

Democratic Mini-Publics

On the Role of Mini-Publics for Democracy

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Abstract

The systemic turn in deliberative democracy has been criticised for inadvertently justifying a post-democratic order where deliberation in formal decision-making bodies remains unreceptive to the democratic input of informal public spheres. The question of how to (re)connect citizens with their representatives has thus become crucial to redeem the democratic credentials of the deliberative democratic ideal. One proposal that has attracted considerable attention concerns the possibility of breaking down the broad public sphere into several micro-deliberative venues directly coupled with empowered decision-making sites. So-called deliberative mini-publics seem to offer the right solution to the legitimisation crisis of governance institutions. As democratic experiments apt to promote direct participation in administrative affairs, they hold the promise of enhancing the public accountability of governance networks. As corrective improvements to the plebiscitary and populist rhetoric of mass public discourse, they raise the hope for a more enlightened public opinion paving the way to better policy outcomes. However, past the initial enthusiasm, deliberative mini-publics have also raised scepticism for potentially replicating, rather than solving, the above trend. Aside from being at risk of strategic abuse, they have been criticised as being just another instrument of depoliticisation. When used as shortcuts to bypass public debate, deliberative mini-publics deprive citizens of the opportunity to reflexively engage with the rationale underlying public enactments and, therefore, cannot be justified on democratic grounds.

Should we therefore think of mini-publics as the cure against the ailments of contemporary democracies or rather as just another example of the underlying crisis of representative government? In this work, I reach a mixed verdict, arguing that the democratic legitimacy of mini-publics depends on their institutional design and integration within the overall democratic system. I adopt a liberty-based, systemic understanding of deliberative democracy that is normatively grounded in the co-originality of basic rights and popular sovereignty to argue that mini-publics can be conceived of as genuine democratic innovations only when devised as instruments of (re)politicisation.

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Introduction

Dissatisfaction with democracy is as longstanding as the idea of democracy itself. On more than one occasion, democratic rule has been lambasted for being an ineffective decision-making method, incapable of advancing citizens' interests or even likely to impinge on their fundamental rights. Socrates' death was just the beginning of what critics regard as a collection of resounding failures.

After World War II, and in concomitance with the defeat and collapse of the great totalitarian regimes of the twentieth century, a broad consensus slowly took root considering democracy as the only legitimate form of government. However, critics still had an easy game in claiming that such a forward momentum had to be explained in terms of satisfaction with the unprecedented economic growth and geopolitical success of Western countries in the '50s and '60s, with the appeal of democratic principles having played only a limited role (Mounk and Foa, 2018). Indeed, nowadays, distrust towards democracy is back in vogue. After the financial crisis of 2008, many have started questioning the ability of democracy to deliver sustainable policies. Allegedly, its main fault is to neglect long-term investments in order to give voters what they capriciously want. Hence, big structural deficits run as a matter of course and issues such as global warming often remain untackled (Economist, 2014).

The search for solutions has led many to advocate for various forms of disenfranchisement, with alternative regimes such as the meritocratic authoritarianism of some Eastern countries even attracting increasing interest and support (Fishkin and Mansbridge, 2017: 6). Nonetheless, one main strategy pursued has been to promote the depoliticisation of ever more sectors of public decision-making. The delegation of policy-making competencies to non-majoritarian bodies is today justified both as the bulwark against a partisan politics that hinders the production of reasonable policy-outcomes (Pettit, 2004; Rosanvallon, 2011) and as a guarantee for long-term investments apt to sustain the confidence of foreign governments and economic investors (Majone, 1999). Initially the result of an adaptation to contemporary conditions of

social complexity, the technocratic reshaping of political systems has thus become a governing strategy aimed at shielding formal decision-making sites from the democratic input and contestation of informal public spheres (Burnham, 2001).

Traditional representative institutions still provide a “stage” where opposing parties can perform a struggle that gives visibility to majoritarian and minoritarian political positions (Rummens, 2012). In structuring public debates, they help citizens develop their preferences and opinions about specific social problems, thus still playing an important role as agents of *construction* of democratic constituencies (Saward, 2006). However, the policy conclusions they present to the public are often drawn elsewhere, and within non-majoritarian bodies they struggle to steer. The result is a dissociation between *politics* and *policies*, with citizens having the power to change the former but not so much the latter (Krastev, 2012; Schmidt, 2013; see Rummens, 2017: 566). It is thus on the acknowledgement that they have no control over decisions that yet profoundly shape their lives that citizens often turn to populist leaders who promise to restore their lost sovereignty (see Rummens, 2017: 567). Having then capitalised upon such dissatisfaction, the latter often use their majoritarian mandates to bypass democratic procedures and enact illiberal policies that disregard the legitimate interests of minorities.

This causes constitutional democracies to spiral into a degenerative crisis. In fact, having been fuelled by the increased delegation of policy-making powers to unaccountable bodies of experts, anti-political sentiments are captured by populist leaders, whose attempts to advance illiberal policies trigger political systems into further closure. It is indeed to prevent disruption that cultural and political elites seek the further depoliticisation of public decision-making, with the effect of generating a vicious circle that progressively erodes the correct functioning of the overall constitutional apparatus. On this view, technocracy and populism are thus opposite but mutually reinforcing trends, whose dynamic interaction has as its primary casualty the once collectively cherished liberal democracy (see Fawcett et al., 2017; Rummens, 2017: 567).

However, technocracy and populism also share a common feature (see Bickerton and Invernizzi Accetti, 2017; Abts and Rummens, 2007; Urbinati, 2014). Albeit from different sides, they both challenge the very idea of the constitutional

state as a coherent, rather than paradoxical, union of liberal and democratic principles (Abts and Rummens, 2007; Habermas, 2001a). According to this view, representative systems have a diarchic structure that follows a principle of normative separation and reciprocal interchange between processes of opinion- and will-formation (Urbinati, 2014: 22). Hence, as in Habermas' "two-track" model of democracy, the state's legislative *will* gains its legitimacy from being the product of a reasoned deliberative practice that takes place within formal institutions, whose democratic credentials depend in turn on such institutions remaining receptive to a public *opinion* that is unconstrainedly shaped within informal public spheres (Habermas, 1996: 304). Populism challenges this view by seeking to bypass political mediations to translate majoritarian opinions directly into the will of the state. Its giving unconstrained priority to the democratic principle of popular sovereignty implies a failure to realise that the will of the people can only be expressed through the procedures of the constitutional state and in recognition of citizens' fundamental right to equal freedoms. Conversely, technocratic government seeks to substitute people's opinion with experts' knowledge. Its exclusive emphasis on individual liberal rights entails a failure to recognise democratic participation as the necessary constituent of their legitimate interpretation. Therefore, in distinctly normative terms, both technocracy and populism fail to acknowledge the co-originality of individual rights and democratic rule as the source of legitimacy of deliberative democratic systems geared towards the protection of human freedom (Forst, 1999; Habermas, 1996; Rawls, 1995; Rummens, 2006).

When shifting the focus to democratic theory, it is not without some regret that we observe a surge in philosophical arguments inadvertently providing normative support to the above degenerative trend. Certainly, orthodox scepticism towards democracy is restated in current epistocratic arguments challenging people's right to a democratic say because they are irrational, apathetic, and uninformed (Brennan, 2011, 2009, 2016; Caplan, 2007; Posner, 2020; Somin, 1998). However, what we also witness is a tendency of democracy's advocates to shape their views so as to accommodate the concerns of their critics. These theories generally share a denial of an intrinsic connection between democracy and liberty, which this study considers crucial to a correct understanding of democracy's value. Hence, on

the one hand, we have philosophical arguments in favour of democracy's non-instrumental value, which somehow agree with standard liberals that liberty and democracy are not intrinsically related (Berlin, 1969: 22), and thus that the latter must be rather justified on the basis of an independently valuable principle of equality (Christiano, 1996, 2008a; Kolodny, 2014a, 2018). On the other hand, we have theories overturning the epistocratic challenge at its very core to argue that democratic procedures must be praised for their epistemic virtues (Goodin and List, 2001; Landemore, 2013). Although these theories clearly deny that rule by the experts is justified, it remains true that they provide an argument for democracy that rests on shaky grounds, as "putting value in the achievable outcomes over or instead of the procedures may prepare the terrain for a sympathetic welcome to technocratic revisions of democracy" (Urbinati, 2014: 82).

Surprisingly, then, similar problems also arise within normative theories that justify democracy on the grounds of liberty, as it is the case with some leading strands of neo-Roman republicanism (Pettit, 1997b, 2012) and current systemic approaches to deliberative democracy (Mansbridge et al., 2012). Neo-Roman republicanism certainly takes distance from standard liberal theories in conceptualising freedom in terms of non-domination rather than non-interference. However, many neo-Roman republicans still reconcile with the latter in denying that democracy and liberty are internally related concepts (see Lovett, 2010: 213; Pettit, 1997b: 30). As a new theory of negative freedom, neo-Roman republicanism primarily demands a public system of law that protects its addressees from the dangers of private and public domination. All things considered, a properly devised democratic system may help achieve this result. However, what many neo-Roman republicans explicitly deny is the idea that democratic authorship in law-making processes is in itself crucial to freedom (Forst, 2013: 154; Urbinati, 2012: 607). This is because, according to neo-Roman republicanism, democracy is rather a potential threat to freedom, which must be tamed through the constraints of a mixed constitution. Prominent proponents of neo-Roman republicanism thus tend to identify democracy with populism when they conceive of it as the "politics of passions", whose adverse effects must be countered through depoliticisation and a popular sovereignty that is exercised only in a critical function (Pettit, 2004: 54; 1999, 2000; see Urbinati, 2012: 615).

The case with deliberative democracy and its systemic interpretations is the one that interests us more, as this is the tradition this work ascribes to. The tension between the liberal and democratic components of constitutional democracy, which technocracy and populism bring at the extreme, re-presents itself within deliberative democratic theory in terms of a conflict between deliberative and democratic aspects (see Chambers, 2009: 332; Lafont, 2006: 3; Thompson, 2008: 511). The deliberative component follows the logic of the liberal pillar, as deliberation is assigned with the task of ensuring the reasonableness and impartiality of policy outcomes. Because the mass democratic public is structurally unsuited to host high-quality debates (Chambers, 2009: 330), deliberative democrats have often conceived of deliberative standards as to be met only within the formal institutions of the state, namely courts (Rawls, 1993: 231 ff.) or parliaments (Habermas, 1996: 307). Thus, questions arise about how to ensure that deliberation within formal institutions can count as also democratic. In this regard, standard theories of liberal democracy traditionally attribute distinctive importance to the institution of voting, as it is through general elections that citizens authorise political representatives as their spokespersons and hold them to account when they fail to promote their views or interests. However, deliberative democracy has conversely remained quite disappointingly silent on this issue. For instance, Habermas' "two-track" model of deliberative politics has been forcefully criticised precisely for remaining extremely vague on the question concerning the linkages between the broad public sphere and its formal decision-making sites (Leydet, 1997). Deliberative democracy has also largely neglected the topic of political parties, to which functions of linkage have yet been traditionally attributed (see Sartori, 1976). This is because, given their reliance on group loyalties and adversarial rhetoric, political parties have often been regarded as falling on the wrong side of the aggregation-deliberation dichotomy (Van Biezen and Saward, 2008: 24; see also Johnson, 2006: 48). Hence, having predominantly focused on deliberation, deliberative democratic theorists have overlooked the crucial democratic function political parties may play.

On the whole, the emphasis deliberative democratic theory has placed on the rationality of political outcomes as a measure of their legitimacy seems thus to have paved the way to an institutional practice that privileges the role of experts over that

of citizens (Crespy, 2014: 87; Landwehr, 2014: 2). Yet, deliberative democracy was initially a participatory ideal aimed at making public decisions responsive “to public deliberation rather than to economic and social power” (Rostbøll, 2008: 2). In its early accounts, the move towards more politicisation was pronounced and indeed also linked to an ideal of freedom. Deliberative democracy developed in opposition to social choice theory and other predominant accounts of aggregative democracy (Goodin, 1986; Miller, 1992; Knight and Johnson, 1994). The emphasis was on bringing into question the process of formation and transformation of preferences that previous models of democracy considered as given and private (Landwehr, 2017: 50). The connection with freedom was quite explicit, for public deliberation had to be seen as an undistorted and uncoerced process through which citizens could develop their own “internal autonomy” by emancipating themselves from false ideologies and mechanisms of adaptive preference formation (Rostbøll, 2008: 135 ff.). All these dimensions risk progressive dilution the more democratic deliberation is construed in epistemic terms as a matter of finding a procedurally-independent truth about political matters. The danger of losing sight of the connection between deliberation and autonomy is twofold: On the one hand, we risk underestimating the function that deliberation plays in tracking the justifiability of public decisions to those who must comply with them (Lafont, 2019: 98). On the other hand, we may also undervalue the extent to which in contemporary societies praising the substantive quality of policy outcomes can only be cashed out in terms of intersubjective agreement between free and equal autonomous persons (see Gledhill, 2017: 491).

These problems intensify when shifting the focus onto the recent systemic turn in deliberative democratic theory (Dryzek and Niemeyer, 2010: 8). The systemic approach represents an attempt to conceptualise deliberative democracy in complex policy environments and contexts of network governance, which often seem to deny the very possibility of any form of democratic association (Bohman, 1996: 155). The leading suggestion is to proceed to the normative assessment of political institutions not by looking at their inherent qualities, but rather by determining whether their systemic interactions may contribute to the satisfaction of deliberative and democratic desiderata at the level of the overall system (Mansbridge et al., 2012: 1 ff.). However, the problem with this logic is that it may promote a complete dissociation

of the two components of the deliberative democratic ideal so that, with no institution having to qualify as both deliberative and democratic, the risk is that of “another vindication of a post-democratic order in which decision-making in elitist expert bodies is shielded by a façade of electoral democracy” (Landwehr, 2014: 41; see also Hendriks, 2016; Owen and Smith, 2015). A testament to the fact that these concerns are not unfounded is the predominant attention given to the rethinking of deliberative criteria in systemic terms, with no corresponding effort undertaken with regard to the democratic aspects of deliberative systems (Parkinson, 2012: 152). It is thus about time for deliberative democrats to redeem the democratic credentials of their theories by further clarifying how they intend to conceptualise the linkage between formal decision-making institutions and the broad public sphere. Deliberative and democratic components must be brought back together to avoid the disaggregative logic that fuels technocracy and populism.

It is at this stage that the proposal for a generalised use of mini-publics for political decision-making acquires a distinctive interest. Deliberative Polls, Planning Cells, Citizens Assemblies, Consensus Conferences, Town Meetings, etc. have all attracted the interest of deliberative democrats as promising institutional innovations able to further deliberative democracy in complex societies. Some have described them as the most promising effort to institutionalise deliberative democracy in today’s world (Fung, 2003: 339), whereas others have conceived of them as part of the renewal of representative systems (Ferejohn, 2008; see Curato and Böker, 2015: 173). Their distinctive advantage would be precisely to combine deliberative and democratic aspects in a unique way, as they are “designed to be groups small enough to be genuinely deliberative, and representative enough to be genuinely democratic” (Goodin and Dryzek, 2006: 220). As deliberative devices, they hold the promise of improving the deliberative quality of public discourse, for they are thought of as providing “more perfect public spheres” (Fung, 2003: 338; see Chambers, 2009: 330) where citizens can dialogically confront their respective positions on given social problems. From a democratic perspective, they are instead described as participatory institutions apt to increase the democratic accountability of governance networks via the direct involvement of ordinary citizens in administrative affairs (Ansell and Gingrich, 2003: 165; see Papadopoulos, 2012: 129).

However, at a closer look, mini-publics also raise the concern of replicating rather than solving the issues above. On the one hand, they appear to promote a kind of democratisation that displays distinctive populist features. They hold out the allurement of more direct forms of democracy, as well as the revendication of the voice of the excluded, whose political role has increasingly been seized by corrupt elites. Most importantly, they represent outside citizens only in “descriptive” terms, thus promoting a kind of representation as “embodiment” that is reminiscent of that which is claimed by populist leaders (Lafont, 2019: 121 ft. 51). On the other hand, their lack of electoral authorisation and accountability severs the bond that links inside participants to outside citizens (Lafont, 2014: 13). The risk is thus that of mini-publics becoming just another instrument of depoliticisation (Urbinati, 2014: 7). Within the literature, deliberative mini-publics find extensive support from theories of the value of democracy that either are epistemic or fundamentally appeal to the procedural principle of democratic equality (Landemore, 2020). However, without necessarily questioning their epistemic virtues, the problem with mini-publics is that they promote a kind of political equality that is incompatible with a more fundamental commitment to freedom as the grounding principle of democratic legitimacy (see Leydet, 2016). With no communication flow between mini-publics and the broad public sphere, citizens within the latter are deprived of the opportunity to critically engage with the rationale underlying public policies (Biale and Ottonelli, 2018: 8). When used to bypass disagreement within the broad public sphere, they thus implicitly require outside citizens to defer to the judgement of a new class of experts, that is, their fellow citizens who have received the invitation to participate in mini-publics’ proceedings (Lafont, 2014, 2019).

