other potential participant, would also have to address the hypothetical inhabitants of a world without property, to whom the entire concept of stealing would make no sense at all. The most universal we could hope for the consensus to be, would be "*if* there is something like (private) property, *then* stealing is wrong," which is the same kind of conditional epistemic value that comes from reflective equilibrium.

Below, I will argue that reflective equilibrium is much better suited to take the complex artificial facticity of social reality into account than attempts at finding a procedure-independent standard of correctness or addressing an ideally expanded audience.

Law and morality

A second topic that requires some attention is the relationship between law and morality. After all, if they are both artificial layers of social facts, constructed through a deliberative process, the question arises what, if any, differences remain between the two. Is there still a worthwhile distinction to be made between the illegal and the immoral?

Currently, law is very rarely constructed through consensus in direct deliberative procedures. Additionally, even if our present legislative assemblies were to decide on laws by consensus, that would still just be the consensus of a small group of politicians. I argued earlier that there is no clear mechanism that can extrapolate from an intersubjective consensus to a larger group of people. The same argument applies here: even if politicians try their absolute best to represent the citizens, there is no way of knowing whether those citizens would reach the same conclusions without actually having those citizens deliberate the issue themselves. In any case, laws currently in place are certainly different from the moral sentiments in society, which are constructed through diffuse and opaque social processes.

Within the theory described above, the difference is not so clear. If we imagine a deliberative legislative assembly coming to a consensus and deciding collectively that stealing is illegal, it would be strange to deny that there is also a consensus on the immoral nature of theft. Most people, in fact, would probably argue that the moral consensus on the immorality of theft is the reason for making stealing illegal in the first place. At the same time, not every moral norm is enshrined in law, even if it would be the subject of a consensus, nor is every legal norm the product or result of a moral consensus – the legal procedure for obtaining a building permit, for example, is more likely inspired by practical considerations rather than moral ones.

What characterises law as opposed to morality, is its enforceability. Rather than just internalisation, law creates the means of enforcement for the norms deemed important enough to require external enforcement. The criminal justice system is the most obvious example, but the enforcement of law also includes private enforcement of contract law or cease and desist orders. Law, then, “*supplements* postconventional morality in a manner effective for action” (Habermas, 1996, p. 114). Determining which norms are important enough to be enshrined in and enforced through law is part of the democratic process.

Earlier, we saw Habermas argue that law also enables participants to drop out of communicative action. Rather than continuously deliberate on what is morally permissible, one can point at their legal rights to prove the permissibility of their actions. In such a case, law does not steer one’s actions, but it supplies

them with the confidence that their actions are acceptable. It serves as a heuristic point of reference for everyday behaviour – it pragmatically settles moral disputes that (may) arise. “Law,” says Habermas, “is two things at the same time: a system of knowledge and a system of action” (Habermas, 1996, p. 114). The threat of legal sanctions stopping someone from stealing is law as a system of action, whereas someone referring to their freedom of speech to criticise the government shows law as a system of knowledge.

The last question is how reliable law is as a system of knowledge. Habermas already acknowledged the tension here: the consensus underlying the law depends on the “context-dependent acceptability of reasons that are constantly exposed to the risk of being invalidated by better reasons and context-altering learning processes” (Habermas, 1996, p. 36). So, even though the deliberative process establishes a real consensus on the cognitive validity of the moral and legal facts, this consensus is still context-bound and thus can dissipate quite easily. Despite the deliberation and the created intersubjective perspective, individuals do not lose the capacity to think for themselves, and they might lose their belief in the validity of the previously established consensus: a change in my individual perspective might also cause a change in my moral judgements, upon reflection.

What Habermas does not (explicitly) acknowledge, is the influence of law on morality. If our reasoning is context-bound, then that context surely includes the layer of social reality that is law. As a system of knowledge, law does more than just pragmatically settling moral disputes – it also forms a part of the background for moral reasoning and arguments. Being brought up or being socialized in an environment with certain legal norms can inform moral judgements, although it certainly does not determine them. This interwoven nature of different sets of norms, the principles and values that inspire them, and the broader context in which they are argued for, indicates that it would be wise to take a more holistic approach than searching for basic values or principles from which all other judgements can be deduced. I believe that reflective equilibrium is a method well-suited for such a holistic approach.

Foundations, intuitions, and reflective equilibrium

Any (moral-)philosophical theory that makes the validity of norms or statements dependent on context, subjective judgements, or intuitions runs the risk of becoming relativist – or at the very least, the risk of being accused of relativism. Relativism, as I understand it here, is the idea that there is no truth, or that there is no way of adjudicating rival truth-claims. There are several ways of avoiding this risk, for example by avoiding metaphysical questions of truth entirely and staying within the reasonable and the political; alternatively, one can posit a form of moral realism where an independent order of moral facts provides the foundation for basic values or procedure-independent standards of correctness; a third option would be to introduce the notion of an ideally expanded audience to give any consensus reached a (more) universal status. I think it is clear by now that I do not believe these attempts have succeeded.