Should we therefore think of mini-publics as the cure against all the ailments of contemporary representative democracies or rather as just another expression of their degenerative crisis? This study adopts a systemic approach to deliberative democracy to reconcile laudatory and critical stances towards mini-publics (Curato and Böker, 2015: 174). As for any other political institution, mini-publics cannot be assessed in isolation from their background institutional framework. Normative evaluations must instead necessarily follow from an analysis of their systemic interactions,

which is an assessment of how mini-publics can improve the deliberative and democratic qualities of governance systems through the iterated exchange with other institutions and fora. Although it is precisely from this point of view that mini-publics have been forcefully criticised, this study argues that the shifting of the normative focus from mini-publics' discrete functioning to their contribution to the overall system also paves the way to a warranted re-evaluation of their democratic credentials. The decisive question is what kind of institutional linkages are needed for mini-publics to strengthen rather than weaken the two-way communicative flow between the broad public sphere and its decision-making sites. Having therefore endorsed a liberty-based, systemic understanding of deliberative democracy that is normatively grounded in the co-originality of basic rights and popular sovereignty (Forst, 1999; Habermas, 1996; Rawls, 1995; Rummens, 2006), I argue that deliberative mini-publics can be conceived of as legitimate institutions only when devised as instruments of (re)politicisation. As such, they must be integrated within the overall system so as to perform three distinct but complementary roles: *first*, they must work as tools apt to increase the democratic accountability of governance systems; *second*, they must translate into deliberative resources for macro-deliberations carried out within the mass democratic public (Lafont, 2019: 141). *Third*, in specific circumstances, they can function as catalysts for the formation of new political public spheres. These functions are deeply interrelated and mutually reinforcing. On the one hand, deliberation must be closely linked to accountability in political decision-making in order to activate a self-correcting process of democratic reason that is vital to both the formation of political public spheres and the progressive improvement of policy outcomes. On the other hand, increasing the quality of public debate is one crucial step for democratic control to be exercised in a non-trivial way. In short, deliberative mini-publics can be viewed as democratically legitimate only when devised so as to support citizens in the exercise of their democratic prerogatives and freedoms.

Content and Structure of the Thesis

This work proceeds as follows: *Chapter I* and *II* set forth the normative and theoretical framework. I defend a deliberative model of democracy that is normatively grounded

in the *co-originality* of citizens' private and public autonomy by arguing that both such dimensions are equally essential to the ongoing realisation of human freedom (Habermas, 1996: 468; Rummens, 2006; 2007: 350). *Chapter III* engages with methodological issues concerning the relationship between theory and practice to defend a *reconstructive* approach to normative democratic theory. According to this view, deliberative democracy is a reflexive method of inquiry (Bohman, 2004) where free and equal citizens reinterpret the terms of their democratic association every time their current ones risk being outdated by newly arising social circumstances. *Chapter IV* and *V* thus investigate the proposal for a systemic use of deliberative mini-publics as part of a project of reconstruction of democratic theory and practice for current complex societies.

In *Chapter I*, I defend a liberty-based account of democracy's non-instrumental value. I do so by showing that alternative equality-based arguments for democracy tacitly rely on a norm of respect for autonomy and, thus, fail to provide a genuine alternative. I mainly focus on Christiano's influential account, according to which democracy acquires value as the intrinsically just realisation of the principle of public equality (Christiano, 2008a). According to Christiano, the intrinsic value of democratic procedures rests on their ability to satisfy specific "interests in judgement" (Christiano, 2008a: 88). However, I argue that the latter can only be interpreted in terms of a deeper norm of respect for autonomy. I thus conclude that the argument from equality remains incomplete without a notion of respect for the free and autonomous person (Rostbøll, 2015: 267; Rostbøll, 2016: 796). This result is further confirmed by the fact that the argument from equality is eventually itself subject to the two objections that allegedly justify a rejection of its liberty-based alternative, namely the "incompatibility" and "trade-offs" problems (Christiano, 1996). In short, the argument from equality represents a dead-end, for it inevitably leads back to the one from liberty. I conclude by contending that the norm of respect for autonomy, on which both arguments fundamentally rely, entails the recognition of persons as authorities in the realm of justice. In other words, the idea of autonomy comes with the rejection of any external authority that goes beyond human reason (Gledhill, 2017: 490).

Based on this, I proceed by endorsing a liberty-based understanding of justice, which primarily demands free and autonomous beings to recognise each other an equal standing as both addressees and co-authors of discursively constructed moral and political norms. I thus outline a kind of constructivism that also rests on the norm of equal respect for persons' autonomy. However, I argue that the latter is to be justified neither metaphysically nor historicistically, but rather from the standpoint of practical reason (Rostbøll, 2011). As such, it places morally substantive constraints on the meta-ethical procedure of construction, which are nonetheless to be seen as constitutive of agency and therefore non-arbitrary (Korsgaard, 1996c). The practical constructivism I endorse rests on two fundamental tenets: *first*, that autonomy is both genetically and normatively a social construct (Cooke, 2020: 562), which means that free and autonomous beings constitute themselves as such only by taking part in an intersubjective practice of general and reciprocal justification that grounds the validity of moral norms (Forst, 2007: 6). *Second*, that individual and moral autonomy are inseparable and co-original principles (Rummens, 2006: 471; 2007: 340; see also Cooke, 2000). If individual practical agents can realise their own individual autonomy only through practical discourse, the latter can also acquire meaning only when its participants already recognise each other as self-determining beings equally worthy of respect.

Having outlined a liberty-based conception of both democracy and justice, my primary aim is to show that the two are internally related concepts. I start by reviewing a liberty-based account of democracy that justifies the latter as constitutive of *freedom as independence* (Rostbøll, 2016). On the premise that a democratically enacted public legal order is constitutive of freedom as independence, this view contends that democracy must be justified not in terms of an ideal of democratic self-rule or collective authorship, but rather on the basis of a less ambitious goal of having no one subject to another's private will. Although this account successfully establishes a necessary relationship between democracy and justice, I object to it on two main grounds. *First*, because it does not fully realise the emancipatory character of a theory of justice that conceives of the latter as an "autonomous construction by autonomous subjects" (Forst, 2007: 7). In conceiving of the right to freedom as independence as a morally substantive norm, which places external – albeit merely formal

– constraints on citizens’ self-legislative activity, this view fails to recognise autonomous beings as the ultimate authorities in the realm of justice. *Second*, because it still conceives of the autonomous subject as a “self-sufficient and self-reliant” individual who stands somewhat antagonistically towards others to then realise his or her own autonomy by gaining independence from other consociates (Anderson and Honneth, 2005: 128-9). As I contend, this falls short of the idea that autonomy is an intersubjectively-mediated achievement and that freedom is a socially attained goal (Honneth, 2014).

In *Chapter II*, I thus seek to correct this view by advocating for an account of deliberative democracy that translates the intersubjective ideal of autonomy previously outlined into a practice of political self-legislation. I argue that the co-originality of individual and moral autonomy enters the political structure in the institutionalised form of a co-original recognition of citizens’ private and public autonomy (Rummens, 2006: 470; 2007: 339). In other words, when citizens must necessarily regulate their social interaction through the means of law, the moral constructivist strategy that grounds the validity of moral norms translates into a legally institutionalised practice for the discursive construction of legal norms (Forst, 2007: 110; Rummens, 2007: 341). This inclusive, deliberative law-making process must be thought of as geared towards the construction of an impartial perspective aimed at settling all the ethical and pragmatic questions concerning the application of moral norms to ever-changing socio-historical circumstances (Rummens, 2007).

Having thus outlined a deliberative model of democracy that is normatively grounded in the co-originality of private and public autonomy, I conclude by rejecting the so-called “incompatibility” objection” (Christiano, 1996: 24-5). According to this objection, freedom and democracy are irremediably at odds because shared contributory influence over law-making processes is never enough for individuals to achieve authorship over their lives (Kolodny, 2014a: 210). Collectively determined legal norms cannot be perceived by the addressees of law as internal to their will unless full consensus is systematically achieved. Since this is a virtually impossible condition to obtain, the argument from liberty must be refuted (Christiano, 1990, 1996, 2008a). I reject this view by arguing in favour of a “deliberative interpretation of self-author-

ship” (Cooke, 2000: 956) that directly follows from the idea of private and public autonomy being co-original and co-constitutive (Cooke, 2020). According to this view, just as in the moral context individual practical agents can exercise their individual autonomy only by entering the discursive construction of moral norms, in the political context citizens can make full use of their private autonomy only by taking part in discursive law-making processes. The possibility of consensus, itself to be pragmatically presupposed by participants in both moral and ethical discourses, is then to be viewed as just an end-in-view that is ever pursued, but nonetheless never fully achieved. As such, it drives and structure deliberation by also providing a critical standard against which collective decisions can be evaluated (Cooke, 1997: 14; Rummens, 2007: 349). Once again, this grounds an understanding of deliberative democracy as an ongoing, open-ended and self-correcting method that citizens adopt to dialogically interpret norms of justice in response to ever-changing socio-historical circumstances (Rummens, 2007).

The liberty-based, constructive view of deliberative democracy I defend has been subject to several misconceptions. It has been interpreted as either an instance of pure (Christiano, 1996: 34-5) or epistemic proceduralism (Estlund, 2008: 85 ff.). I reject both of these views by arguing that the model of democracy I set forth cannot be fully captured by the distinctions above, as it rather combines procedural and substantive aspects in a “unique and inextricable manner” (Rummens, 2007: 335). In other words, a deliberative model of democracy normatively grounded in the co-originality of private and public autonomy covers a *via media* between procedural and epistemic accounts of democratic legitimacy. A model of this kind also has distinctive implications for what concerns the relationship between theory and practice. Whereas alternative perspectives conceive of ideals that are elaborated in theory as setting standards that must be either mirrored or brought about in political practice, the model I advocate rather conceives of normative ideals as abstracting away from current political practices to then drive further social reform (see Gledhill, 2017).

I thus conclude the normative framework by highlighting how the perspective I endorse gives us a distinctive insight into some of the most pressing problems affecting contemporary liberal democracies, namely technocracy, populism, and the mutually reinforcing logic that ties them together. This sets the background against

which I intend to evaluate the proposal for a generalised use of mini-publics for political decision-making. As already anticipated, despite the initial enthusiasm, deliberative mini-publics have also raised the concern of potentially replicating the problems above, especially when used as instruments of depoliticisation. However, the hypothesis I set forth is that deliberative mini-publics can be defended on democratic grounds when integrated within deliberative systems in such a way that they strengthen, rather than weaken, the communicative flow between civil society and institutional decision-making. I thus lay down the basis for an account of mini-publics that conceives of them as integrative institutions facilitating representative, deliberative systems in the delivery of crucial democratic goods.

Chapter III thus proceeds to a preliminary defence of *representative democracy* and the *deliberative systems approach* (Parkinson and Mansbridge, 2012) as genuine interpretations of the democratic ideal for the conditions of social complexity raised by the development of modern nation-states and contemporary polycentric societies, respectively. This chapter further investigates methodological issues concerning the relationship between theory and practice, thus addressing the problem of the inherent tension between democratic ideals and the social fact of complexity. To some, deliberative democracy has appeared as a highly demanding normative ideal, which by raising the standards of political legitimacy may end up attracting serious scepticism about the possibilities of its concrete attainability (Bohman, 2004: 23). I argue that this sort of scepticism follows from a flawed methodology, which conceives of normative ideals as to be elaborated in abstraction and without considerations for the means necessary to their practical attainment, with issues concerning their concrete implementation only to be addressed at a second stage of research. By virtue of relying on a clear-cut distinction between normative ideals and social facts, these perspectives end up conceiving of the latter as only obstacles to the realisation of the former, thus sinking any project of social reform into despair and eventually conservatism (Dewey, 1937: 489; Festenstein, 2017). In contrast to this view, I defend a *reconstructive approach to democratic theory* that conceives of social facts also as resources that trigger an ongoing reinterpretation of democratic norms. This is more in line with the idea of deliberative democracy itself, as treating the latter as an ideal in need of practical application contradicts its core insight of conceiving of

the validity of norms as the result of intersubjective justification (Gledhill, 2017: 487). The conclusion is thus to conceive of democracy as a reflexive practice “in which people deliberate together concerning both their common life and the normative and institutional framework of democracy itself” (Bohman, 2007: 5).

On the basis of this approach to democratic theory, I proceed to a defence of political representation as a genuine democratic device. I argue that the well-established view in political theory that conceives of representative democracy as either an oxymoron or second-best adaptation to modern conditions of social complexity is precisely the result of having conceived of democratic ideals in abstraction from social reality, and indeed in relation to the outdated historical exemplar of Athenian democracy. In contrast to this view, I argue that political representation is complementary rather than antithetical to democratic participation (Urbinati, 2006: 4). This is for two reasons: On the one hand, the procedural mediations of representative systems are apt to ensure the reasonableness of democratic decisions by means of introducing a moment of deliberative reflection in democratic decision-making. The dichotomy between liberal and democratic aspects at the core of constitutional representative systems is here restated in terms of an opposition between two of the greatest traditions in philosophical thought, namely *rationalism* and *voluntarism*. Representative democracy is thus justified for promoting the progressive alignment of will and reason via a recursive and self-correcting process of reasonable will-formation (Habermas, 2001a: 767). On the other hand, representative institutions are complementary to democratic participation because it is by advancing *representative claims* that public officials activate and shape their democratic constituencies (Saward, 2006, 2010). Theories that conceive of representative democracy as an oxymoron have traditionally interpreted general elections as the rare moment in which the democratic people exercise sovereignty only to renounce to it (Constant, [1819] 1988: 312; see Urbinati, 2006: 54). As a consequence, political representation has been traditionally thought of as “*re-presenting*”, that is, “making present again”, what is no longer there – the people (Pitkin, 1972: 8 emphasis in the original). Conversely, I seek to restore the democratic credentials of representative institutions by endorsing a *constructive* view of political representation (Saward, 2006, 2010), whose

distinctive feature is precisely to conceive of democratic constituencies as themselves constituted through political representation.

Thus, the account of representative democracy I endorse comprises different aspects. It takes inspiration from both Habermas' "two-track" model of deliberative politics (Habermas, 1996: 304 ff.) and Dewey's ideas of experimental inquiry and democratic experimentalism (see Dewey, 2012 [1927], 1938) to combine them with a constructive account of political representation that better suits the deliberative democratic ideal (Brown, 2018). The basic idea is to conceive of the broad public sphere and its representative institutions as tied together into a circular process that is aimed at progressively guaranteeing the reasonableness of democratic decisions. Hence, according to this model, impartial solutions to social problems that are firstly detected in the broad public sphere are reflexively elaborated within parliamentary institutions to be then resubmitted to democratic scrutiny and social testing, in an enduring and self-corrective process that may in principle ensure some normative and technological progress over time. However, I conclude the chapter by showing how current increases in social complexity, and the corresponding delegation of policy-making powers to non-majoritarian bodies, risk putting into question the correct functioning of such circular exchange between the broad democratic public and its representative institutions. I thus argue that a further reconstruction of democratic theory and practice is today needed. I locate in the systemic approach to deliberative democracy a coherent attempt in that direction, thus arguing that it offers a valid normative framework for rethinking deliberative democracy in the complex policy environments of network governance. However, I conclude by raising some concerns about the democratic credentials of deliberative systems, arguing that advocates of such an approach have so far failed to clarify how non-trivial forms of democratic control can be organised in contemporary complex societies.

This distinctly democratic problem leads me to examine the proposal for a generalised use of deliberative mini-publics for political decision-making as part of a project of reconstruction of deliberative democracy for the conditions of social complexity raised by the development of polycentric societies. The leading hypothesis relates to the possibility of considering mini-publics as intermediary bodies strengthening the chain of transmission between the "weak" publics

autonomously forming in the broad public sphere and the “strong” ones of decision-making institutions (Brown, 2006: 203; Fraser, 1992: 134; see Habermas, 1996: 307). Given their proximity to the latter, mini-publics display a potential to influence and constrain deliberation within formal decision-making bodies that is greater than that which is exercised by informal publics. Hence, the thesis I advance is that mini-publics can be defended on democratic grounds only when their systemic relationship with informal public spheres is one of complementarity rather than displacement (Mansbridge et al., 2012: 3).

Chapter IV defines what counts as a deliberative mini-public to review then some of the most pressing concerns that have been raised about their possible role. Of particular interest is the objection that mini-public would be *illegitimate* when granted decision-making power. Indeed, their lack of electoral authorisation and accountability makes them unsuited to play a direct role in the shaping of public policies (Lafont, 2014: 3). Were they used as “shortcuts” to bypass democratic disagreement within the broad public sphere, mini-publics would become just another instrument of depoliticisation, which risks depriving citizens of the opportunity to reflexively engage with the rationale underlying public policies (Lafont, 2019; see also Biale and Ottonelli, 2018: 8). This is a serious problem for a liberty-based conception of democracy. Indeed, if mini-publics have been justified for combining deliberative and democratic aspects in a unique way (Goodin and Dryzek, 2006: 220), it is also the case that the democratic component has been cashed out in terms of mini-publics’ ability to promote the value of democratic equality. However, mini-publics advance a conception of political equality that is incompatible with freedom as the most fundamental principle of democratic legitimacy (see Leydet, 2016). The more political systems become depoliticised, the more citizens lose the ability to identify political decisions as the product of their activity as free and equals. Notwithstanding this conclusion, I challenge the idea that a more proportionate use of mini-publics as bestowed with merely consultative powers should be viewed as *superfluous*. This is another objection mini-publics have indeed received in the case of their use for the shaping of public policies being merely indirect, with their recommendations to be eventually re-submitted to public scrutiny for democratic approval (Lafont, 2014: 3). As the argu-

ment goes, if political representatives must nonetheless convince the broad democratic public of the goodness of proposed policies, gathering small groups of citizens to discuss them in advance risks becoming just a huge waste of time and public resources. I challenge this view by arguing that mini-publics can instead exert valuable democratic functions if well integrated within a deliberative system.

Chapter V thus concludes with an analysis of the tasks that mini-publics can perform and the kind of systemic linkages they need in order to function effectively. I classify such tasks into three different categories. *First*, I consider the possible role of deliberative mini-publics in decisions of institutional design and meta-governance. Meta-governance, as the power of representative institutions to exercise oversight over the formation and functioning of governance networks, has often been conceived of as a key strategy for the (re)politicisation of network governance (Landwehr, 2014; Sørensen and Torfing, 1997). I argue that coupling mini-publics with representative institutions for decisions of this kind represents a valuable strategy for both preventing the risk of institutional choices motivated by pure electoral interest and for giving public visibility to decisions that often escape public notice despite their huge impact on citizens' lives. I also argue that, given the importance of such decisions, mini-publics deployed for the sake of this task should enjoy the strongest possible linkages with both the broad public sphere and its decision-making institutions. *Second*, I consider the use of mini-publics for the ordinary policy-making activity of deliberative systems. As in the above case, I argue that mini-publics can be valuable devices apt to both increase the democratic accountability of formal decision-making bodies and shape public processes of opinion-formation in a more deliberative fashion. *Third*, I consider a role for mini-publics in conditions where a political public sphere is not yet fully developed. Here, I argue that mini-publics can function as agents of construction of democratic constituencies, as their role becomes that of helping citizens shape their opinions about specific problem situations. In such a case, deliberative mini-publics are thus justified as catalysts helping the formation of democratic publics.

To conclude, the present work should be read as an investigation of the democratic potential of deliberative mini-publics. Deliberative democratic theory may have inadvertently provided normative justification to a post-democratic order

where deliberation within formal institutions remains unreceptive to the democratic input of informal public spheres. It is time for deliberative democrats to clarify how citizens' democratic deliberation can be institutionally linked to deliberative systems' policy-making activity. In short, we need an institutional project that can bring deliberative democratic theory back to its democratic roots. If deliberative mini-publics had initially been thought of as contributing to this goal, it also turned out that their systematic use may produce the opposite result. An excessive emphasis on their deliberative qualities has indeed overshadowed their democratic potential, thus leading them to become just another instrument of depoliticisation. Therefore, what we need now is a theory of how mini-publics can be used to (re)politicize deliberative systems, that is, a theory of *democratic* mini-publics.

I. The Idea of Democracy

Introduction

The question of democracy's value remains unsettled, despite being fundamental to understanding the exact implications of our commitment to democratic ideals (see Christiano, 2008a: 1). Yet, in circumstances of rising scepticism about the aptitude of democratic regimes to deliver sustainable policies, such a question also acquires a distinctive significance. On the one hand, we want to know whether we have good reasons to sustain democratic institutions when alternative arrangements may seem more apt to provide stable and reliable governance. On the other hand, a clear understanding of the specific grounds of democracy's value is crucial to inform and drive our criticism and renewal of existing democratic institutions and practices (Rostbøll, 2015: 267; 2020: 235).

Notions of liberty and equality figure prominently in many non-instrumental justifications of democracy's value.¹ However, both their specific interpretation and axiological order are subject to ongoing contestation. When liberty is the leading principle, the one to which is assigned normative priority in the order of justification, democratic equality is in turn appraised for its constitutive role in serving the former – as Nadia Urbinati nicely puts it: “democracy promises liberty first of all and uses legal and political equality to protect and fulfil this promise” (Urbinati, 2014: 19; see also Urbinati, 2012: 608). When the normative focus is on equality instead, democratic methods are generally praised for either publicly recognising citizens as equals in the decision-making process (Christiano, 1996, 2008a) or instituting relations of social equality by allowing no one to rule over others (Kolodny, 2014a). Traditionally,

¹ Some non-instrumental justifications of democracy focus instead on democratic participation as an activity that is valuable in itself and, thus, independently from its constitutive role in either serving freedom or establishing relations of social equality (Arendt, 1970; Mill, 1972; see Cooke, 2000: 948). However, they have been consistently criticised for focusing on what are essentially by-products of democratic participation (Elster, 1999: 19 ff.); for being perfectionist (Kymlicka, 2002: 294 ff.); or incapable to account for the authority and legitimacy of democratic decisions (see Rostbøll, 2020). In what follows, I will not discuss them further.

it is the argument from liberty that had a prominent role in the justification of democracy's non-instrumental value, whereas the argument from equality has been developed as a response to perceived inadequacies of the former (Rostbøll, 2015: 269).

A similar situation is traceable in alternative understandings of justice, as notions of freedom and equality figure prominently also in accounts of what justice primarily demands. A classical strand of liberalism attributes to justice the main task of securing for each individual equal private freedoms and opportunities for self-determination. In such case too, the recognition of a general right to freedom enjoys normative priority in the order of justification, whereas the ascription of equal freedoms follows from the appraisal of equal capacities for choice (Hart, 1955). Conversely, conceptions of justice based on a principle of equality concentrate on what individuals are due in terms of a just distribution of goods, welfare, resources, etc. Here, the quest for justice follows from the recognition of an intrinsic wrong in treating individuals as social inferiors, so that the focus becomes that of displaying equal concern for them as recipients of material goods (Dworkin, 2000; see Forst, 2007: 4, 190).

A third area of dispute concerns the relation between democracy and justice, with the alternative positions in the debate revolving around different conceptions of the meta-ethical status of justice (Rummens, 2018: 134). Instrumental accounts of democracy necessarily presuppose a substantive understanding of justice, for the latter is conceived of as a procedurally-independent standard that democracy may help either implement or discover (Arneson, 2003, 2004; van Parijs, 1999). Non-instrumental accounts of democracy may instead equally subscribe to either a procedural or a substantive account of justice. In the former case, democracy is valued for its intrinsic features and democratic outcomes are deemed just simply by virtue of their being the product of such a procedure. Any independent evaluation of the substantive qualities of democratic decisions is in principle ruled out on the assumption that there is no objective value beyond that which is recognised by participants to the democratic process (Arrow, 1963; Kelsen, 2013; Riker, 1982; see Mackie, 2011). In the latter case, procedural and substantive justice are viewed as two irreducible dimensions of assessment that may well come into conflict (see Christiano, 2004). However, the question regarding the truth about justice is deemed so intractable that a

withdrawal to non-instrumentalism becomes inevitable. In this case, it is the persistent disagreement about the substantive requirements of justice that grounds a non-instrumental justification of democracy as the procedural expression of equal respect for persons (Christiano, 2008a; Valentini, 2012b; see Rummens, 2018: 134).

In what follows, I defend a liberty-based conception of both democracy and justice to show that the two are internally related concepts. *Section I* defends a liberty-based account of democracy against one of its equality-based contenders. I argue that the latter implicitly relies on an unacknowledged reference to the notion of freedom and, therefore, does not constitute a genuine alternative. *Section II* defends a liberty-based understanding of justice that primarily demands free and autonomous beings to recognise each other's equal standing as both addressees and co-authors of discursively constructed moral and political norms. The ultimate goal is to defend an account of democracy that translates the above structure in a context where people must regulate their common life through the means of law. Thus, *Section III* introduces an account of democracy that conceives of a democratically enacted public legal order as constitutive of *freedoms as independence* (Rostbøll, 2016; Stilz, 2009). I argue that this account succeeds in both establishing an internal relation between democracy and justice and grounding a preference for deliberation as the only legitimate form of collective decision-making. However, I conclude by judging this account as incomplete. In the following chapter, I thus extend the liberty-based argument further to advocate a deliberative model of democracy that translates the intersubjective ideal of moral autonomy into a practice of political self-legislation.

1.1 Liberty-Based versus Equality-Based Accounts of Democracy's Non-Instrumental Value

The liberty-based argument for democracy has both great normative force and historical significance. It has shaped our understanding of democracy across time and continues to inform the implementations and institutionalisation of contemporary democratic practices. When people ask for democracy, they frame their claim as a demand for freedom.

Having located the basis of the dignity of persons in the capacity for autonomous agency and reason, the argument from liberty considers equal respect for persons' autonomy as the primary demand of justice. It is then by simultaneously underwriting both basic individual rights and democratic rule that the norm of respect for autonomy prescribes an equal standing for citizens as both addressees and co-authors of law (Larmore, 1995: 64 ff.; Rostbøll, 2015: 267). The starting premise is of a Kantian derivation, as the argument from liberty conceives of a public legal order as necessary to freedom. Government by law is crucial to solving problems of social interaction. In its absence, citizens cannot attain freedom, for the unpredictability of their social environment and exposure to the threat of interference from the strongest hinder their ability to pursue any meaningful life plan. Conversely, by establishing a univocal interpretation of the contents of justice backed up by the threat of coercion, a public system of law fixes social expectations and protects its addressees from the dangers of private domination (Christiano, 1996: 15; Stilz, 2009: 51). However, government may itself end up either exerting arbitrary interference or becoming a source of domination (Pettit, 1997b: 171 ff.). On the one hand, the legal constraints it places on individual activity may turn out substantively unjustified if they reflect some factional interest rather than promoting the common good. On the other hand, were such constraints unilaterally imposed by an unaccountable elite, the prerogatives they grant would result unstable and the equal standing citizens enjoy as addressees of law irremediably compromised by some having the power to rule over others (Rostbøll, 2015: 276). Therefore, the argument from liberty considers granting citizens with co-authorial power over the production of law as the only way to fully honour their right to freedom. Whereas steady democratic scrutiny wards off the risk of arbitrary rule by increasing the chances of public enactments being progressively in line with an equal freedoms understanding of justice, an equal say over public affairs is necessary for citizens to fully relate to each other as free and autonomous beings. Therefore, when legal enactments can be deemed to flow from their concerted will, citizens can be considered free under the rule of law.

Despite its longstanding influence, the argument from liberty has also met several criticisms, mainly targeting the idea of public autonomy or democratic self-rule. Tailored to Kant's categorical imperative, the self-rule argument considers the

principle of public autonomy as a direct implication of its private counterpart. If one is entitled to determine the terms of one's own life, then one also must have control over political decisions to which one is subject. However, this is an unattainable condition, for the fact that each has a legitimate claim in shaping the content of collective decisions inevitably implies a fair distribution of political power. It is thus on the account that "shared contributory influence" over law-making processes is never enough for individuals to achieve authorship over their own life that critics claim democracy cannot be justified on the basis of liberty (Kolodny, 2014a: 210). One may think the problem vanishes once correspondence between one's preferences and the correlated political decisions is achieved. However, the objection runs deeper, for were correspondence fortuitously obtained, either by one casting a decisive ballot or by each having their views matched in consensual decisions, the result would still be precariously dependent on the dispositions of others. If we conceive of liberty as requiring security from the mere possibility of interference, then in such cases we must also conclude that democracy is incompatible with it.²

Christiano summarises this point by arguing that the argument from liberty irremediably faces an "incompatibility problem", where democracy is incompatible with liberty because it is a "system of decision-making where each is dependent on the assent or actions of many others to secure what they want", which is a "paradigmatic case of unfreedom" (Christiano, 1996: 24-5). Besides, he also introduces a "trade-offs problem" concerning the relationship and possible trade-offs between political and private freedom. Advocates of the argument from liberty need to explain "why the liberty involved in participating in ruling the society is more important than the individual liberty in more non-political pursuits. They must explain why political liberty is essential to liberty overall" (Christiano, 1996: 19). The problem is introduced as one of trade-offs because advocates of the argument from liberty, having acknowledged the inherent tension between collective rule and individual freedom, often conclude that democratic participation is what assures the greatest amount of liberty

² Christiano does not seem to fully appreciate this fact, as he often suggests that reaching consensus would be enough for such concerns to dissolve. In fact, he claims that liberty-based arguments must be rejected simply because the possibility of consensus is virtually impossible to achieve (Christiano, 1996: 46-7).

each of us can possibly attain (see Graham, 1986). Thus, Christiano wonders why this must be necessarily true and why, for instance, giving up political liberties for the sake of deploying more time to the enjoyment of private freedoms could not be seen as maximising liberty overall. The objection relies on the idea that the enjoyment of certain non-political liberties does not depend on a political dimension or, in other words, that there are private liberties that can be exercised independently on whether we receive our fellow citizens' assent or not.³

Given these objections, critics of the argument from liberty propose shifting the normative focus onto a principle of equality. They argue that democracy is non-instrumentally valuable either because it publicly recognises citizens as equals in the decision-making process (Christiano, 1996, 2008a) or because it institutes relations of social equality by allowing no one to rule over others (Kolodny, 2014a). One may read this line of argument as inscribed in a classical strand of liberal thought, where the independently valuable equality that democracy brings about is eventually perceived as potentially inimical to freedom (Urbinati, 2014: 19). Classical liberals have pointedly denied any intrinsic connection between freedom and democracy, cautiously supporting the latter only as an all things considered better guarantee for the protection of liberal freedoms (Berlin, 1969: 22). Advocates for a non-instrumental account of democracy seem thus to have adapted their views so as to accommodate the concerns of their critics. By shifting the focus onto an independently valuable democratic equality, they now agree with liberals that democracy and freedom are not logically related.

Something analogous can be said about some recent strands of neo-Roman republicanism. In this case, the core value is freedom, which is however to be interpreted as the *status* of not having anyone as a master, rather than as the right not to

³ Amongst such liberties, Christiano lists the right to get married or the choice of scientific, religious, and political affiliations (Christiano, 1996: 26). Evidence that such liberties are in fact subject to a political dimension becomes striking once we consider the challenges that many had to face – and many others are still facing – for such rights to be recognised and protected. Religious and political persecutions can hardly be thought of as mere issues of the past, whereas freedom of thought and expression are still today to be strenuously defended even in the academic world. The same applies to the right to get married, with recent legal and political debates even questioning the very definition and structure of such an institution (see *Obergefell v. Hodges*, 576 U.S. 2015).

be interfered with in the pursuit of one's own goals. With its emphasis on non-domination, neo-Roman republicanism takes distance from liberalism in advancing a different understanding of the concept of freedom. However, leading strands of neo-Roman republicanism still reconcile with liberalism in contending that liberty and democracy are only contingently related concepts (see Lovett, 2010: 213; Pettit, 1997b: 30). As a new theory of negative liberty, neo-Roman republicanism primarily demands a public system of law that protects its addressees from the dangers of private and public domination. All things considered, a properly devised democratic system may help achieve such a result. However, what is excluded from this account is the idea of freedom as entailing democratic self-rule or collective authorship (Forst, 2013: 154; Urbinati, 2012: 607). This is because, according to many proponents of neo-Roman republicanism, democracy is itself a potential threat to freedom, which must be tamed through depoliticisation and a popular sovereignty that is exercised only in its critical function (Pettit, 2004: 54; 1999, 2000; see Urbinati, 2012: 615).

Before I proceed to defend a liberty-based argument for democracy that makes room for an ideal of democratic autonomy, I question whether the argument from liberty can effectively dispense with the more fundamental value of respect for autonomy or rather remains fundamentally incomplete without such an appeal (Rostbøll, 2015: 267; Rostbøll, 2016: 796).

Christiano justifies constitutional democracy as an intrinsically just realisation of the principle of public equality (Christiano, 2008a: 71). The starting premise is to conceive of equality as the basic principle of justice. Justice is the appropriate response to the "dignity of persons", and what it requires us to acknowledge is that each one's life is equally morally important so that nobody's well-being can be sacrificed for the sake of the greater good. Therefore, the first aim of fully legitimate political institutions is to show equal regard for all citizens by promoting a principle of equal advancement of interests (Christiano, 2008a: 3-4; 2008b).

Here lies one first point of contention, as it is unclear why human dignity as the basis of moral equality should ground a principle of equal advancement of interests as the primary demand of justice. Traditionally, the idea of dignity refers to "a rank or elevated position. It expresses that something is raised above something else" (Sensen, 2011: 146; 2009: 309). When applied to humanity, it conveys the idea that

human beings hold some property that confers on them a privileged status over the rest of nature.⁴ Within a Kantian strand of thought, it is the capacity for freedom and reason that grants human beings such an elevated rank. The ability to raise oneself above the set of causal forces of nature to perform an autonomous moral choice is indeed conceived of as the only attribute to which we confer unconditional value (Kant, [1785] 1997: 7, Gr 4:393). Although Christiano seeks to advance a conception of human dignity that is different from Kant's, he eventually concludes that persons are to be distinguished from the rest of nature precisely for their not "merely being a set of casual forces" but rather "authorit[ies] in the realm of value", where the status of authority depends on their unique ability to recognise, appreciate and produce value in an "autonomous and self-conscious" way (Christiano, 2008b: 123). This is enough to conclude that ideas of independence from nature, freedom and autonomy play a crucial role also within Christiano's understanding of the notion of dignity. It remains thus unclear why the appreciation of human dignity must lead to a principle of equal advancement of interests, rather than one of respect for autonomy, as the primary demand of justice. If I am correct that ideas of freedom and autonomy are still at play in Christiano's account of the dignity of persons, then we may be able to find some traces of them also in his justification of democracy, demonstrating that he does not only rely on equality to justify democracy's value.

Promoting a principle of equal advancement of interests requires the institution of a system of law, which fairly distributes the burdens and benefits of social cooperation through the assignment of basic rights and duties (Christiano, 2008a: 4). However, and here lies the crucial point, justice does not merely demand the equal advancement of everyone's interests but also imposes a publicity constraint on the set of procedures and actions that are taken to that end – "justice must not only be done, it must be seen to be done" (Christiano, 2008a: 8). This is because, although all members of society acknowledge the need for a shared system of rules governing social institutions, they also often disagree on what specific principles they should adopt to regulate their common life. It is against this background of faithful disagree-

⁴ For a recent defence of this approach see (Floris, 2019).

ment that justice demands a democratically fair distribution of political power, as citizens must be able to see that they are treated as equals in the decision-making process, as well as be reassured that their interests are not unjustifiably set back.