The social constructivist version of democracy that I argue for does not run the risk of relativism, or at least, I believe, not problematically so. Reflective equilibrium as a method for substantiating moral judgements plays an important role in this defence against relativism, especially when combined with Landemore’s idea of collective intelligence. To recapitulate: reflective equilibrium is the state in which our considered judgements, our moral principles, and the background theories align. Narrow reflective equilibrium amounts to little more than systemising one’s own views (Knight, 2017, p. 4). It is somewhat analogous to Nietzsche’s example of defining the term ‘mammal’ so one can conclude that a camel is a mammal; from my considered judgements, I distil certain moral principles, only to point to my considered judgements and say they are supported by principles. Reaching *wide* reflective equilibrium, however, is a much more substantial effort and requires one “to be presented with all possible descriptions to which one might plausibly conform one’s judgments together with all relevant philosophical arguments for them” (Rawls, 1971, p. 49). That is, to put it mildly, quite the demand.

Rawls immediately acknowledged the impossibility of a true wide equilibrium, so that the “most we can do is to study the conceptions of justice known to us through the tradition of moral philosophy and any further ones that occur to us, and then to consider these” (Rawls, 1971, p. 49). Still, reflective equilibrium can be more or less wide, and the wider equilibrium requires much more cognitive effort to reach. The point of deliberation – of creating an intersubjective perspective, of making the group the “only knower,” in Landemore’s formulation – is that we do not have to achieve wide reflective equilibrium on our own. Deliberation amongst a diverse group enlarges the pool of information and ideas, introduces new perspectives from which to interpret certain pieces of evidence, and allows “the group to weed out the good arguments from the bad” (Landemore, 2013, p. 102). Considering all possible moral principles, all possible formulations of justice, their arguments, and their consequences is much easier as a collective effort.

Still, this does not show how the risk of relativism is mitigated. As for universal Truths-with-a-capital-T, statements that are objectively true from an Archimedean point of view, I gladly admit that I do not believe they exist. The closest we can get to statements that are always true is conditional statements: *if this, then that* – and as we have already seen, reflective equilibrium can provide these kinds of statements. The second problem, of adjudicating rival claims, is a bit more complicated, but it can be solved by reflective equilibrium.

The problem can be described as such: our considered judgements are considered, yes, but they are also based on our intuitions, on personal judgements made within the contexts of our own lives, influenced by culture, tradition, and history, etc.. If, in trying to reach reflective equilibrium, we build on these deeply personal considerations, then there is no way to distinguish whether my moral principles are better than anyone else’s. I might argue that stealing is wrong, while someone else might argue that it is not – if our arguments are based on our considered judgements, both our believes are equally justified.

This problem disappears, however, with the realisation that our considered judgements are not fixed in any way. “Wide reflective equilibrium does not merely systematize some determinate set of judgments. Rather, it permits extensive revision of these moral judgments” (Daniels, 1996, p. 27). So while our considered judgements play a role in the process of reflective equilibrium, the process is not determined by them. Our considered judgements are contingent – as are the moral principles and the background theories – and if we acknowledge that contingency, that means we can accept reasons and arguments to revise our considered judgements in light of the conversations we have.

Rawls described the “burdens of judgment,” which take the context-bound nature of our perspectives into account, as the reason why over time, different people come to affirm different but still reasonable comprehensive doctrines. This could lead to the conclusion that, in a democratic society, divergence of opinions is inevitable. I do not believe this is the case: despite the different contexts in which our considered judgements develop, and despite the different reasons and arguments we might have for choosing our principles, it is possible to converge, to reach a consensus. All the same, it is perfectly possible to adjudicate between different truth-claims, but the process does take effort. It requires the creation of a common point of view, an intersubjective perspective, from which the reasons and arguments can be considered. So, the last piece of the puzzle then, is how such an intersubjective perspective can arise.

5.2. Conversation and understanding

Habermas talks about deliberation creating an intersubjective perspective from which a consensus can arise, but he is not very explicit in how such a perspective can come to be. On that matter, it is better to turn to Hans-Georg Gadamer, whose seminal work *Truth and Method* (2004, [1960]) closely investigates the idea of authentic conversation. An inauthentic conversation occurs when one “engages in dialogue only to prove himself right and not to gain insight” (Gadamer, 2004, p. 356). We can imagine how detrimental such an attitude would be in deliberation: if every participant was unwaveringly convinced of the truth of their own judgements, arguments, and principles, no consensus could ever emerge. What, then, makes a conversation authentic, and how does this feature in deliberation?

Gadamer, too, starts from the idea that we are situated in a context from which we cannot transcend. This context determines what we can understand, which Gadamer describes as our horizon: “the range of vision that includes everything that can be seen from a particular vantage point” (2004, p. 301). As our context changes, so too changes our horizon, which means that our situation is never fixed. To put it in terms I have used before, it is contingent. That does not mean we should be dismissive of others, their standpoints, and their horizons – in fact, the horizon of others is of fundamental importance. “To allow the Other to be valid against oneself (...) is not only to recognize in principle the limitation of

one's own framework, but is also to allow one [sic] to go beyond one's own possibilities, precisely in a dialogical, communicative, hermeneutical process" (Gadamer, 2000, p. 284).