So construed, Christiano's equality-based argument can be read as comprising both an instrumental and a non-instrumental line of justification. On the one hand, having endorsed an equality-based substantive understanding of justice, Christiano attributes instrumental value to democratic procedures as the best method through which a principle of equal advancement of interests can be promoted. Given that people display a cognitive bias in overvaluing their own interest when compared to that of others, unilateral interpretations of the contents of justice are likely to fail in giving appropriate weight to the interests of each so that only a fair distribution of political power can ensure that nobody's interest is misinterpreted, underrated or simply neglected (Christiano, 2008a: 89). On the other hand, although the issues to be democratically decided are taken to be choice-insensitive (Christiano, 2008a: 86 ff.),⁵ the pervasive disagreement surrounding them implies a withdrawal to a non-instrumental justification of democracy as the procedural expression of citizens' equal moral worth (see Rummens, 2018: 134). The non-instrumental value of democracy depends thus on its aptitude to satisfy some specific *interests in judgement* that people develop in response to their persistent disagreement (Christiano, 2008a: 88). The conclusion that Christiano's equality-based argument implicitly relies on an unacknowledged reference to the notion of freedom follows from such interests in judgment eventually disclosing a concern for persons' autonomy. If the satisfaction of citizens' interests in judgement is to be interpreted in terms of a deeper norm of respect for autonomy, then we must conclude that liberty rather than equality underwrites democracy's non-instrumental value.

One first interest in judgement that Christiano postulates is that of being recognised and affirmed as an equal among one's fellow citizens (Christiano, 2008a: 88). To exclude someone from political decision-making not only risks setting back their substantive interests but also implies a lack of respect for one's capacity for moral and political judgement. When not recognised as equals, citizens suffer a "serious

⁵ Dworkin labels as "choice-insensitive" those issues of principle whose right solution does not depend on the "character and distribution of preferences within the political community" (Dworkin, 1987: 24).

loss of status” (Christiano, 2008a: 93), for their standing as “authorities in the realm of value” (Christiano, 2008a: 15) is eventually disregarded. However, as seen above, individuals’ status as authorities in the realm of value crucially depends on their capacity for autonomous agency and choice. Therefore, the fundamental complaint here is not that one is not being treated as an equal, but that one’s autonomy is not being adequately respected.

A second interest in judgement people are deemed to possess is that of learning the truth about socially important matters. Citizens do not only have an interest in rectifying other people’s judgement, they want to refine their own too (Christiano, 2008a: 92). Democracy satisfies this demand by instantiating a trial-and-error deliberative procedure through which citizens can deepen their own understanding of the common good by dialogically confronting their respective viewpoints. Public deliberation is thus justified also as a learning process fostering citizens “internal autonomy” (Rostbøll, 2008: 5; Christiano, 2008a: 193) since, by engaging in dialogue with others, citizens learn how to advance their own interests in a way that is compatible with an equal advancement of interests for all (Christiano, 2008a: 86). Christiano states that citizens have an “interest” in doing so, which I believe can only be explained in terms of a “pure practical interest” in excluding all other pathological interests from influencing their moral and political judgement, that is, a form of moral autonomy or positive freedom (Okochi, 2005: 65).

A third interest in judgement is that of feeling “at home in the world” (Christiano, 2008a: 90). To describe this peculiar need, Christiano breaks it up into various components, all concurring to ensure that citizens have a sense of fit and connection with the social world they live in. To successfully pursue their life plans and, therefore, all their other fundamental interests, citizens must be able to develop a sense of identification with the larger projects and institutions of their society. Were they perceiving their social world as something extraneous to them, the sense of exclusion and alienation that would follow would risk stifling any of their efforts to achieve a fulfilling life (Christiano, 2008a: 90-1). Democratic deliberation helps prevent feelings of detachment by granting citizens the opportunity to reflect on both the sources of their disagreement and the rationale underlying public policies. In this case, the connection with the idea of freedom is quite tight. The idea of being at

home in the world is taken from Hegel's *Elements of the Philosophy of Right* ([1820] 1991), and it is part of his philosophical concept of reconciliation, which comprises both the *process* of overcoming alienation from the social world and the *state* of being at home in the world.⁶ According to Hegel, a social world can be home only if it is a "world of freedom", where this requires that one is neither limited nor dependent on anything that is "ultimately other" than oneself. For this condition to obtain, the self must be able to actualise its subjectivity in the objectivity of the external world, for otherwise its dependence on an external reality that is ultimately other than itself would make it unfree. Therefore, for citizens to attain "absolute freedom", they must be granted the opportunity to build together a social world that is an expression of themselves, that is, a social world where they can feel at home.

Once we interpret the above interests in judgement in terms of a deeper norm of respect for autonomy, we cannot but conclude that Christiano's equality-based argument inevitably leads back to its liberty-based alternative. The attempt to remove a reference to the notion of freedom from a non-instrumental justification of democracy reaches a dead-end so that the value of freedom remains quintessential to a justification of this sort. This conclusion is corroborated by the fact that, having introduced citizens' interests in judgement, the equality-based argument becomes equally vulnerable to the "trade-offs" and "incompatibility" problems mentioned above. On the one hand, it is clear that both the interest in being recognised as equals and that of feeling at home in the world could in principle be satisfied by taking part in smaller and more private associations. Thus, someone may wonder why not give up on political participation for the sake of deploying more time to develop a sense of fit and connection within smaller groups? Christiano anticipates this possible objection, against which he argues that no trade-off is possible, for public institutions irremediably frame all private activities in which people may take part (Christiano, 2008a: 91). This is a reasonable answer. It is, however, also available to advocates of the argument from liberty. It is indeed undeniable that the concrete specification of individual liberties is irremediably framed by the outcomes of collective decisions so that participation in public affairs inevitably becomes a condition for

⁶ Here, I draw on (Hardimon, 1994: Ch. 3, sec. IV) see also (Christiano, 2008a: 61).

the enjoyment of more private pursuits. On the other hand, the interest in being at home in the world immediately raises incompatibility issues. After all, nobody will be able to shape the world in the way that most pleases them. Decisions on what projects to collectively pursue and how to shape social institutions are to be taken together with others so that there will always be an insoluble tension between our individual ambitions on how to shape the social world and how it will end up being shaped.

By distributing political power equally, democracy institutionalises a form of rule that is compatible with everyone's freedom. Hence, we must conclude that the value of liberty enjoys normative priority in the order of justification, whereas equality is accounted for its constitutive role in serving the former. The equality-based argument for democracy leads back to the one from freedom for equality does not have independent value but must be explained in terms of respect for the free and autonomous person (Rostbøll, 2015: 267; Rostbøll, 2016: 795-6).

One final objection to my argument may come from the fact that Christiano explicitly avoids attributing much of an *independent* value to the satisfaction of citizens' interests in judgement. As he clearly states: "respect for judgement is not something of rock bottom significance. Its significance is explained by a deeper concern for well-being" (Christiano, 2008a: 67-8). It is only from an "egalitarian standpoint", where citizens seek to advance justice against the background of their disagreement, that a publicly equal distribution of political power acquires non-instrumental value besides its instrumental one (Christiano, 2008a: 69). Indeed, Christiano concludes that, were there a god able to determine with infallible precision what the equal advancement of interests requires in every single case, any sort of citizens' participation in public affairs would become superfluous – "Perfect knowledge and power [...] can sidestep the requirement of publicity in trying to implement equality" (Christiano, 2008a: 71-2). Although it is reasonable to think of the need for democracy as being triggered by the fact of disagreement,⁷ I believe such a conclusion to be unwarranted.

⁷ This is why I prefer speaking of a "non-instrumental" value of democratic procedures, rather than an "intrinsic" or "unconditional" one, which would suggest that democracy remains valuable whatever the circumstances (see Rostbøll, 2015: 268-9).

Having introduced the interest in being at home in the world, we are indeed to conclude that interests in judgement are not wholly reducible to a more general interest in having one's own interests equally advanced. As Hardimon argues, the reconciliatory process of coming to be at home in the world is a matter of "subjective appropriation" (Hardimon, 1994: 96), as it highlights the need for autonomous people to freely appropriate the social reality they live in. A full appreciation of their right to freedom implies that no specific interpretation of the contents of justice can be paternalistically imposed from above, no matter how indisputable this may seem. In Forst's terms, autonomous beings always come with a fundamental right to justification, to which a duty to justify necessarily corresponds (Forst, 2007: 21). Were there an infallible god to establish justice amongst humans, such a god would still be required to justify its actions as a matter of justice – and this is precisely because it would be difficult for us to feel at home in the world, when we are indeed in the garden of god.

In conclusion, according to Christiano's equality-based argument for democracy, the non-instrumental value of democratic procedures depends on their ability to satisfy specific interests in judgement that citizens develop in response to their persistent disagreement about justice. However, these interests in judgement are to be interpreted in terms of a deeper norm of respect for autonomy. Hence, also within the equality-based account, the non-instrumental value of democracy is grounded in an unacknowledged norm of respect for the free and autonomous person. This is why the equality-based argument for democracy does not constitute a genuine alternative to its liberty-based counterpart. Having then considered the interest in being at home in the world, we can now see how the norm of respect for autonomy implies that no specific interpretation of the contents of justice can be paternalistically imposed from above, no matter how indisputable this may seem. Free and autonomous beings come with a claim to be recognised as authorities in the realm of justice. They deny any authority above or beyond their common reason, for liberty has to be also claimed against the gods.

1.11 The Idea of Justice: The Morality of Autonomy

In the section above, I characterised democracy as being normatively grounded in principles of liberty and equality, with liberty enjoying normative priority in the order of justification and equality being accounted for its constitutive role in serving the former. In this section, I defend a liberty-based understanding of justice that runs along the same lines. I thus advocate a constructivist conception of justice that primarily demands that free and autonomous beings recognise each other's equal standing as both addressees and co-authors of dialogically constructed moral and political norms.

On the one hand, the position I defend takes distance from substantive understandings of justice that emphasise an equal distribution of either rights or goods as an independently conceived standard of rightness that democracy may help bring about. What I find most questionable in these approaches is a Platonic tendency to prioritise philosophy over democracy. When placing philosophical justification prior to democratic inquiry, philosophers self-promote their role from Socratic intermediaries to Platonic guardians, thus claiming for themselves more than the equal standing they are to enjoy with others as equal normative authorities in the realm of values (Rorty, 1992; 1978: 317). The advocacy of a substantive conception of justice that is held true "to an order antecedent and given to us" (Rawls, 1980: 519) indeed implies a downgrading of citizens to passive recipients of formulas of justice that are drawn behind their back and, thus, a lack of recognition for their role as active subjects entitled to a free and autonomous determination of their own freedoms (see Forst, 2007: 4).

On the other hand, I also take distance from purely procedural understandings of justice that rule out any substantive evaluation of democratic outcomes on the assumption that no objective value exists beyond that which is recognised by participants to the democratic process. I consider these views as subject to three main problems: *First*, they are insufficient to justify democratic procedures as we know them, for random selection methods can equally satisfy minimal requirements of procedural fairness (Estlund, 2008: 6 ff.). *Second*, by giving democratic majorities "carte blanche permission to make whatever decisions they like" (Habermas, 2001a:

767), they risk threatening the basic rights of democratic minorities and the correct functioning of the constitutional state. *Third*, by renouncing to a critical benchmark for the evaluation of political practices and outcomes, they deprive democratic minorities of the tools for democratic contestation, thus forestalling democratic renewal and the progress towards a more just society.

Conversely, the constructivist conception of justice I endorse primarily demands the establishment of a “basic structure of justification” for the intersubjective construction of valid norms (Forst, 2007: 119). Constructivism covers a *via media* between the substantive and purely procedural accounts just outlined, for its meta-ethical stance is neither that of denying nor affirming the existence of an independent order of values grounding the validity of normative claims. Lying in the space between moral realism and relativism (O'Neill, 1989: 206), constructivism assumes an *agnostic* stance towards the existence of objective moral truths to then ground authoritative normative principles in the intersubjective agreement between autonomous persons reached within the constraints of practical reason (Ronzoni, 2010). Constructivism is today a well-established position in meta-ethics. Since I cannot delve deep into its complexities, I limit myself to clarify why notions of freedom and autonomy play a central role within it and why it immediately leads to democracy as its necessary constituent.

The great majority of constructivist accounts are Kantian in character. What makes them so is a reliance on some basic features of human beings that are proper to Kant's moral philosophy (Rees, 2020: 677). Although constructivism states that only those norms that withstand the test of the constructive procedure are valid, most constructivists also acknowledge that “not everything [...] is constructed”. Indeed, some specific constraints that regulate the construction procedure are “simply laid out”, and these usually coincide with the Kantian conception of the autonomous person and the principles of practical reason (Rawls, 1993: 104). However, the status of these constraints remains quite controversial, for any attempt to justify them faces a *Euthyphro* kind of dilemma when deciding whether they should be conceived of as either substantive and moral or formal and non-moral (Rees, 2020; Stern, 2012a; Street, 2010). In the former case, constructivism risks collapsing into moral realism. The whole constructivist strategy would thus be in vain, for it remains unclear why

the moral insight grounding the constraints over the construction procedure could not be extended to more specific moral and political norms (Finlayson, 2020: 602, ft.19).⁸ In the latter case, given that the choice of non-moral constraints may appear random and arbitrary, the risk for constructivism is instead that of collapsing into relativism (Rees, 2020: 676).

In the above section, I argued that both liberty-based and equality-based arguments for democracy fundamentally appeal to the notion of human dignity. I conceived of dignity as referring to an elevated rank associated with the capacity for autonomous agency, that is, the ability to free oneself from the set of casual forces governing nature to then perform an action that is governed by reason. Thus, I contended that an appreciation of human dignity should primarily lead to a norm of respect for autonomy rather than to one of equal advancement of interests. This may convey the idea that I am now committed to a specific philosophical anthropology and that the conception of autonomy I put forward either is metaphysically charged or reflects a comprehensive conception of the good. In placing such a norm at the basis of a constructivist strategy, I would thus run the risk of falling back into either moral realism or contextualism, depending on how I characterise its endorsement.

To avoid this drawback, I consider respect for autonomy as a non-arbitrary moral norm that is accessed and justified from the standpoint of practical reason (Rostbøll, 2011). Following Korsgaard's *constitutivist argument*, I conceive of autonomy not as a property that can be verified or discovered from the theoretical perspective of the external observer but rather as something we must necessarily presuppose every time we engage in a critical reflection about what we ought to do and why (Korsgaard, 1996a: 96). I also argue that human beings are rationally committed to respecting themselves and others as free and autonomous beings. Having conceived of respect for autonomy in such terms, the constructivist strategy is fully redeemed from the above risks and leads to democracy as its necessary constituent.

⁸ In some of his later writings, Rawls explicitly admits that the original position relies on some substantive premises, which he though considers an appropriate starting point for his political constructivism on the basis that they already constitute the object of an overlapping consensus within the "public political culture of democratic societies" (Rawls, 1993: 13; 1980: 572). Hence, according to some, the attempt to avoid a realist position led Rawls to lean towards a form of historicism (Rorty, 1992) or semi-relativism (Ronzoni, 2010: 84). For an opposite point of view see (Habermas, 1996: 62) and (Forst, 2017).

The justification of autonomy from the standpoint of practical reason is of Kantian derivation. As Kant argued, rational beings “cannot act otherwise than *under the idea of freedom*” (Kant, [1785] 1997: 53, Gr. 4: 448, emphasis in the original). Being self-conscious, they can always turn their attention onto their own mental states and call them into question. Hence, from their reflective standpoint, every course of action requires a *reason* or reflective endorsement (Korsgaard, 1996a: 93). Rational action can only be undertaken under the idea of freedom because it always presupposes a choice and, therefore, the possibility of choosing otherwise. This explains rational beings’ capacity to be negatively free, that is, their ability to act independently from causes that are external to their will (Korsgaard, 1996d: 162). However, it remains to be established from where they can derive their own reasons for action. A law or principle is needed, for this is where reasons can be drawn from (Korsgaard, 1996a: 98). This is where Kant introduces the categorical imperative in the Formula of Universal Law as the law of the free will. The point is that the law we are looking for cannot be found outside of the agent’s will, for otherwise they would not be free. The categorical imperative remains though compatible with the autonomy of the will because it is a law only in its form and not in its content (Korsgaard, 1996a: 98). By requiring practical agents to act only on universalisable maxims, it does not impose any external constraint on their will but rather enables them to positively realise their own freedom. It is thus as a constitutive principle of agency that the categorical imperative presents itself to the reflective self in the form of a practical necessity.

However, “to regard something as a necessary condition of something else is not identical to regarding the former as having value in itself” (Rostbøll, 2011: 345). Having established that we cannot but act under the idea of freedom, we still have left open the question of whether we have any reason to value it, that is, whether we should regard our own autonomy as something that commands our respect. In other words, so far, we have only established that the idea of autonomy underwriting the construction procedure is an unavoidable presupposition of agency and, therefore, not an arbitrary constraint. What we still need to determine is whether it comes with the obligatory force of a moral ought. Once we reject moral realism, however, it is possible to see how the requirement to value one’s own autonomy also becomes

unavoidable from the standpoint of practical reason. The point is that rational action implies that one must conceive of the end of one's own action as at least somewhat good, for otherwise they have no reason to act. Since we cannot place such goodness in the end itself, for this would entail value realism, we are committed to regarding the end of one's action as good because it is good for oneself. From the standpoint of practical reason, we must thus value our autonomy for its own sake as the source of all reasons and values (Korsgaard, 1996a: 122; Stern, 2012b: 90). In Kant, practical agents become aware of their capacity for autonomous agency through the moral feeling of respect, which makes them perceive the categorical imperative as authoritatively binding (Bagnoli, 2011, 2013).

However, having established that we must value our own autonomy does not yet tell us anything about why we should also regard the autonomy of others as equally valuable (Korsgaard, 1996a: 130). In short, we still need to determine how constructivism intends to justify any claim of "universal interpersonal morality" (de Maagt, 2019: 2768). Within the literature, we find two predominant lines of argument addressing this question. The first focuses on the first-person perspective and states that if we are rationally committed to value certain features in ourselves, then in the name of consistency we are also equally committed to value the same features in others (see Korsgaard, 1996b: 133). The second argument focuses instead on a second-person perspective.⁹ Since shifting from the necessary preconditions of individual agency to the claims of morality is seen as entailing insurmountable problems, this argument proposes as its starting point the involvement of individuals in some primordial form of interaction or shared reasoning, thus ruling out from the very outset any need to bridge the gap between the personal and the interpersonal (de Maagt, 2019: 2769).¹⁰ Arguably, both strategies face their own problems. Since I cannot delve deep into such issues here, I limit myself to clarifying which aspects of the first argument I find unconvincing and, therefore, why I take the second to be more promising.

⁹ For this classification see (de Maagt, 2019).

¹⁰ Those who subscribe to this line of argument include: Apel (1980), Habermas (1990a), O'Neill (1986), Darwall (2006), and Korsgaard (1996c; 2009), see (de Maagt, 2019: 2769).

One *first* worry is related to the mode and order of cognition in which the first-person perspective conceptualises our subjective awareness as autonomous practical agents, which I think is marked by a kind of individualism that is untenable. As various theories of Hegelian inspiration (i.e., communitarianism, feminism, socialism, pragmatism, etc.) have convincingly pointed out, the liberal understanding of the autonomous person as transparently self-aware and self-sufficient fails to capture our deep nature of social animals, thus also obliterating the importance of relationships of care and dependency that are yet crucial to develop and sustain such a capacity in the first place. The second-person perspective has instead the advantage of capturing best our social character by conceiving of the autonomous self as the result of mutual recognition and social interaction. This idea can be arrived at in two steps: *first*, by conceiving of individual practical agents not as prior to their own choices and actions, but rather as being constituted by them (Korsgaard, 2009: 19); and, *second*, by understanding the space of reasons they enter to determine their own actions as essentially public (Forst, 2007: 38; Korsgaard, 1993; 1996a: 133 ff.; Rostbøll, 2011: 352). Hence, the conclusion we reach is that autonomous agents constitute themselves as such by taking part in an intersubjective exchange of public reasons that serves them to both acknowledge their capacity for autonomous agency and shape their own interests and plans of life in consideration of their compatibility with others’.

A *second* worry concerns the fact that the argument from the first-person perspective misses the “specific point of morality”, as respect for others is here derivative of respect for oneself as a practical agent. On this account, others are brought under the moral radar only at a second stage of reflection, whereas morality would require them to be acknowledged from the very beginning (Forst, 1999: 55).¹¹ The second-person perspective avoids this problem by conceiving of the norm of respect for autonomy as dialogically reconstructed from the standpoint of communicative

¹¹ Admittedly, this concern may also apply to some of the arguments from the second-person perspective. In the case of Apel’s and Habermas’ discourse ethics, for instance, our obligations towards others are derivative of a cognitive insight into the pragmatic presuppositions of communicative reason, together with an ethically motivated decision to carry on with a life where we regulate our reciprocal interactions through the means of discourse (Habermas, 2003a: 73; see Forst, 2007: 57).

reason (Habermas, 1996: 3). Equal respect for oneself and others as autonomous beings is thus a norm that is simultaneously acknowledged in a process of reciprocal justification. Hence, whereas from the standpoint of practical reason recognition of one's own value comes with the categorical imperative to adopt only universalisable maxims as a principle for action, from the standpoint of communicative reason the same imperative translates into a duty to justify one's own actions in terms that nobody can reasonably reject.¹² From this, we infer the constructivist thesis that the validity of moral norms is generated by the intersubjective agreement of all participants to practical discourse.

Two considerations are worthy of attention. *First*, within the second-person perspective, moral autonomy is both genetically and normatively a social construct (Cooke, 2020: 562). Practical awareness of oneself and others as autonomous agents is a reflexive insight gained through social interaction. The full recognition of this capacity entails in turn the commitment to consider as valid only those norms that can meet the agreement of all participants to practical discourse. Importantly, this by no means entails the antirealist position that states that all values are created rather than discovered.¹³ Here, "validity" is to be distinguished from "truth", as it only refers to what norms we must regard as authoritative (Ronzoni, 2010: 80). In other words, the kind of constructivism I endorse is practical rather than metaphysical (Forst, 2016: 50; Rostbøll, 2011: 357 ff.). It remains agnostic towards questions concerning the ontology of values to merely prescribe autonomous beings to recognise one another as equal authorities in the realm of value.

Second, individual and moral autonomy are inseparable and co-original (Rummens, 2006: 471; 2007: 340). Individual autonomy, as the capacity to set one's own ends, can be developed and realised only by entering a space of reasons that is

¹² By drawing on Scanlon's formulation of reasons that "could not be reasonable rejected" (Scanlon, 1998: 4), Forst characterises the reasons we owe to one another as those that can withstand the test of *generality* and *reciprocity* (Forst, 2007: 6). More generally, he presents a constructivist conception of justice that is grounded in a basic right to justification, whereas I emphasised more a norm of respect for autonomy. However, I take the two to be two sides of the same coin (Rummens, 2016); to respect someone as an autonomous being implies treating them as a discursive subject, in the same way as to treat someone as a discursive subject is a matter of respecting their autonomy (Festenstein, 1997: 165).

¹³ In other words, I have not endorsed the metaphysical notion of "constitutive autonomy", according to which "the order of moral and political values must be made, or itself constituted, by the principles and conceptions of practical reason" (Rawls, 1993: 99).

public by its very nature to shape then one's own interests and plans of life in coordination with others. Moral autonomy, as the search for shared norms that regulate social interaction, makes sense only on the basis of a recognition of each one's individual autonomy as equally valuable (Rummens, 2006: 473). Certainly, given these conclusions, one may wonder how it is that one is self-determining "if the laws that one wills are subject to the constraint that they can be accepted by, or justified to, all members of a realm of ends". Situating the autonomous agent in a community of agents to whom they must account for their own actions and choices seems to introduce a dependence on the assent of others that does not sit well with the idea of a self-determining agent (Reath, 2006: 173). In other words, the incompatibility problem that Christiano raises in the political context seems to already appear at the moral stage. However, it is precisely through the idea of individual and moral autonomy as being co-original and co-constitutive that the puzzle can be solved.¹⁴ Participation in shared reasoning provides the conditions for agents to constitute themselves as individually autonomous, as it is only by entering such a practice that they can shape their own practical identities and interests. Authors of discursively constructed norms of interpersonal interaction must thus regard one another as equally involved in a common project of reciprocal constitution, where each determines their own ends in coordination with others. Certainly, such a process is by no means necessarily harmonious, as it rather involves constant negotiation. However, the full realisation of each individual autonomy remains an end-in-view that is ever pursued, although never ultimately achieved. The reasoned search for shared norms that can meet the agreement of all parties involved is indeed an ongoing and open-ended process of which conclusions are to be viewed as always temporary and constantly subject to further revision.

To conclude, it is now possible to rejoin the argument to my initial claim, according to which what justice primarily requires is the institution of a "basic structure of justification" (Forst, 2007: 119), where free and autonomous beings are granted equal standing in a discursive procedure for the construction of moral and political norms. Importantly, the requirement for such standing to be *equal* follows from the

¹⁴ For the idea of co-originality as implying the strong notion of reciprocal constitution see (Cooke, 2020: 571 ff.). In what follows I take inspiration from her.

recognition of everyone's autonomy as entailing an equal right to be respected as a normative authority in the realm of justice. It stresses the need for no one to be subject to another's arbitrary will, where this is not only to be viewed instrumentally as a way to ensure that the norms to which one is subject do not reflect partial interests, but rather also intrinsically as a right to have one's voice heard (Pettit, 2002: 350; see Forst, 2013: 162).¹⁵ As I argued in the previous section, the value of equality can only be explained in terms of a more fundamental allegiance to the values of liberty and autonomy. A freestanding commitment to the value of equality would indeed not be sufficient to justify the requirement for the shared construction of norms to be carried out discursively, as other methods could in principle satisfy procedural fairness.

My next aim is to show that the conception of justice I outlined can only be understood in conjunction with the idea of democracy itself. In the next section, I thus clarify why citizens must necessarily regulate their social interaction through the means of law, and then conclude by sketching a model of democracy that conceives of a democratically enacted public legal order as constitutive of freedom as independence. However, the argument I lay down is only provisional. In the next chapter, I will push it further to advocate for a deliberative model of democracy that translates the intersubjective ideal of moral autonomy into a practice of political self-legislation. Justice and democracy are internally related, for the first task of social and political institutions is to enable a juris-generative political system that integrates the basic structure of justification that justice primarily requires (see Forst, 2007: 119).

1.III Freedom as Independence and Democracy

In Kantian philosophy, the unconditional value of freedom grounds both the *supreme principle of morality* – the categorical imperative – according to which we should act only on maxims that could also serve as a universal law, and the *universal principle of*

¹⁵ From this point of view, the account I am defending here also significantly differs from neo-republican theories stressing non-domination as a method to secure the enjoyment of negative freedoms from the potential of arbitrary interference (see Forst, 2013: 161). This difference becomes clear also from the fact that, as I am going to argue, the account of justice that I am defending here implies democracy as its necessary constituent, whereas the connection between neo-republicanism and democracy is often loose (Urbinati, 2012).

right, telling us what forms actions must take in order to be compatible with a principle of equal freedoms for all (Guyer, 2005: 201). The two principles, however, differ in some important respect. Within the sphere of morality, the categorical imperative presents itself to the practical subject in the form of a duty. Rational beings fully realise their inner freedom by putting themselves under an obligation that is perceived as a constraint on their natural inclinations and desires. Conversely, in the sphere of politics, the universal principle of right attributes conceptual priority to the notion of rights, stating which freedoms can be simultaneously exercised by all citizens under a scheme of equal freedoms for all.

The notion of equal freedoms has received several criticisms (Cohen, 1981: 9; Dworkin, 1978: 271; Hart, 1975). Although different in many respects, these all share the idea that in conditions of social interdependence people's different purposes must necessarily come into conflict so that any set of rules or theory of justice will inevitably imply a decision over which persons to favour (Ripstein, 2009: 32). All such critiques presuppose a negative conception of liberty, according to which any event preventing a person from achieving the satisfaction of their own desires is a hindrance to freedom.¹⁶ However, Kant's understanding is different, as he conceives of freedom as a distinctly relational notion (Rostbøll, 2016: 803). Kant puts forward a conception of *freedom as independence*, which refers to the idea of being one's own master and, thus, to the right not to be subject to another person's choice or will. Freedom is a distinctly relational notion for the "innate right to freedom" (Kant, [1797] 1991: 38, MM 6:237) does not refer to the protection of some non-relational aspect or good, but rather always to the constraining of other people's conduct (Ripstein, 2009: 35). From this point of view, although the idea of freedom as independence immediately brings in a form of equality, it cannot itself be identified with an independently conceived norm of respect for equality.¹⁷ Indeed, the requirement

¹⁶ As a result, advocates of a negative conception of freedom have often found themselves in need of distinguishing between those obstacles to freedom that obtain from other people's choices and actions and those that are the result of external factors, such a chance, incapacity, or scarcity. Hence, they have often marked a difference between being *unfree* and *non-free*, where only former indicates a situation where hindrances are ascribable to other people's actions (Kramer, 2008: 40-1).

¹⁷ As Kant puts it: "The Principle of innate freedom already involves the following authorisations, which are not really distinct from it [...]: innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being *his own master (sui juris)*" (Kant, [1797] 1996: 393, MM 6:237, emphasis in the original).

for citizens to be in a relationship of equal standing does not primarily follow from the idea of treating them as equals, but it is rather the result of an imperative to respect each other as free and autonomous beings who are entitled not to be subject to someone else's will.¹⁸ Once again, respect for equality has thus to be conceived of as the implication of a more fundamental norm of respect for freedom (Rostbøll, 2016: 795-6). Moreover, *pace* Berlin, the idea of being one's own master is also different from that of mastering oneself. As a relational notion, it does not concern the aim of achieving independence from one's own internal constraints, but rather always refer to the right of not being forced to obey someone's else's will, that is, of not having another person as a master (Skinner, 2002: 239; see also Ripstein, 2009: 36; Rostbøll, 2015: 268; Stilz, 2009: 37).

According to Kant, the right to freedom also implies the authorisation to coerce. Coercion aimed at preventing the violation of a right is deemed compatible with freedom in virtue of a law of non-contradiction, as "a hindering of a hindrance to freedom is consistent with freedom according to universal laws" (Kant, [1797] 1991: 57; 6:231). The legitimate use of force is thus a consequence of the more general idea of equal freedoms. Kant does not consider the hindering of another person's choice as always wrong to then argue that it might be sometimes justified in the name of the greater good. He rather considers coercion as legitimate only when it hinders a hindrance to freedom, and this is because it is aimed at restoring the original condition of equal freedoms that the principle of right prescribes (Ripstein, 2009: 55). Note, however, that for Kant people in the state of nature do not have the right to punish others for their unlawful behaviour, as instead Locke suggests. If for Locke "the execution of the law of Nature is in that state put into every man's hands, whereby everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation" (Locke, [1690] 1980: 9), for Kant in the state of nature there cannot be rightful punishment so that people only have the right to coerce others into civil society (Williams, 1983: 138).

¹⁸ This also contradicts Kolodny's claim, according to which the quest for democracy is rooted in a concern not to have another person as a master (or as a slave), where this is to be explained in terms of a *fundamental* commitment towards a society where people relate to each other as social equals, rather than as social inferiors or superiors (Kolodny, 2014a: 196).

Therefore, the protection of equal freedoms requires the institution of a public system of coercive law. The conceptual priority that the principle of right assigns to the notion of right over that of duty is then explained by the fact that the protection of equal freedoms cannot be left to the good will of each individual citizen. Equal rights must be guaranteed independently of good intentions or moral motivation. In the absence of public enforcement, people lack the assurance that others will not interfere with them and, therefore, are under no obligation to refrain themselves from interfering with others (Ripstein, 2009: 159). As Ripstein convincingly argued, a public legal order is not merely a causal condition ensuring a result that can be independently described, nor it is a mere compromise to secure a greater good, but rather an unconditional requirement for people to enjoy freedom as independence (Ripstein, 2009: 9). Legal rights are thus *constitutive* of a kind of relationship free and equal citizens must entertain with one another in order for nobody to be subject to another's will (Rostbøll, 2016: 794).

On this account, we can see how positive law complements morality by providing the authority of moral commands with an additional motivational support through the threat of coercion. The universal principle of right does not rely on citizens to adopt moral maxims as a principle of action, but rather partially releases them from moral obligations by allowing respect for the law to depend on merely self-interested or prudential behaviour.¹⁹ From this point of view, legal regulations differ from moral ones by being narrower in scope. They only refer to citizens' external and coercible behaviour without further investigating their reasons for action (Habermas, 1995a: 14). However, law complements morality also in another way. Legal regulations are indeed also broader in scope for pertaining "not only to the regulation of interpersonal conflicts but also to the pursuit of political goals and the implementation of policies" they do not only touch on "moral questions in the narrow sense, but also on pragmatic and ethical questions, and on compromise formation among conflicting interests". Legal regulations touch upon a wide array of pragmatic

¹⁹ The possibility of virtuous compliance, that is, compliance motivated by respect for others, is not *ipso facto* excluded and, in principle, laws should always be designed so to leave this option open (Habermas, 1996: 121). Although I do not consider morality as necessarily having a "weak motivational force" (Habermas, 1996: 164; see Forst, 2021: 21), I take the principle of right to conceive of the motivational force of moral commands as not always sufficient to ensure the aimed result.

questions concerning the application of moral norms to concrete circumstances and, by doing so, they also relieve individual citizens from the cognitive effort of determining from their isolated perspective whether the exercise of their individual will is compatible with a principle of equal freedoms for all (Habermas, 1995a: 14).

This second aspect is of paramount importance, for it provides an answer to the “trade-offs problem” discussed above. The point is that individual citizens may even be able, upon reflection, to vaguely assert their entitlement to certain liberties. However, from their isolated perspective, they still cannot put others under the duty to respect them, nor they can determine with “mathematical exactitude” (Kant, [1797] 1991: 58, MM 6:233) the boundaries of their concrete exercise. Since moral rights remain completely underdetermined before their translation into legal ones, isolated citizens cannot individually establish whether their claimed liberties are in line with a principle of equal freedoms for all. To establish this, they must necessarily enter into a dialogue and confrontation with their peers so that, having reached an intersubjective agreement on the details of each individual prerogative, everyone comes under the obligation to fulfil all their correlative duties (positive and negative). We must thus conclude that the actual enjoyment of private liberties does always significantly depend on political participation, for by living outside of politics nobody can determine whether their claimed liberties are in fact legitimate, nor they can place others under the obligation not to interfere with them. Private freedoms highlight a sphere of action where each rules with the assent of others (Habermas, 1996: 85). Even though the exercise of political rights remains open to the free choice of individual subjects, as nobody is strictly compelled to participate in public affairs, it remains true that “if you don’t turn on to politics, politics will turn on you” (Nader, 2000).