While part of Gadamer's work concerns the hermeneutical process of interpreting texts, he much prefers conversation over writing. The written word has a certain helplessness, Gadamer writes, with reference to Plato. This helplessness comes from the fact that written arguments cannot defend themselves: "you might think they spoke as if they had intelligence, but if you question them, wishing to know about their sayings, they always say only one and the same thing" (Plato, 1999, p. 565). Conversation, or dialogue *does* have room for questioning, for going back and forth, and for phrasing the argument in a different way to increase understanding. For Gadamer, questions, rather than answers, are the most important part of every conversation. "The significance of questioning consists in revealing the questionability of what is questioned" (Gadamer, 2004, p. 357), which is an incredibly vague way of saying that questions reveal the contingency of the matter at hand. It is a matter of conceiving of possibilities *as* possibilities (Gadamer, 2004, p. 359).

Once we enter a conversation on a certain subject – say, whether stealing should be punished harshly – we can see that a decision on the matter is contingent. If we question our partner in conversation, we can begin to grasp the meaning they apply to different concepts and the reasons they might have for their stance on the matter, while they question our reasons and arguments. "To conduct a conversation means to allow oneself to be conducted by the subject matter to which the partners in the dialogue are oriented. It requires that one does not try to argue the other person down but that one really considers the weight of the other's opinion. Hence it is an art of testing" (Gadamer, 2004, pp. 360–361). When the conversation goes on, we might realise that our reasoning does not differ much, but that we have different starting points. A conversation on stealing might turn into a conversation on punishment in general, which might turn into a conversation on justice. Slowly, the standpoint and horizon of the other become clearer to us, and the other way around. Because the conversation is testing, the standpoints and horizons are constantly revised. True understanding "*is always the fusion of these horizons supposedly existing by themselves*" (Gadamer, 2004, p. 305, emphasis in original).

This understanding as the fusion of horizons is not just something that happens to us as individuals conducting a conversation, but something that happens between us. It is intersubjective in a literal sense. Reaching understanding is not just stating our own standpoint, but it is to be "transformed into a communion in which we do not remain what we were" (Gadamer, 2004, p. 371). In this transformation, we put our own standpoint forward to put it to the test, to put it at risk, and the conversation allows us to create something new. A conversation is an intersubjective process, in which all different possibilities, reasons, and arguments are considered as a whole; it is constructive, considering "it is the art of forming concepts through working out the common meaning" (Gadamer, 2004, p. 361); and what it constructs, is very much real – it "allows something to 'emerge' which henceforth exists" (Gadamer, 2004, p. 385).

It is these true conversations that allow us to reach a reflective equilibrium on the collective, intersubjective level.

Once we understand how a common perspective can be achieved through the fusion of horizons, it becomes even more clear why actually participating in the deliberation is of prime importance. The idea of an ideally expanded audience, of addressing those who are not present, becomes impossible, because we have no idea of their viewpoint and horizon. Conversely, once they hear about the deliberations, they cannot really know what it was about. A report of a conversation never does it justice. We can tell someone else what the topic of conversation was and what conclusion we might have reached, but they will not understand in the same way that the participants of the conversation do. “In this way, one might know what the topic of conversation is without really knowing what it is about in this deeper sense. More generally, we are always falling into conversations before we know their subject since it is always the ongoing achievement of the conversation itself. Only when we achieve understanding with the others do we know what is at stake in the exchange” (Walhof, 2005, p. 165).

Gadamer’s conception of conversation and understanding is the puzzle piece that completes my account of deliberative constructivism. This deliberative constructivism is built on the creative and constructive power of conversation, in which participants put their own views to the test. It is possible to put one’s views to the test by oneself, and to try and reach a reflective equilibrium alone, but to do so in a conversation creates an intersubjective point of view, a collective horizon, and allows the collective intelligence to bring together all the different considerations that might influence the final decision. The standard of correctness for political decision-making is crafted together, meaning that it cannot be procedure-independent. This process of decision-making creates an artificial layer of social reality, constituted of moral and legal facts, which are contingent, but no less true for it.

5.3. The implications of deliberative constructivism

To end the exposition of my social constructivist account of deliberative democracy, I need to discuss the implications. If we accept this account of how our moral and legal norms come to be, what does that mean for deliberation? Can it be implemented, and if so, how? And what values are important for good, constructive deliberation?

5.3.1. Implementation

The workings of a good conversation are, as we saw, fickle. That immediately calls for a degree of reservation when it comes to the institutionalisation of social constructivist deliberation in our democratic systems. A conversation is difficult when two people are involved, let alone ten, a hundred, a million, or eight billion. There are immense practical limitations when it comes to the feasibility of

any deliberative institution that wants to incorporate the kind of conversation Gadamer describes. Still, understanding the mechanisms that can drive the collective construction of norms can help design more effective deliberative institutions, where the practical limitations are taken into account.

Taking practical limitations into account when it comes to moral ideas is not necessarily a problem. The entire system of law is an example of pragmatically solving practical limitations to the amount of moral deliberation that can take place. Rather than continually deliberate every issue, we create a legal norm, and we accept the tension resulting from the fact that moral sentiments might change before the law does. In a different scenario, we accept the practical limitations of our justice system and thus that some guilty people will go free.

Similarly, we can pragmatically accept the existence of parliaments, in which representatives deliberate in our stead. Here, we can refer back to Estlund's distinction between the legitimacy of a norm and the justification for it. Even though the correct procedure from an epistemic point of view is a demanding form of deliberation, we still might deem the outcome of parliamentary deliberation legitimate in the sense that we feel we ought to obey the resulting norms. Although there are differences between Landmore's conception of democracy and mine, I believe she is right in saying that "[t]he recognition that a category of individuals labeled as 'experts' can legitimately speak for the people is not necessarily incompatible with the view that ultimately the people know best and remain the underlying source of normative authority, not just on fairness grounds, but also on epistemic grounds" (2013, p. 16). Understanding the transformative aspects of deliberative constructivism, it should be clear exactly how parliamentary deliberation might not really be representative, and we can conceive of different possibilities. Some of those possibilities will be more direct forms of democratic government, while others might simply increase the frequency of elections or replace them with mechanisms like sortition. Which of those possibilities is the right choice, I cannot say by myself.

The only concrete recommendation I can make, is that authentic conversations should be stimulated more. First of all, the fact that you cannot force a good conversation to happen, does not mean you cannot seek one out. Gadamer practiced what he preached and extensively corresponded with his contemporaries – an endeavour that would have been foolish if it was impossible to seek out conversation. Furthermore, the kind of conversing, of asking questions and really listening to the other, that is required for understanding is a skill. More conversations and more understanding increases this valuable skill, which leads to a better decision-making in the long term, even if the processes of social construction are diffuse and mitigated through different layers of representation. Ideas are simply very slow to spread, especially if our starting standpoints are far apart. But convergence need not be an instantaneous process. It takes time, effort, and more than one conversation. A lively cultural exchange between people involved in local deliberations can help spread new information, new reasons and

arguments, and new perspectives. Any serious conversation will then have to take these new ideas into account, and if they resonate, a further converging step may have been taken.

5.3.2. Values within the deliberative process

When it comes to the wealth of writing and research on deliberative democracy over the past decades, many authors have emphasized the values of inclusivity, equality, and mutual respect. These are normative concepts, through and through, which begs the question how constructivist deliberation manages to incorporate them. The short answer is that I cannot say. The slightly longer answer is that deliberation must be seen as an iterative process, where the normative considerations that steer it must be adjusted throughout.

That does not mean I dismiss the value of equality, inclusivity, and mutual respect. It is just that there is currently no consensus on the meaning of those values. When it comes to equality, for instance, Bächtiger et al. (2018) point out that there is significant academic debate on what this equality means substantially. It obviously does not require all participants to be identical – i.e. equal in every aspect – but it requires them to be treated as equal in morally relevant aspects. Furthermore, some authors argue that equality in deliberation includes societal, economic equality as well as equal influence on the final decision.

The point is not to adjudicate these claims – the entire point of the thesis is that such adjudication should happen collectively – but to point out that the values associated with deliberative democracy are not absolute. Their meaning is not self-evident, but is given to them, and thus carries a certain contingency. An example of how the value of inclusivity cannot shake its contingency is the fact that children are excluded from the political process. As with all contingent matters, there are (good) reasons for excluding children, but it is not like a person suddenly receives the necessary political capacities the moment they turn eighteen. Rather, a combination of moral and practical considerations have led us to limit inclusivity in certain, contingent ways.

Lastly, the value of mutual respect is even harder to endow with content. Coming up with rules for respectful deliberation requires more than writing “be polite” on a sign. What mutual respect means in the group setting needs to be determined by the group itself. That requires extensive conversation and probably a fair amount of trial and error. To a certain extent, authentic conversations require a basic level of respect between partners, because we need to see the other as someone with a standpoint and horizon of their own, but it is unclear what kind of action norms immediately follow from this acknowledgement of the other.

On the subject of mutual respect, it is also not immediately obvious that deliberation only works when the participants are rational, calm, kind, and level-headed. Just like Landemore, Darren Walhof points to “Twelve Angry Men” as a prime example of successful deliberation, except he examines it from a

Gadamerian point of view. Rather than highlighting the aggregation of information and the new, collective interpretations of witness testimonies, Walhof shows how laden with emotion the conversation is: “[t]he exchanges themselves are sometimes heated – not polite deliberative exchanges but shouting matches, some of which nearly come to blows. Some jurors remain resistant to participating in the exchanges. More than once, the conversation is punctuated by protests along the lines of, ‘I don’t have to answer to you’. Over the course of the dialogue, however, each juror is drawn into the conversation and finds his views changed as a result, but in each case this change comes about through something that would not have necessarily had the same impact on another” (Walhof, 2005, p. 169). The fact that a consensus eventually emerges, Walhof argues, is exactly *because* the jurors argue based on their emotions, their pragmatic impulses, and their biases and prejudices, not in spite of them. By entering their prejudices into the conversation, they are put at risk and it becomes possible to test them, and for them to be transformed (Walhof, 2005, p. 170).