This point can be easily illustrated by considering the right to acquire property.²⁰ Both Locke and Kant conceive of property rights as crucial to freedom as independence. The basic idea is that, by ensuring our survival, property protects us from being exposed to the arbitrary will of others (Simmons, 1992: 274; see Stilz, 2009:

²⁰ In what follows, I rely on (Stilz, 2009: 41 ff.).

36). However, since a right to property must be universalised and, thus, made compatible with an equal right for all, individuals can only be entitled to a fair share of earth's resources, as indicated by the Lockean proviso. Two problems arise: on the one hand, unilateral interpretations of what counts as a fair acquisition are unreliable, for calculating the exact amount of property each person is entitled to requires knowledge of population numbers and the relative characteristics of both land and natural resources, which is all data that are inaccessible from an isolated perspective. Thus, Lockean conflicts of interpretation are likely to remain also in conditions where each is committed to exercising their own freedoms according to a scheme of equal freedoms for all, and even where no self-interest bias ends up interfering with one's own judgement. The first reason isolated individuals turn out incapable of determining what is legitimately theirs is indeed a lack of epistemic resources for carrying out such an assessment. On the other hand, individuals will also face difficulties in convincing others of the rightfulness of their acquisitions and, therefore, be unable to put them under the obligation not to take what has become theirs. Lacking the assurance that others will not interfere with them, they would be themselves under no obligation not to interfere first. To be sure, the same outcome may also obtain in situations where no conflicts of interpretation arise. Indeed, even if you happened to agree with my interpretation of a fair share, the actual enjoyment of my possessions would still depend on your willingness not to withdraw from this agreement at any time. Such dependence is itself a source of insecurity and unfreedom, for it leaves me exposed to your power to arbitrarily interfere with my legitimate sphere of activity (Stilz, 2009: 51).²¹ Again, lacking the assurance that you will not refrain from doing so, I have no obligation not to interfere first.

A public system of law overcomes these problems by instituting a public and univocal interpretation of what counts as a legitimate exercise of freedom that is backed up by the threat of coercion. By securing citizens in a relation of equal standing as addressees of law, it protects them from the exposure to the dominating will of

²¹ As neo-republican theories focusing on the idea of freedom as non-domination have rightly emphasised, exposure to someone else's power to arbitrarily interfere is itself a form of unfreedom, independently on whether such power is exercised or not (Pettit, 1997b: 63 ff.; see Stilz, 2009: 51).

others, thus becoming constitutive of the ideal of freedom as independence. However, a public legal order is not a mere fact or necessity in need of no further justification but rather an act of will that citizens impose on each other (Rostbøll, 2015: 268). Hence, to fulfil the ideal of freedom as independence, a further step is required, and this has to do with granting citizens co-authorial power over the production of law.²² Importantly, this is not to be taken only instrumentally, as a guarantee that political decisions will not reflect factional interests rather than promoting the common good, nor it is to be taken merely as a method to secure citizens' negative rights against the potential of interference. Conversely, it must be viewed as constitutive of a kind of relationship that autonomous beings ought to entertain with one another. Democracy ensures that the equal standing citizens enjoy as addressees of law is not compromised by some having the right to rule over others. A democratically enacted system of public law is thus constitutive of freedom as independence because it ensures a kind of relationship that cannot be described independently from democracy itself (Rostbøll, 2016).

It is through this argumentative strategy that advocates of the liberty-based argument for democracy seek to avoid the incompatibility problem I mentioned above. First of all, whereas Christiano considers dependence on the assent of others as an infliction of democracy, advocates of the argument from liberty rightly acknowledge that this is an inevitable condition of any social order, which democracy actually aims to relieve (Rostbøll, 2015: 275). Surely, one may claim that democracy does not really solve the problem, as it does not succeed in making us independent from one another. It remains thus unclear what reasons we may have to exit the state of nature to enter the social contract (Kolodny, 2009: 198). However, what democracy does is change the way in which we rely on one another. By imposing a structure for the regulation of conflicts and disagreement in which none rules over any other, democracy becomes constitutive of a kind of relationship where each has an equal chance to pursue their own goals in a way that is compatible with everyone's freedom (Rostbøll, 2015: 275).²³ So construed, the argument from liberty can thus avoid the

²² The idea that freedom as independence also requires a public legal order to be democratically enacted is advocated by Rostbøll (2016) and Stilz (2009).

²³ After all, as neo-republicans have rightly emphasised, there are plenty of situations in which one's

incompatibility objection precisely by virtue of having replaced the ideal of democratic self-rule or collective authorship with the less ambitious goal of ensuring that no one is subject to another's private will. It is an argument that is framed along with Kant's principle of right rather than the categorical imperative (Rostbøll, 2016). As such, it does not require collective decisions to match one's asserted interests or judgements, but rather only that such decisions are the result of a decision-making process where none rules over others. In Kolodny's terms, it is a conception of democracy that is not aimed at satisfying interests in neither correspondence nor absolute influence, but whose goal is rather to ensure that each has as much influence as anyone else in relative terms (Kolodny, 2014a).

Perhaps unsurprisingly, at this point, one may argue that the argument from liberty has now become barely distinguishable from at least some of its equality-based alternatives, such as Kolodny's (2014a). By highlighting a norm that primarily prescribes an equal standing for citizens as both addressees and co-authors of law, it does indeed bring to the fore a principle of equality at the very outset. We may thus either conclude, with Christiano, that "liberty-based arguments for democracy [...] are incomplete without a principle of equality" (Christiano, 1996: 18) or, with Kolodny, that this understanding of liberty "makes 'liberty, equality and fraternity' a kind of conceptual stutter" (Kolodny, 2018: 171). However, as stated above, the crucial point lies elsewhere, as it concerns the dubious expedient of removing any reference to the notion of liberty from a non-instrumental justification of democracy. The argument from liberty by no means denies the crucial role that a principle of equality plays in the justification of democracy. It merely contends that this is not a freestanding value, as any commitment to the value of equality must be explained in terms of a more fundamental allegiance to the norm of respect for the free and autonomous person – "without the norms of freedom and autonomy the equality argument is incomplete" (Rostbøll, 2015: 267; Rostbøll, 2016: 796).

pursuits are not hindered and yet their condition is marked by unfreedom, as it is in the paradigmatic case of the benevolent master (Pettit, 1997b: 32; 2012: 64-7). Non-interference may in fact be maximised when a more fundamental commitment to honour freedom remains yet unfulfilled (Pettit, 1997a). Moreover, we should not forget that, given the right premises, reliance on others is also in itself a source of freedom, for it opens up opportunities that would otherwise be unavailable were each living by their own efforts (Rawls, 1971: 4).

Moreover, the difference between interpreting the demand for no one to rule over others in terms of liberty and respect for the free and autonomous persons, rather than on the grounds of a freestanding value of equality, becomes immediately clear once we consider what decision-making method citizens should adopt to regulate their common life. When interpreted on the basis of equality, the aim of ensuring that no one is subject to another's private will only requires a fair distribution of political power. The equality-based interpretation remains thus indifferent between alternative egalitarian procedures for collective decision-making, as for instance a lottery of decisions can in principle ensure the same result.²⁴ To justify more positive forms of democratic influence, such as deliberation or majority voting, the argument from equality must resort to further and independent qualifications, where these usually appeal to the aim of improving the substantive reliability of democratic methods (Estlund, 2008; Kolodny, 2014b: 314). On this account, deliberation can only be justified instrumentally, as a way of gathering all the information that is needed to produce public decisions that are in line with a principle of equal freedoms for all. Conversely, an interpretation that appeals to the norm of respect for the free and autonomous person can immediately justify a preference for democratic deliberation as the only legitimate form of collective decision-making. As I argued above, to respect someone as a free and autonomous being entails an obligation to respect them as a discursive subject to whom we owe justification for our own actions and choices (Festenstein, 1997: 165). The interpretation from liberty includes an account of democratic deliberation as an intrinsically valuable practice aimed at ensuring that free and autonomous beings are respected as subjects of justification. The argument from liberty does not only require a decision-making method where no one rules over any others, it also demands collective decisions to be taken deliberatively. The liberty-based argument for democracy is distinctly an argument for deliberative democracy.

²⁴ However, I do agree with Kolodny that the aim of ensuring that no one rules over others is sufficient to exclude suffrage by lottery, where this refers to a situation where each gets an equal chance to rule over others. Indeed, the requirement of each not being subject to anyone's private will is to be ensured on an ongoing basis (Kolodny, 2014a: 228; see also Estlund, 2008).

Conclusions

In this chapter, I defended a liberty-based account of democracy's non-instrumental value against one of its equality-based contenders. I argued that the latter implicitly relies on an unacknowledged reference to the notions of freedom and autonomy and, therefore, does not constitute a genuine alternative. I also defended a liberty-based understanding of justice that primarily demands free and autonomous beings to confront each other as both addressees and co-authors of discursively constructed norms. The ultimate goal is to show that democracy and justice are internally related concepts. I thus proceeded to illustrate why socially interdependent people must necessarily regulate their social interactions through the means of law. I argued that a democratically enacted system of public law is constitutive of the ideal of freedom as independence, where the latter refers to a relationship where no one is subject to another's private will. When construed in such relational terms, the argument from liberty can easily avoid the incompatibility objection. This is because it does not require collective decisions to match one's asserted interests or judgements, but rather only that such decisions result from a decision-making process where no one rules over others. Moreover, once this demand is interpreted in terms of respect for the free and autonomous person, rather than on the basis of a freestanding value of equality, a preference for democratic deliberation as the only legitimate method for taking collective decisions also becomes immediately available. Whereas the equality-based argument requires indeed additional considerations to justify a preference for deliberative democracy, the liberty-based argument already owns the theoretical resources to insist on collective decisions being discursively justified to those who are subject to them. The liberty-based argument for democracy is distinctly an argument for deliberative democracy.

Notwithstanding these conclusions, in the next chapter, I seek to push the liberty-based argument further. In fact, for reasons I am going to clarify, I believe that the argument from freedom as independence stands somewhat incomplete. I thus seek to develop the argument further by arguing that a liberty-based justification of deliberative democracy should in fact translate the intersubjective ideal of autonomy into a practice of political self-legislation. Democracy is a matter of translating the

“basic structure of justification” that justice fundamentally requires into a context where free and equal citizens must regulate their common life through the means of law (Forst, 1999: 6).

II. Deliberative Democracy

Introduction

In the previous chapter, I defended a liberty-based account of democracy's value against Christiano's equality-based contender. I argued that the latter implicitly relies on an unacknowledged reference to the notions of freedom and autonomy and, therefore, does not constitute a genuine alternative. I thus contended that a democratically enacted public legal order is constitutive of freedom as independence, where the latter refers to an ideal of social relationships where no one is subject to another's arbitrary will. As I argued, a model of democracy framed along these lines can avoid the incompatibility objection by replacing the ideal of democratic self-rule with the less ambitious goal of ensuring that no one stands in a subordinate relationship with others. Whereas the incompatibility objection might prove fatal to a non-relational understanding of liberty, it simply turns out inconclusive when liberty is construed as a distinctly relational notion (Rostbøll, 2016: 802 ff.). I also argued that, when interpreted in terms of liberty rather than on the grounds of a freestanding value of equality, a so construed model of democracy can immediately demand collective decisions to be taken deliberatively. Whereas the argument from equality requires further support from independent considerations to justify deliberative methods (Estlund, 2008; Kolodny, 2014b: 314), the argument from liberty upholds an account of the intrinsic value of deliberation as a practice that respects autonomous persons in their role as subjects of justification (see Forst, 1999). The liberty-based argument for democracy is distinctly an argument for deliberative democracy.

In what follows, I argue that the relational argument based on freedom as independence is still incomplete. *Section I* extends thus the argument further to advocate a liberty-based model of democracy that translates the intersubjective ideal of moral autonomy into a practice of political self-legislation. This leads me to endorse a deliberative model of democracy that is normatively grounded in the co-originality of basic individual rights and popular sovereignty (Forst, 2007; Habermas,

1996; Rummens, 2006). *Section II* defends deliberative democracy from the charge of being just another instance of either pure or imperfect proceduralism. *Contra* Estlund (2008: 85 ff.) and Christiano (1996: 35 ff.), I argue that deliberative democracy evades this dichotomy by combining substantive and procedural aspects in a “unique and inextricable manner” (Rummens, 2007: 335). *Section III* concludes by showing how such an understanding of democracy gives us a unique insight into some of the most pressing problems of contemporary liberal democracies. Having thus provided the background against which I intend to investigate the proposal for a generalised use of deliberative mini-publics for political decision-making, I anticipate and clarify some of the issues and concerns an initiative of this kind may raise.

II.1 Deliberative Democracy and the Co-originality Thesis

As we saw above, the democratic self-rule argument considers the principle of public autonomy as a direct implication of its private counterpart – if one is entitled to determine the terms of one’s own life, then one must also have control over the political decisions to which one is subject. However, this is an unattainable condition, for the fact that each has a legitimate claim in shaping the content of collective decisions inevitably implies a fair distribution of political power. Therefore, the democratic self-rule argument allegedly fails because “shared contributory influence” over law-making processes is never enough for individual citizens to achieve authorship over their own life (Kolodny, 2014a: 210). Advocates of the argument from liberty seek to avoid this problem by endorsing a relational understanding of liberty that does not entail any notion of democratic self-rule, but rather only requires that no one rules over any other. Whereas the incompatibility objection might prove fatal to a non-relational understanding of liberty, it simply turns out inconclusive when liberty is construed as a distinctly relational notion (Rostbøll, 2016: 802 ff.).

However, the relational argument from freedom as independence is still somewhat incomplete. On the one hand, in rescinding the linkage between the moral and political domains, it ends up positing the right to freedom as independence as an antecedently given norm that places external constraints on citizens’ self-legislative activity. As such, it fails to fulfil the emancipatory character of a theory of justice that

rather conceives of free and autonomous beings as the ultimate authorities in the realm of value (Forst, 2007: 7). On the other hand, it still relies on a misplaced idealisation of autonomy, as it is commonly found in standard liberal theories of justice. The autonomous person is indeed conceived of as an antecedently individuated, “self-sufficient and self-reliant” subject who secures their own aims by gaining independence from other consociates (Anderson and Honneth, 2005: 128-9). The presence and activity of the latter are mainly perceived as an obstacle to the pursuit of one’s own goals so that democracy is eventually justified as an impartial mechanism for balancing pre-existing interests and conflicting private pursuits. Hence, what is left out is both the advocated idea of autonomy as an intersubjectively-mediated achievement and the fact that the exercise of one’s own freedoms is often made possible by the complementary activity of others (Honneth, 2014). As I argued in *Chapter I.II*, autonomy should in fact be viewed as an emergent property that is developed and sustained through social interaction and dialogue with others (Anderson and Honneth, 2005: 128-9). Inclusion in a framework of well-structured social relationships is crucial to gain practical awareness of oneself as a free and autonomous being, to develop a plan of life and conception of the good through confrontation with others, and to maintain a clear sense of one’s own worth and the conviction that our ends are worthy of being pursued.²⁵ This means that dependence on others, rather than always a hindrance, is in itself also a source of freedom, at least when the right conditions apply. In what follows, I thus seek to account for these claims by defending an account of democracy that translates the intersubjective ideal of moral autonomy into a practice of political self-legislation.

As a start, we may note that the inherent tension between individual freedom and democratic rule that the incompatibility objection targets is often interpreted as a consequence of the fact that moral autonomy “splits up” in the political domain in the dual form of private and public autonomy. Whereas in the moral domain autonomy happens “all of a piece” within the individual moral agent, in the public domain it only appears in the dual role of citizens as both addressees and co-authors of law

²⁵ On this last point see also (Rawls, 1971: 440 ff.)

(Habermas, 1995a: 15; 2001a: 779). Thus, whereas advocates of the self-rule argument seek to re-join the two components, critics simply conclude that democracy and liberty are at odds. This is because self-determining agents will have to obey rules they have shaped in common with others, which are rules they cannot perceive as internal to their will unless full consensus is systematically achieved. However, this characterisation of individual moral autonomy as splitting up in the public domain is misleading. As follows from the previous chapter, there is no “decisive difference between the moral and the political sphere” (Rummens, 2006: 474). In fact, there is no split in the public domain that has not already happened in the moral one – “Just as legal norms ‘address’ citizens as boundaries on their private autonomy, moral norms also ‘address’ moral agents as boundaries on their individual autonomy” (Rummens, 2006: 474). In other words, the incompatibility problem that Christiano attributes to the political context already occurs in the moral sphere. However, if we can make sense of the intersubjective ideal of moral autonomy as not self-contradicting – and I already argued that we can – then perhaps the same goes for the ideal of democratic self-rule. My contention is that the contradiction can be solved by showing that the two poles are in each case co-original and mutually dependent. Just as in the moral context individual practical agents can exercise their individual autonomy only by entering the discursive construction of moral norms, in the political context citizens can make full use of their private autonomy only by taking part in discursive law-making processes. On these premises, I advance a deliberative model of democracy that translates the basic structure of justification that grounds the validity of moral norms in a context where people must regulate their social interaction through the means of law.