Fierce debate and agonism

The realisation that prejudices and emotions can play an important role in deliberation casts some doubts on Rawls’s idea of public reason, where anything but arguments based on the political conception of justice is excluded from the debate. It also shows that addressing an ideally expanded audience does not make sense if you want to understand and converse with someone right in front of you. Effective conversation occurs when you manage to connect with your partner in conversation, not a hypothetical universal audience. At the same time, the fact that a debate can be heated and even confrontational does not mean that deliberative constructivism commits itself to any agonistic view of politics and contestation. According to this agonistic view of politics, of which I take Chantal Mouffe to be the prime exponent, democracy is eternally concerned with creating an us/them-distinction, where the “other” is an adversary, “i.e. somebody with whose ideas we are going to struggle but whose right to defend those ideas we will not put into question” (Mouffe, 1999, p. 755). Mouffe also bases her agonistic approach on a social constructivism, where what is considered normal and natural “is the result of sedimented hegemonic practices; it is never the manifestation of a deeper objectivity exterior to the practices that bring it into being” (Mouffe, 2007, pp. 2–3). Insofar Mouffe describes social practices as sedimented, but contingent, I agree with her.

For Mouffe, however, the differences between people and their viewpoints can never be rationally reconciled and all that remains is a constant power-struggle where those with different opinions “will attempt to disarticulate the existing order so as to install another form of hegemony” (Mouffe, 2007, p. 3). Public deliberation is impossible, as is any form of consensus or convergence, because “to accept the position of the adversary is to undergo a radical change in political identity, it has more of a quality of a conversion than of rational persuasion” (Mouffe, 1999, p. 755). In this description, however, Mouffe has forgotten that political identities are as constructed and as contingent as the political institutions themselves. Furthermore, one’s political identity is not a singular, monolithic construction, but is made

up of many different considerations, mutually supporting each other in one more or less coherent view. The combination of authentic conversation and collective reflective equilibrium show how it is perfectly possible to come to a consensus, without undergoing radical changes in political identity, but rather by shifting our standpoint and horizon one step at a time; and, importantly, how this is possible without positing any foundationalism or relegating emotions to the private sphere – of which Mouffe accuses deliberative democrats (Mouffe, 1999, pp. 755–756). Heated exchanges within a deliberative setting can be allowable, and might even relieve some of the polarized antagonism in the wider society by transforming our contingent standpoints.

The only condition for such a transformation is acknowledging the contingency of our own standpoint, of our own context, of our considered judgements, and of our beliefs, without denying their importance, their very real existence. The prime value of deliberative constructivism is a sort of Socratic humility that says we really do not know anything for certain. That uncertainty prompts us to be open to things that are other, be it people, experiences, or ideas, without telling us to accept them as true at first sight. It stimulates a healthy critical attitude towards our judgements and beliefs, our norms and institutions, and the world around us. In absence of procedure-independent standards of correctness, that is truly the best outcome.

“There are these two young fish swimming along and they happen to meet an older fish swimming the other way, who nods at them and says, ‘Morning, boys. How’s the water?’

And the two young fish swim on for a bit, and then eventually one of them looks over at the other and goes, ‘What the hell is water?’” (David Foster Wallace, 2009, pp. 1–2)

6. Conclusion

According to Hélène Landemore, deliberative democrats have been distracted by a focus on the byproducts or intrinsic qualities of deliberation, rather than focusing on “its primary point: figuring out the truth” (Estlund & Landemore, 2018, p. 113). For this distraction, she holds John Rawls responsible. Rawls, who started out defending a comprehensive moral theory of justice as fairness, later limited himself to a political, not metaphysical account of justice and liberalism. This political account of justice did not concern itself with matters of truth, but rather tried to reconcile a variety of different, reasonable comprehensive doctrines, whose existence is unavoidable in free and pluralist societies. Different religious or philosophical doctrines could argue amongst themselves about what the truth might be, but justice, as a political concept, is reasonable and that suffices for Rawls.

Landemore turned to Joshua Cohen and David Estlund for arguments against Rawls’s “epistemic abstinence.” Cohen argued that the truth matters when we talk about justice, and that we should include a minimal conception of it. After all, he argued, it is not the truth itself that causes our disagreements; we could just as well argue over what is *most* reasonable, or whether the purported truth is even relevant to the topic of conversation. So even though truth is not a sufficient condition for any justification, we should still include at least a minimal version of it in our deliberations. Estlund also argued for the inclusion of truth-claims in deliberation, making a distinction between the justification for a decision and the legitimacy of that decision. In justifying a certain decision, we can appeal to the whole truth as we see it, but the legitimacy of that decision does not rely on the truth. Rather, a decision is legitimate if it results from a procedure that no reasonable person could reasonably reject. The legitimacy of deliberation stems from the fact that deliberation has epistemic properties, even if it does not *always* manage to track the truth.

Since these critiques show that a plurality of reasonable comprehensive doctrines do not lead to epistemic abstinence, Landemore argued for the re-inclusion of epistemic considerations in deliberative democracy. Deliberation is uniquely suited for an epistemic kind of problem-solving, due to the cognitive diversity of the group. This cognitive diversity leads to a distributed intelligence, where we can say that the *group itself* knows what the right answer is. The existence of a right answer prior to the deliberation is simply a given, because there would be no point in deliberation if it was not.

According to Landemore, this argument for the existence of procedure-independent standards of correctness comes from Habermas. Habermas's reply to Rawls took a different approach than Landemore's, however. Rather than expecting an overlapping consensus of reasonable comprehensive doctrines to appear, Habermas argued that a consensus must be crafted through deliberation. An argumentative process creates a common, intersubjective perspective, from which reasons can be weighed and norms can be crafted. Rather than assuming the existence of a procedure-independent, prior, right answer, Habermas seems to suggest that participants in deliberation should simply pragmatically assume that a consensus is possible. This interpretation of Habermas's comments seems to fit in better with the other pragmatic process conditions he suggests. On the other hand, Habermas tries to pass off the requirement of addressing an ideally expanded audience as a pragmatic process condition as well. The requirement of addressing this audience with universally acceptable arguments does not follow from Habermas's discourse principle, and in fact undermines his pragmatic approach to deliberation. The context-bound nature of reasons and arguments is simply incommensurable with an ideally expanded audience. Habermas does not seem to have noticed this contradiction.

In the second half of this thesis, I have tried to reconsider Landemore's view of the epistemic functions of deliberation and deliberative democracy. Where Landemore argues that an objective, epistemic, procedure-independent standard of correctness is an unacknowledged assumption and an implicit element of most theories of democracy, I have argued that it cannot exist in the way she assumes it to. Standards of correctness prior to deliberation are entirely subjective, with everyone adhering to their own conception of justice or the common good. If a common conception of justice or the common good is crafted, then the standard is not procedure-independent. Landemore's argument for the existence of procedure-independent standards of correctness, namely that there would be no point in deliberating about politics if it was not the case, does not provide any support for it. After all, we might as well say that there is no point in deliberating, and the experiments conducted in Canada, Ireland, France, and in many other places are a futile waste of time. So it seems that the epistemic turn has turned down a dead-end road.

That cynicism, however, is wholly unsatisfactory. We can imagine a conception of deliberative democracy that is still worth our time, even if we acknowledge that there is no procedure-independent standard of correctness. Although he does not support this view, Estlund neatly summarizes it: "we get to determine those facts about what we should do, but then they *are* facts about what we should do" (2012, p. 252). This has been my mission for this thesis.

The alternative conception is one where democracy is seen as a constructive process, not only creating an artificial facticity through legal norms, but also creating an artificial moral facticity. The moral facts constructed through deliberation are contingent, but not arbitrary. More importantly, they are still very much facts. This means that the cognitive validity of moral norms is preserved, without any reference

to procedure-independent standards. The procedure-independent standards of correctness are replaced with Rawls's method of (wide) reflective equilibrium, which takes a more holistic approach to morality. Reflective equilibrium does not try to build moral considerations on universal or self-evident foundations. Rather, we look for reasons and arguments to find the combination of considered judgements, principles and values, and background theories that offer the most coherent and mutually supporting view.

The constructivist account of deliberation I offer also does not abandon all of the strengths Landemore emphasized. Collective intelligence finds a place in a collective process of reflective equilibrium. A cognitively diverse group will be much better at the kind of reasoning that is required for reaching a wide reflective equilibrium. Lastly, my account refers to Hans-Georg Gadamer's ideas of authentic conversation and fusion of horizons to provide an explanation of *how* a group can achieve the kind of collective perspective required for intersubjective deliberation.

Insofar the goal was to provide a plausible alternative purpose for deliberation in the absence of procedure-independent standards of correctness, I think I have succeeded. That does not mean there are no further avenues of research. Further steps for deliberative constructivism could start with exploring its constructivist underpinnings in more detail. Do people conceive of facts differently when they are confronted with their contingency? Could a pragmatist conception of truth fit in, like Misak and Talisse explore (2014)? A different suggestion would be to explore the tensions and contradictions in Habermas's work over time. How have his ideas on universalisation and an ideally expanded audience changed over the last seventy years? Has he managed to solve the contradiction? Lastly, empirical research could focus on whether authentic conversations lead to something of a collective reflective equilibrium.

To end with some broad strokes: we can think of reflective equilibrium like making a bed. You regularly tidy the sheets, fluff up the pillows, and straighten the blankets. Sometimes, when smoothing out one corner, you accidentally create a new fold or ploy, and of course sleeping on it ruffles everything up a bit. There is a constant need for slight adjustments. Sometimes, you spend a night away from home and everything feels uncomfortable and alien, where at home everything is nicely tied together. At other times, the bed is uncomfortable and you would rather sleep at home, but you find that adding an extra pillow would really help with your neck pains. And sometimes, you sleep in a different bed and come to the realisation that your own stead has not given you a good night's sleep in a long while. You change out the mattress, but the new one only highlights how uneven the bedframe is and how the blankets no longer fit quite as snugly, and so the change in one element prompts you to keep revising, trying new combinations of fabrics, downs, quilts, and curtains, until you can once again sleep soundly at night.