The alleged divide between private and public autonomy lies at the core of a fundamental disagreement between two of the greatest traditions in modern political thought – *classical liberalism* and *civic republicanism* (Habermas, 1994, 1995a, 1996, 2001a).²⁶ Their divergence over the question of the source of legitimacy of

²⁶ A clarification is in order. On the one hand, with the term classical liberalism, I refer to the tradition going back to Locke, as liberals like Kant or Rawls extend beyond this stream of thought. On the other hand, with the term civic republicanism, I refer to the traditions that go under the name of “communitarianism” or “civic humanism”. Hence, neo-republican theories such as those advanced by Pettit (1997b), Richardson (2002), or Bellamy (2007) do not fall under this category.

modern law results from their attributing a different axiological order to what they perceived as two irreducible and competing principles. Classical liberalism has traditionally prioritised citizens' private autonomy, thus conceiving of basic rights as guarantees of protection against the interference of the state and other citizens. Under this view, basic rights are essentially negative rights, which protect a sphere of independence by giving individuals actionable claims that others refrain from encroaching an exercise of freedom that is held legitimate by virtue of natural law (Habermas, 1996: 85). Positive rights of political participation display the same structure, as they allow citizens to keep the government under surveillance and program it so as to serve their private interests. Conversely, civic republicanism has traditionally given priority to citizens' public autonomy, thus conceiving of popular sovereignty as a process through which members of unified ethical communities collectively realise their shared conception of the good life. Under this view, basic rights are essentially political rights, whose primary function is to guarantee the possibility of participation in an inclusive decision-making process through which free and equal citizens reach an understanding about their collective identity and goals (Habermas, 1994: 1-2).

Both traditions have their own weaknesses. The main flaw of civic republicanism is precisely to conceive of legal and political institutions as the medium for the collective realisation of substantive forms of life. At odds with "the conditions of cultural and societal pluralism that distinguish modern societies" (Habermas, 1996: 279), this idea of politics misconstrues the primary function of the legislative process, which should be instead that of dealing with questions of justice and the settling of matters of public concern in the equal interest of all (Habermas, 1994: 4-5). Hence, as liberals often point out, the implicit danger of such a tradition is that it gives the democratic lawgiver "carte blanche permission to take whatever decisions they like" (Habermas, 2001a: 767), regardless of whether these violate the legitimate sphere of activity of democratic minorities. Conversely, one problem with classical liberalism is that the prioritisation of individual liberties over democratic participation may lead to "the permanent threat of social disintegration since legal subjects who exclusively pursue their private interests erode the basis of social solidarity" (Cooke, 2020: 560).

More specifically, the conclusion we are to draw is that both traditions fail to provide a consistent mediation between the two principles of private and public autonomy. As Habermas notoriously argued, they fail to grasp the intuitive idea that they are co-original and mutually dependent (Habermas, 2001a: 767). Civic republicanism underestimates the extent to which democratic self-legislation (public autonomy) is itself possible only on the condition of citizens enjoying a certain degree of independence in society (private autonomy). Its exclusive emphasis on positive rights of political participation disregards indeed the fact that other subjective freedoms (i.e., *habeas corpus*, property, etc.) are equally important for undominated processes of popular sovereignty to take place (Habermas, 2001a: 767-71). Conversely, in conceiving of basic rights as external constraints on the democratic sovereign, classical liberalism firstly misses the fact that they are also functional prerequisites for political participation.²⁷ As such, they do limit the range of decisions that citizens can collectively take, but they do so internally rather than externally, so to speak. Secondly, in conceiving of basic rights as naturally fixed and “monologically” knowable,²⁸ classical liberalism fails to acknowledge the extent to which they require popular sovereignty for their content to be legitimately interpreted and specified in response to changing socio-historical circumstances. As seen above, citizens cannot adequately enjoy their private autonomy until abstract moral norms are translated into coercive and context-specific legal rules, which both reassure individuals about general compliance and settle all the ethical and pragmatic aspects pertaining to their practical application (Habermas, 1996: 125; 2001a: 767).

The relational liberty-based account of democracy already significantly overcomes these oppositions, thus succeeding in establishing a necessary connection between freedom as independence and democracy (Rostbøll, 2016). On the one hand, it differs from civic republicanism by rightly conceiving of the legislative process as geared towards the guarantee of citizens’ equal liberties. Thus, it for instance requires the democratic sovereign to exercise its will only through the mediated form

²⁷ This is a thesis that Habermas also supports with historical evidence, as negative liberties had been introduced by framers of constitutions as positive guarantees for participation in public discourse (Habermas, 1991: 223).

²⁸ This means knowable by individuals who are testing their own rational intuitions in the solitude of their conscience, rather than through dialogue with others.

of a constitutional system with separation of powers. Under direct democracy or majoritarianism, the sovereign's will would indeed become just another unilateral will to which some are subject (i.e., democratic minorities). On the contrary, freedom as independence – as the ideal of not being subject to another's private will – requires the democratic sovereign to express itself only in the form of an omnilateral will that is produced via constitutional procedures (Rostbøll, 2016: 798). On the other hand, it differs from classical liberalism for it conceives of freedom not as non-interference, but rather as a form of reciprocal standing that is itself constituted by a legitimate legal order. The necessary relation between basic rights and democracy is in turn established by virtue of the ideal of freedom as independence only indicating an indeterminate form, which does not specify how the ideal must be interpreted in response to changing socio-historical circumstances. For this task, the common will of citizens is required, for otherwise any interpretation that is not authored by citizens themselves would violate their independence (Rostbøll, 2016: 801-2).

However, the Kantian account still falls short of the idea that private and public autonomy are “co-original” principles. In Kant, the innate right to freedom as independence follows from the application of the moral principle to external and coercible relations. Moral autonomy, as warranted by natural law and “monologically” tested by the self-reflective individual, is genetically and normatively prior to the fact of citizens' political association. As such, it grounds pre-political rights that place a limitation on the exercise of citizens' public autonomy (Habermas, 1996: 100-1).²⁹ To be sure, Rostbøll explicitly denies a deduction of the principle of right from the moral principle. As he argues, “Kant's philosophy of right has a value of its own” and “should not be understood as a mere application of his moral philosophy” (Rostbøll, 2016: 792). However, as far as I understand, he still conceives of the right to freedom as independence as an antecedently given and external constraint on citizens' self-legislative practice (Rostbøll, 2016: 802). This falls short of recognising justice as an “autonomous construction by autonomous subjects” (Forst, 1999: 7), for the imposition

²⁹ According to Habermas, Rousseau's theory of the social contract suffers from the opposite flaw, as the right of each person to equal liberties results from the general will being required to express itself only in general and abstract terms. Also Rousseau's theory thus falls short from the idea of private and public autonomy being co-original, as the latter is genetically prior to the former (Habermas, 1996: 101).

of an external – albeit merely formal – constraint on citizens’ self-legislative activity entails a failure to respect autonomous individuals as the ultimate authorities in the realm of justice.

Moreover, the argument from freedom as independence fails to acknowledge that autonomy is an intersubjectively-mediated achievement and freedom a socially attained goal. Its underlying idea is that socially interdependent individuals, who have already on their own become aware of themselves as autonomous, hereafter realise that they can each secure their private pursuits only by achieving reciprocal independence through democratically enacted law. However, this forecloses two interconnected considerations: *first*, as I argued in the previous chapter, that practical awareness of oneself and others as autonomous agents commanding respect is a reflexive insight that is gained through social interaction, which commits us to conceiving of the validity of moral norms as generated by the intersubjective agreement of all participants to practical discourse. It is only on this account of moral autonomy as both genetically and normatively a social construct that we can reach the conclusion that private and public autonomy are in fact co-original principles. Indeed, moral autonomy having no pre-social justification, it cannot ground pre-political rights that work as external constraints on the legitimate use of popular sovereignty (Cooke, 2020: 562). *Second*, that the activity of others is itself a source of freedom. A pre-social understanding of autonomy leads to a conception of freedom as independence that overstates the extent to which the activity of others hinders the pursuit of one’s own goals. Conversely, the intersubjective idea of autonomy grounds a conception of *social freedom*, which rightly captures the extent to which individuals both shape and realise their own intentions through social interaction and cooperation (Honneth, 2014; see also Cooke, 2020: 564). It acknowledges that the realisation of one’s own plan of life is often made possible by the complementary activity of others, who have in turn taken up one’s intention as the condition of possibility of their own (Honneth, 2014: 191).³⁰ On this account, democracy becomes a form of freedom in itself, for it

³⁰ In Hegel, the process of reconciliation through which one comes to feel at home in the world goes through the previous step of one feeling at “home with oneself in the other”, where this refers to a situation where one understands the actions of others as a requirement for the realisation of one’s own (Honneth, 2014: 186; see Hegel, [1807] 1977: § 7).

designates a communal praxis of reciprocal interaction through which individuals develop and shape their own practical identities to then organise their lives in such a way that the pursuits of each intertwine with those of others.

Certainly, having conceived of autonomy as both genetically and normatively a social construct neither implies a conception of the social self as a mere accident of broader social wholes nor entails that the normative focus should shift away from its basic individual rights (Forst, 2002: 6 ff). If we are to conceive of the individual as autonomous at all, then we must also believe that they retain the capacity to distance themselves from their social environment and call into question the values and attachments they draw from it. The socially constituted self is to be viewed as participating in its own constitution by entertaining a critical dialogue with both itself and the social environment in which it lives (Forst, 2002: 18). The normative focus on basic rights protects this capacity. It grants those who participate in the cooperative task of determining shared intentions the opportunity to both (re)negotiate their individual responsibilities and have a say on how their respective activities should complement one another in the pursuit of shared goals (Honneth, 2014: 183). However, in this case, basic individual rights cannot be viewed as external to citizens' political association, for they rather represent unnegotiable preconditions for their self-legislating activity to proceed in an uncoerced fashion.

One common criticism of this view is that it downplays basic rights to mere functional prerequisites to democratic participation, thus leading back to a form of civic republicanism. This is the most recurrent critique against Habermas' co-originality thesis (see Larmore, 1995: 64; Nussbaum, 2000: 150 ff.83; Forst, 2007: 101). In truth, according to Larmore, the co-originality thesis tacitly relies on a substantive moral premise that Habermas is reluctant to admit, which is the principle of equal respect for persons' autonomy as underwriting both basic rights and democratic rule (Larmore, 1995: 64-8). In later writings, Habermas accommodates this view by arguing that basic rights indeed have intrinsic value, whose origin is located in the moral notion of human dignity, which is intentionally left vague so as to facilitate compromise-formation and the achievement of an overlapping consensus (Habermas, 2001a: 770; 2010). However, according to Larmore, this brings the idea of democracy "back within the liberal fold, as generally understood" (Larmore, 1995: 66). It not only

leads to a conception of basic rights as external constraints on citizens' popular sovereignty but also reduces the whole normative framework to an expression of the current political culture of Western societies.

This is a question I already settled in the previous section, where I argued that the normative principle of respect for autonomy is to be justified neither metaphysically nor historicistically, but rather as a constitutive principle of action that is reconstructed from the standpoint of communicative reason. As it is fleshed out in the co-original recognition of individual and moral autonomy, this principle enters the political structure in the institutionalised form of a co-original recognition of citizens' private and public autonomy (Rummens, 2006: 470; 2007: 339). In a context where citizens must regulate their social interaction through the means of law, the moral constructivist strategy that grounds the validity of moral norms must translate into a legally institutionalised structure for the discursive construction of the specific requirements of justice – as Forst puts it, *moral constructivism* is to be identified as the “logical and normative core” of *political constructivism* (Forst, 2007: 110; Rummens, 2007: 341). On this account, deliberative democracy is to be viewed as translating the intersubjective ideal of moral autonomy into a practice of political self-legislation. On the one hand, it grants legal subjects the opportunity to co-determine the specific terms of their social cooperation by taking part in discursive law-making processes. On the other hand, it requires public deliberation to be geared towards an impartial perspective that recognises the autonomy of each as both an addressee and co-author of law (Rummens, 2007: 344 ff.).

Hence, given its morally substantive character, the co-original recognition of private and public autonomy does in fact restrict the possible outcomes of democratic deliberation. However, it is neither an external constraint that philosopher kings impose on citizens' self-legislative activity nor just a functional prerequisite for such a practice to proceed in an uncoerced fashion. On the contrary, it is a constitutive principle of the very activity of living together as free and equals and, thus, an implicit commitment all participants to democratic discourse must already accept (Cooke, 2000: 954 ff.; Gledhill, 2017: 489; Rummens, 2007: 343; 2010: 261). It is *constitutive* for it describes the way in which autonomous agents should direct or guide themselves in order to be considered as performing such an activity in the first place.

It is *normative* for performing such an activity implies being guided by the precise version of it (Korsgaard, 2009: 32; see Gledhill, 2017: 489). It thus represents a principle that citizens must already accept because moral and political deliberation can only make sense when participants already recognise each other as autonomous beings having the authority to self-determine their own lives. To engage in a dialogue with others with the aim to convince them of the rightness of our own claims without at the same time recognising their authority as autonomous beings amounts to a performative contradiction (Rummens, 2006: 473). Hence, so conceived, the co-original recognition of citizens' autonomy also represents a principle that citizens should be able to reconstruct themselves via democratic deliberation so as to have an adequate understanding of their implicit commitments as participants in such a process (Rummens, 2018: 139-40; Forst, 2007: 110). It is even a principle that can be itself (re)problematized and subjected to challenge, for there is no norm that is exempt from critical scrutiny and rational investigation, not even those enabling the process of inquiry itself (Gledhill, 2017: 493).

Now, we saw above that the shift from moral to political constructivism is necessary, for a public system of law is indispensable for citizens to regulate their social interactions. However, they are by no means identical, as they rather differ in hierarchical order and scope. Moral constructivism deals with strictly universalisable answers and, therefore, grounds the validity of moral norms in the idealised agreement of all possible participants in practical discourse (i.e., humanity). It holds the presumption of grounding unconditionally binding norms, whose validity is not affected by socio-historical changes. Conversely, political constructivism aims at settling all the ethical and pragmatic contingencies that pertain to the application of moral norms to specific circumstances. Hence, although legal-political enactments are only acceptable when they do not violate general moral norms, their legitimacy only depends on their ability to meet the assent of all those who are subject to them (Habermas, 1996: 110). In short, citizens make use of democratic procedures so to continually reinterpret moral norms in ways that reflect their context-specific needs, ends, and values. It is by doing so that they jointly build a social world where they can "feel at home" (see Forst, 1999: 43).

However, it is at this stage that the incompatibility objection may strike again in all its force, as it is beyond doubt that any context-specific interpretation of the contents of justice will inevitably meet strenuous disagreement. As the objection goes, whereas in the case of universally valid moral claims we can hold onto the idea of reasoned consensus being virtually possible to achieve, when it comes to ethical disagreements any ambition of this kind must inevitably fade.³¹ According to standard liberal theories, ethical disagreements are indeed irreconcilable in principle so that any attempt to seek social consensus with regard to them is to be rejected as dangerously utopian.³² Were this the case, the democratic self-rule argument would undeniably have to be dropped in favour of one of its alternatives, conceiving of democratic procedures as merely an impartial mechanism for dealing with essentially private conflicts. However, the intractability of ethical disagreements is too often overstated. First of all, characterising political constructivism as comprised of moral, ethical and pragmatic discourses does not entail that the tracing of sharp distinctions may always be easy or even possible. On the contrary, political contentions often revolve around whether certain questions should fall into either one or the other category. Secondly, even when people may agree in classifying certain issues as either ethical or pragmatic rather than moral, it does not follow that they should automatically consider them as immune from critical scrutiny and appraisal (Cooke, 1997: 10 ff.). Indeed, people do often debate over what goals they should collectively pursue or whether certain paths adequately reflect their collective identities or not. This is not just performative; if they do this, it is because they presuppose the possibility of an agreement.

Having characterised ethical and pragmatic issues as also subject to public scrutiny and, therefore, as matters that can in principle meet the generalised agreement of all parties involved, we can now draw a conclusion in regard to the ideal of

³¹ Here, I endorse the Habermasian distinction between “morality” and “ethics”, according to which the former indicates the set of universal principles of justice (the right), whereas the latter refers to the reasonable interpretation of such principles in light of the values shared by historically-situated communities (the good) (see Habermas, 1990b, 2001b).

³² This is most notably the opinion of Riker (1982) and Berlin (1969). This reconstruction of the problem of ethical disagreement relies on Cooke (1997).

democratic self-rule that is similar to that which I drew in relation to the intersubjective ideal of moral autonomy. The point is that, also in this case, the intersubjective agreement grounding the validity of legal and political enactments must be viewed as an end-in-view that is ever pursued but nonetheless never fully achieved. As such, rational consensus on legal-political enactments represents an ideal that both drives democratic deliberation and serves as a *critical* standard against which current democratic outcomes can be comparatively evaluated (Cooke, 1997: 14; Rummens, 2007: 349). This opens up to a “deliberative interpretation of self-authorship” (Cooke, 2000: 956), where the norm of respect for autonomy is no more taken to require the systematic correspondence between one’s interests or judgements and the correlated political decisions, but rather that no one is excluded from an ongoing process of public justification. In other words, within this account, the idea of self-authorship is not tied to democratic outcomes, but rather to the deliberative process itself, for citizens are self-legislating to the extent that they can participate in a discursive law-making process where each provides and responds with reasons that can in principle be shared (Cooke, 2000: 967).