The analogy will only take us so far, of course, but the point is that confrontations with others – other beds, other ideas, traditions, cultures, languages, people, and perspectives – highlight what elements of our own thinking could be different. And once we see that things might be different, once we see the questionability, the other possibilities, the contingency of the situation, we can begin to see the reasons and arguments people have for their choices, and even better, we can change our minds. A small change might fit into our own worldview very well, or it can disturb the whole, prompting further considerations and revisions, until we manage to reach a new reflective equilibrium. But it all starts with acknowledging other possibilities.

David Foster Wallace understood that some of the most ubiquitous elements of our world are the most difficult to see as contingent – and how incredibly banal that conclusion is, even if it is packaged as a nice little parable about fish. But he did emphasize that we should consider this banal platitude, instead of believing or pretending that “a person’s most basic orientation toward the world and the meaning of his experience were somehow automatically hardwired, like height or shoe size, or absorbed from the culture, like language. As if how we construct meaning were not actually a matter of personal, intentional choice, of conscious decision” (Foster Wallace, 2009, pp. 25–26).

What the right choice, the right conscious decision, for constructing meaning would be, Foster Wallace did not answer. My answer, as I have tried to exposit in this thesis, is that it can only really be constructed together.

And while I think that is a conclusion that does not lead to any optimistic suggestions for implementing deliberation in our everyday politics, one can still wonder if I am not too optimistic about the capacity of people to consciously consider the contingency of social reality and of the facts they take as absolute. I guess my answer would be that, in order to be a democrat, in the end, you have to be optimistic about the capabilities of other people. You have to believe that people can change their mind, that they can be considerate of others, that they can face uncertainty and reflect on it, that they can recognize the flaws in their reasoning and in themselves in general, and that they can admit when others are right. And so I do.

But what do I know?

References

- Bächtiger, A., Dryzek, J. S., Mansbridge, J., & Warren, M. E. (2018). Deliberative Democracy: An Introduction. In A. Bächtiger, J. S. Dryzek, J. Mansbridge, & M. E. Warren (Eds.), *The Oxford Handbook of Deliberative Democracy* (pp. 1–32). Oxford University Press.
- Benhabib, S. (1996). Toward a Deliberative Model of Democratic Legitimacy. In S. Benhabib (Ed.), *Democracy and Difference: Contesting the Boundaries of the Political* (pp. 67–94). Princeton University Press.
- Bermeo, N. (2016). On Democratic Backsliding. *Journal of Democracy*, 27(1), 5–19.
<https://doi.org/10.1353/jod.2016.0012>
- Chambers, S. (2003). Deliberative Democratic Theory. *Annu. Rev. Polit. Sci.*, 6, 307–326.
<https://doi.org/10.1146/annurev.polisci.6.121901.085538>
- Cohen, J. (1986). An Epistemic Conception of Democracy. *Ethics*, 97(1), 26–38.
<https://doi.org/10.1086/292815>
- Cohen, J. (2009). Truth and Public Reason. *Philosophy & Public Affairs*, 37(1), 2–42.
<https://doi.org/10.1111/J.1088-4963.2008.01144.X>
- Condorcet (Marquis de), M. J. A. N. de C. (1785). *Essai sur l'Application de l'Analyse à la Probabilité des Décisions Rendues à la Pluralité des Voix*. de l'Imprimerie Royale.
- Cooke, M. (2000). Five Arguments for Deliberative Democracy. *Political Studies*, 48(1), 947–969.
- Daniels, N. (1996). *Justice and Justification. Reflective equilibrium in theory and practice*. Cambridge University Press.
- Dryzek, J. S. (2000). *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press.
- Estlund, D. M. (2008). *Democratic Authority: A Philosophical Framework*. Princeton University Press.
- Estlund, D. M. (2012). The Truth in Political Liberalism. In J. Elkins & A. Norris (Eds.), *Truth and Democracy* (pp. 251–271). University of Pennsylvania.
- Estlund, D. M., & Landemore, H. (2018). The Epistemic Value of Deliberative Democracy. In A. Bächtiger, J. S. Dryzek, J. Mansbridge, & M. E. Warren (Eds.), *The Oxford Handbook of Deliberative Democracy* (pp. 113–131). Oxford University Press.
- Farrell, D. M., Suiter, J., & Harris, C. (2019). ‘Systematizing’ constitutional deliberation: the 2016–18 citizens’ assembly in Ireland. *Irish Political Studies*, 34(1), 113–123.

<https://doi.org/10.1080/07907184.2018.1534832>

- Foster Wallace, D. (2009). *This is Water. Some Thoughts, Delivered on a Significant Occasion, about Living a Compassionate Life*. Little, Brown and Company.
- Gadamer, H.-G. (2000). Subjectivity and Intersubjectivity, Subject and Person (P. Adamson & D. Vessey, trans.). *Continental Philosophy Review*, 33(1), 275–287.
- Gadamer, H.-G. (2004). *Truth and Method* (J. Weinsheimer, D. G. Marshall, & W. Glen-Doepel (trans.); Second rev). Continuum.
- Gergen, K. J., & Gergen, M. M. (2008). Social Constructionism. In *The SAGE Encyclopedia of Qualitative Research Methods* (pp. 817–820). SAGE Publications.
- Habermas, J. (1995a). Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism. *The Journal of Philosophy*, 92(3), 109–131.
- Habermas, J. (1995b). Reply to Symposium Participants, Benjamin N. Cardozo School of Law (W. Rehg, trans.). *Cardozo Law Review*, 17(4–5), 1477–1557. <https://heinonline.org/HOL/Page?handle=hein.journals/cdozo17&id=1495&div=61&collection=journals>
- Habermas, J. (1996). *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (W. Rehg (trans.)). The MIT Press.
- Habermas, J. (1998). *The Inclusion of the Other: Studies in Political Theory* (C. Cronin & P. De Greiff (eds.); C. Cronin (trans.)). The MIT Press.
- Haggard, S., & Kaufman, R. (2021). The Anatomy of Democratic Backsliding. *Journal of Democracy*, 32(4), 27–41. <https://doi.org/10.1353/jod.2021.0050>
- Hong, L., & Page, S. (2004). Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers. *Proceedings of the National Academy of Sciences of the United States*, 101(46), 16385–16389.
- IAU. (2006). *IAU 2006 General Assembly: Result of the IAU Resolution votes | Press Releases | IAU*. <https://www.iau.org/news/pressreleases/detail/iau0603/>
- Ingham, S. (2013). Disagreement and epistemic arguments for democracy. *Politics, Philosophy and Economics*, 12(2), 136–155. <https://doi.org/10.1177/1470594X12460642>
- Jakli, L., Fish, S. M., & Wittenberg, J. (2019). A Decade of Democratic Decline and Stagnation. In C. W. Haerpfer, P. Bernhagen, C. Welzel, & R. F. Inglehart (Eds.), *Democratization* (2nd ed., pp. 267–282). Oxford University Press.

- Klosko, G. (2012). *History of Political Theory. An Introduction. Volume I: Ancient and Medieval* (2nd ed.). Oxford University Press.
- Knight, C. (2017). Reflective Equilibrium. In A. Blau (Ed.), *Methods in Analytical Political Theory* (pp. 46–64). Cambridge University Press.
- Landemore, H. (2013). *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*. Princeton University Press.
- Landemore, H. (2017). Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy. *Social Epistemology*, 31(3), 277–295. <https://doi.org/10.1080/02691728.2017.1317868>
- Manin, B. (1987). On Legitimacy and Political Deliberation. *Political Theory*, 15(3), 338–368.
- Mansbridge, J., Bohman, J., Chambers, S., Christiano, T., Fung, A., Parkinson, J., Thompson, D. F., & Warren, M. E. (2012). A systemic approach to deliberative democracy. In J. Parkinson & J. Mansbridge (Eds.), *Deliberative Systems. Deliberative Democracy at the Large Scale* (pp. 1–26). Cambridge University Press.
- Misak, C. J., & Talisse, R. B. (2014). Debate: Pragmatist Epistemology and Democratic Theory: A Reply to Eric MacGilvray. *Journal of Political Philosophy*, 22(3), 366–376. <https://doi.org/10.1111/jopp.12033>
- Mouffe, C. (1999). Deliberative Democracy or Agonistic Pluralism? *Social Research*, 66(3), 745–758.
- Mouffe, C. (2005). The limits of John Rawls's pluralism. *Politics, Philosophy & Economics*, 4(2), 221–231. <https://doi.org/10.1177/1470594X05052539>
- Mouffe, C. (2007). Artistic Activism and Agonistic Spaces. *Art & Research*, 1(2), 1–5. <https://doi.org/10.4324/9780203788905>
- Nietzsche, F. (1989). On Truth and Lying in an Extra-Moral Sense. In S. L. Gilman, C. Blair, & D. J. Parent (Eds.), *Friedrich Nietzsche on Rhetoric and Language*.
- Plato. (1999). Phaedrus. In H. N. Fowler (Ed.), *Plato: Euthyphro. Apology. Crito. Phaedo. Phaedrus* (pp. 405–580). Harvard University Press.
- Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.
- Rawls, J. (2005a). *Political Liberalism*. Columbia University Press.
- Rawls, J. (2005b). Reply to Habermas. In *Political Liberalism* (pp. 372–434). Columbia University Press.

- Rawls, J. (2005c). The Idea of Public Reason Revisited. In *Political Liberalism* (pp. 435–490). Columbia University Press.
- Raz, J. (1990). Facing Diversity: The Case of Epistemic Abstinance. *Philosophy & Public Affairs*, 19(1), 3–46.
- Rose, J. (2007). Putting the Public Back in Public Policy. The Ontario Citizens' Assembly on Electoral Reform. *Canadian Parliamentary Review*, 30(3), 9–16.
- Torney, D. (2021). Deliberative Mini-Publics and the European Green Deal in Turbulent Times: The Irish and French Climate Assemblies. *Politics and Governance*, 9(3), 380–390. <https://doi.org/10.17645/pag.v9i3.4382>
- Walhof, D. R. (2005). Bringing the Deliberative Back In: Gadamer on Conversation and Understanding. *Contemporary Political Theory*, 4(1), 154–174. <https://doi.org/10.1057/palgrave.cpt.9300119>