Two considerations support this conclusion. The first, which I already stressed, is a denial of private autonomy having pre-social justification. As deliberative democrats have traditionally emphasised, it is only by participating in public discourse that citizens form and transform their interests, preferences, and judgements. Although the normative focus is to be placed on the search for rules and laws that can meet the assent of all parties involved, it remains true that individual agents can both constitute themselves as autonomous and (trans)form their practical identities and intentions only in dialogue with others (Rostbøll, 2008: 27).³³ The focus on this point is perhaps one of the most distinctive features of a deliberative approach to politics, for what deliberative democrats emphasised is the extent to which public

³³ Kymlicka questions whether the evaluation of different ways of life and shaping of identities must necessarily take place within the structures of the state, as smaller and more private associations may equally serve the same function (Kymlicka, 2002: 250 ff.). However, as I argued in the previous chapter, public institutions irremediably frame all private activities and social contexts to which one may take part. Practical identities that are developed at the peripheries of the state face thus the risks of a constrained or arrested development. Moreover, private associations often allow confrontation with only likeminded people and, thus, reduce the opportunities for critical reflection and the broadening of hermeneutic horizons.

deliberation represents an uncoercive process for the formation and transformation of preferences that previous aggregative models of social choice theory considered as given and private (Landwehr, 2017: 50).³⁴ The second has to do with the fact that, at the end of the day, deliberative democracy never requires citizens to surrender their judgement to decisions that do not reflect their considered views (Lafont, 2006: 20). On the contrary, by disclosing the rationale underpinning collective decisions, it always grants defeated minorities the opportunity to challenge and subvert them in the future. Although democratic enactments must be viewed as authoritative, dissenting citizens must only accept them *pro tempore* and until they succeed in convincing others that their alternative options are to be preferred.

II.II Deliberative Democracy: A Via Media between Pure and Imperfect Proceduralism

As anticipated in the previous chapter, alternative models of democracy revolve around different understandings of the meta-ethical status of justice (Rummens, 2018: 134). *Pure instrumentalism* presupposes a substantive understanding of justice, thus conceiving of the latter as a procedurally-independent standard that democracy may help discover or implement (Arneson, 2003, 2004; van Parijs, 1999). Within this account, democratic procedures are not deemed intrinsically just (Arneson, 2004). Their value is purely instrumental, as it exclusively depends on their ability to enhance social justice by either promoting the common good or maximising the fulfilment of basic individual rights. Democratic decisions acquire legitimacy and authority solely by virtue of resulting from a decision-making procedure that is over time better than any feasible alternative in maximising the fulfilment of the above moral goals (Arneson, 2003: 122). Conversely, non-instrumentalism may equally subscribe to either a procedural or a substantive understanding of justice (Rummens, 2018: 134). In the case of *pure proceduralism*, democracy is valued intrinsically and its outcomes are deemed just simply by virtue of being the product of a decision-

³⁴ See for instance (Goodin, 1986; Knight and Johnson, 1994; Miller, 1992).

making method that is intrinsically fair. Any independent evaluation of the substantive quality of democratic decisions is in principle ruled out on the assumption that no objective value exists beyond that which is recognised by participants to the democratic process (Arrow, 1963; Kelsen, 2013; Riker, 1982; see Mackie, 2011). In the latter case, procedural and substantive justice are two important but irreducible dimensions of assessment, which may well come into conflict (Christiano, 2004: 268-9). Since persistent disagreement about the substantive qualities of political decisions threatens social stability (Estlund, 2008: 99), a withdrawal to non-instrumentalism as the procedural expression of equal respect for persons becomes inevitable (Christiano, 2008a; Valentini, 2012b; see Rummens, 2018: 134).

Within the above framework, we can distinguish between monistic and dualistic views (Christiano, 2004). Pure instrumentalism and pure proceduralism are monistic insofar as they only admit one dimension of assessment, whether this is either substantive or procedural. Conversely, dualistic views recognise both evaluative dimensions to seek then a mediation between the two. If we follow Rawls' tripartition of procedural justice (Rawls, 1971: 83 ff.), we can then think of pure proceduralism as tracing back to a conception of *pure procedural justice*, whereas hybrids accounts involving a concern for the epistemic quality of democratic outcomes represent instances of *imperfect procedural justice*. The point is to establish to which category a deliberative model of democracy that is normatively grounded in the co-originality thesis eventually belongs. In this section, I argue that such a model combines substantive and procedural elements in such a way that evades the dichotomy between pure and imperfect proceduralism (Rummens, 2007: 337). On this account, I thus reject both Christiano's claim that deliberative democracy is a form of pure proceduralism (Christiano, 1996: 34-5) and Estlund's opposite contention that deliberative democracy is just another instance of the epistemic proceduralism he seeks to defend (Estlund, 2008: 85 ff.). I conclude by highlighting how the conception of deliberative democracy I set forth has distinctive implications with regard to the relationship between democratic theory and practice (see Gledhill, 2017).

The attempt to draw a taxonomy of existing theories of democracy starting from Rawls' characterisation of the three kinds of procedural justice has notoriously

raised a great deal of confusion.³⁵ As already anticipated, Rawls distinguishes between *pure*, *perfect*, and *imperfect* procedural justice. Pure procedural justice obtains when there is no independent standard of justice so that the validity of outcomes entirely depends on their being the result of a fair procedure. To illustrate this point, Rawls uses the example of gambling, where the right distribution of winnings and losses entirely depends on the betting procedure being conducted fairly.³⁶ Perfect procedural justice obtains instead when there is an independent criterion of justice, and it is possible to devise a procedure that ensures the corresponding result. The example here is that of a method for the equal division of a cake, where the person cutting the slices must choose last. Imperfect procedural justice finally obtains when there is an independent criterion of justice, but no feasible procedure can ensure this is always met. The standard example is that of a fallible criminal trial seeking to convict only guilty defendants (Rawls, 1971: 85-6). Dahl was the first to apply the Rawlsian categories to the field of democratic theory. However, he seems to have misconstrued them somewhat, for he uses the example of the cake to illustrate the case of pure procedural justice and then envisages an infallible criminal trial to account for the category of perfect procedural justice. The example of gambling simply disappears from the scene (Dahl, 1998: 165). Things get even more confusing when, in later writings, Rawls explicitly refers to Dahl to argue that procedural and substantive justice cannot be separated so that “procedural justice depends on substantive justice and differs about something else”. No mention is made to the case of pure procedural justice, with the implicit suggestion that it may not play much of a role in the justification of democratic institutions (Rawls, 1995: 170-1; see Ottonelli, 2012: 54).

Rawls undertakes this remarkable conceptual shift, for which he does not offer much of an explanation, in his *Reply to Habermas* (1995). On that occasion, he makes explicit that his theory of justice recognises the co-originality of private and public autonomy (Rawls, 1995: 179; see also Habermas, 1995b: 127), thus backing up

³⁵ In what follows, I rely on (Ottonelli, 2012: 47 ff.).

³⁶ Another example of this is Nozick’s historical account of distributive justice, where distributions of goods are considered just only if they result from legitimate acquisitions and an iteration of free and voluntary transfers between persons entitled to their holdings. According to Nozick’s entitlement theory of justice, “whether a distribution is just depends upon how it came about” (Nozick, 1974: 153).

Habermas' claim that their dissent remains "within the bounds of a familial dispute" (Habermas, 1995b: 110). Rawls' claim that procedural and substantive justice are entangled and inseparable aspects is in response to Habermas' accusation that the inclusion of substantive criteria in the devising of the original position comes at the cost of developing his theory in a "strictly procedural manner" (Habermas, 1995b: 116; 26). According to Habermas, the monological, hypothetical, and substantive rendering of the original position eventually entails a prioritisation of the principle of private autonomy over its public counterpart, thus leading to a curtailment of citizens' right to autonomously regulate their common life through the means of discourse. Indeed, when real flesh and blood citizens seek to co-determine the terms of their social cooperation, they inevitably "find themselves subject to principles and norms that have been anticipated in theory and have already become institutionalized beyond their control" (Habermas, 1995b: 69). Conversely, by placing the focus on the "communicative presuppositions and procedural conditions of democratic opinion- and will-formation as the sole source of legitimation" (Habermas, 1996: 450; see Rummens, 2007: 336), Habermas seeks to vindicate the distinctive procedural character of his theory, thus implicitly suggesting that it amounts to an instance of pure procedural justice. However, Rawls' contention that procedural and substantive aspects cannot be separated is also aimed at rejecting this claim. According to Rawls, despite pretending not to go beyond procedural values, Habermas' theory is committed to substantive standards of normative rightness after all (Gledhill, 2011: 184). Indeed, once we consider Habermas' emphasis on deliberative procedures being aimed at regulating public matters "in the equal interest of all those affected" so as to give expression only to "generalizable interests", his account starts resembling more an instance of imperfect procedural justice (Habermas, 1996: 154; see Rummens, 2007: 336).

This question of whether a deliberative model of democracy that is normatively grounded in the co-originality thesis should count as an instance of either pure or imperfect proceduralism is a persisting one. For instance, Christiano highlights two different understandings of a liberty-based argument for democracy, which he labels as the *epistemic* and *constructive* views of participation and self-government (Christiano, 1996: 28). He presents the epistemic view through the example of the criminal trial and, thus, as an instance of imperfect proceduralism. The constructive

view is instead introduced through the example of gambling and, thus, as a case of pure proceduralism.³⁷ Eventually, he rejects them both on the grounds that they are too heavily reliant on the possibility of democratic consensus (Christiano, 1996: 35; 37). Nonetheless, although no reference is explicitly provided, it is clear that Christiano attributes the constructive view to Habermas and that, therefore, he conceives of Habermas' account as an instance of pure proceduralism.³⁸ Estlund's opinion is exactly the opposite, for he conceives of Habermas' theory as just another example of the epistemic proceduralism he seeks to defend.³⁹ As he claims, deliberative democracy presents itself as "wholly proceduralist, and as eschewing procedure-independent standards", although "it invokes independent standards after all" (Estlund, 2008: 85). Estlund's critique targets both Rawls and Habermas, as he conceives of Rawls' original position and Habermas' ideal speech situation as both fixing procedurally-independent standards against which actual deliberations and decisions can be critically evaluated (Estlund, 2008: 89-90). Therefore, what both Christiano and Estlund overlook is the possibility that deliberative democracy may eventually elude the opposition between pure and imperfect proceduralism.

In fact, when correctly understood, deliberative democracy eludes such opposition by combining procedural and substantive aspects in a distinctive and unique way (Rummens, 2007: 337). On the procedural side, it recognises citizens' authority to co-determine the specific terms of their social cooperation. The principle of public autonomy appears here as the complement of its private counterpart. Indeed, respect for autonomy does not only require citizens to enjoy an equal standing as addressees of law but rather demands also the recognition of their role as co-authors of the legal order to which they are subject. No matter how indisputable they may seem, legal constraints on individual activity can never be paternalistically imposed from above but must rather be always intersubjectively established via discursive

³⁷ Within the constructive view "The relation between democracy and the legitimate common good is not like that of a trial procedure to the guilt or innocence [...] it is more like the relation between the rules of a game and the winner of the game" (Christiano, 1996: 36).

³⁸ Christiano describes the constructive view as one where participants in democratic deliberation "are not required to accept any prior norms aside from those that are necessary to the process of discussion itself" and that the discussion is reasoned as it only follows "the force of the better argument" (Christiano, 1996: 36-7).

³⁹ Note that Habermas himself at times refers to his position as "epistemic proceduralism" (Habermas, 2009: 149; see Gledhill, 2017: 489).

practices of mutual justification (Rummens, 2007: 338). On the substantive side, it imposes the necessity for citizens' deliberative practice to be geared towards the construction of an impartial perspective giving equal consideration to everyone's interests (Rummens, 2007: 336-7). The principle of private autonomy appears here as the "necessary presupposition" of its public counterpart, for citizens engaged in the cooperative search for a shared system of rules must already necessarily recognise each other as autonomous subjects having an equal right to live a life of their own choice (Rummens, 2006: 478). Therefore, deliberative democracy so construed can be seen as avoiding the dichotomy between pure and imperfect proceduralism to eventually cover a *via media* between the two.

Contra Christiano, deliberative democracy cannot count as an instance of pure proceduralism. An interpretation of this kind would indeed regard whatever outcome of reasoned deliberation as per se legitimate, whereas in the model outlined intersubjective agreements are valid only when they also embody the substantive criterion of an equal consideration of interests. Hence, whereas the outcomes of a pure procedure are legitimate independently of their substantive characteristics, which indeed tend to be distinctly "arbitrary",⁴⁰ the legitimacy of deliberative outcomes crucially depends on their supporting reasons giving equal weight to everyone's needs and values (Rummens, 2007: 342). This entails, *inter alia*, that the legitimacy of public decisions is to be viewed as only temporary and indeed conditioned by their remaining open to challenge (Gledhill, 2017: 498). Whereas pure proceduralism may inhibit democratic contestation by imposing on citizens a demand for compliance that is pre-emptive of any content-dependent considerations (Christiano, 2004: 267), deliberative democracy always allows them to maintain a critical stance towards any decision they disagree with. As stated above, although democratic enactments must be viewed as authoritative, dissenting citizens must only accept them *pro tempore* and until they succeed in convincing others that their alternative is to be preferred. This also means that, although aimed at the possibility of reaching consensus, democratic deliberation neither requires such a result for decisions to be held

⁴⁰ In Nozick, for instance, the distribution of holdings that follows his entitlement theory is distinctly *unpatterned* (Nozick, 1974: 155 ff.).

legitimate nor would have to stop once consensus is fortuitously achieved.⁴¹ Quite the opposite, democratic deliberation should in fact sometimes be aimed at breaking an existing consensus (Rostbøll, 2008: 23). This is for two reasons: On the one hand, political decisions always depend on the information and reasons that are currently at hand so that further revisions may be needed once new information becomes available (Habermas, 1998: 408; see Gledhill, 2017: 497; Rostbøll, 2008: 24). On the other hand, the shape the world is in is subject to change due to new events and conditions, and so is the distribution and nature of people's needs, preferences and interests,⁴² so that public arrangements always require adjustments in response to such changing scenarios (Rummens, 2006: 480; 2007: 350). After all, as stated above, citizens make use of democratic procedures to continually reinterpret moral norms in response to ever-changing historical circumstances, from which it follows that any interpretation is by definition temporary.

Contra Estlund, deliberative democracy cannot be thought of as an instance of imperfect proceduralism either. Here, the crucial point is that the idea of autonomy implies the rejection of any authority that is external to human reason, which means that claims to normative rightness can only be cashed out in terms of intersubjective agreement among participants to practical discourse. Democratic deliberation thus cannot be viewed as a means to ascertain independently valid normative standards because it carries itself the burden of establishing such validity in the first place (Gledhill, 2017: 490). As Gledhill rightly observes, what is at stake here is an opposite understanding of the relationship between justice and legitimacy. Whereas for Estlund legitimacy requires tracking true principles of justice, in the Habermasian model principles of justice are defined in terms of legitimate agreement between free and equals (Gledhill, 2017: 490). Hence, deliberative democracy does include an "independent standard" for the critical evaluation of democratic procedures and outcomes, though this cannot be thought of as "procedurally-independent" or "purely epistemic" standard – "it is a normative standard independent of existing procedures

⁴¹ As Gledhill rightly observes, so conceived, the Habermasian model of democracy avoids the "consensus paradox" according to which deliberation aims at a rationally motivated consensus, but the achievement of such consensus would inhibit further deliberation" (Gledhill, 2017: 497).

⁴² As Rummens argues, these are mutually related phenomena, as changes in one trigger changes in the other (Rummens, 2007: 350).

but *dependent* on other, more reciprocal and inclusive ones” (Forst, 1999: 185-6 emphasis in the original). This is because, in the absence of a direct epistemic access to the truth of practical norms, there is no way out of the common reason of citizens involved in processes of mutual justification. Whenever we think that some political decision is unjust, the only possible way to criticise it is through an appeal to improved and more inclusive forms of justification. Political outcomes can only be questioned by showing that some important argument or perspective that would have indeed changed the verdict has been underestimated or neglected in the process of argumentation.⁴³ Claiming that certain political decisions are wrong or unjust simply because we know the truth about political matters is nothing but showing that we lack convincing political reasons.

As a *via media* between pure and imperfect proceduralism, deliberative democracy can be described in terms of what Habermas calls an “‘imperfect’ but ‘pure’ procedural rationality”, where political outcomes are justified on the presumption of being rational without the guarantee of being right and where no procedure-independent standard of normative rightness is available (Habermas, 1998: 396-7; see Gledhill, 2017: 499). This case of imperfect but pure procedural justice can be described by reconsidering the example of the criminal trial. In fact, although participants to criminal proceedings must always pragmatically presuppose an independent truth to be found, it remains the case that no public access to the reality of whether the defendant is guilty or not is ever conceivable outside of the procedures of the legal system. It is then the proper unfolding of the latter that eventually constitute the validity of the final verdict, with any further appeal having to refer to more perfect procedures, where additional evidence or reasons are taken into account (Gledhill, 2017: 500).

In conclusion, and to briefly anticipate the argument developed in *Chapter III*, I want to highlight how the model I endorse has distinctive implications with regard to the relationship between normative theory and social practice (see Gledhill, 2017).

⁴³ In this regard, Habermas argues that democratic deliberation is subject to a “dual fallibilist proviso” (Habermas, 2003b: 258-9). Public decisions can indeed be flawed either for (I) *procedural reasons*, as when not all perspectives have been included in the decision-making process or the latter did not proceed in an uncoerced fashion; or (II) *substantive reasons*, as when political outcomes fail to give equal consideration to everyone’s interests (Rummens, 2006: 479-80; 2007: 349-50).

Whereas alternative accounts tend to conceive of ideal procedures and outcomes as setting independent standards that must be either mirrored (Cohen, 1989: 71; Rawls, 1982: 45) or brought about in political practice, the model I advocate for conceives of normative ideals as abstracting away from current practices to then drive further social reform. To borrow an expression from Dewey, here democracy “is an ideal in the only intelligible sense of ideal: namely, the tendency and movement of some thing carried to its final limit, viewed as completed, perfected” (Dewey, 2012 [1927]: 148). Citizens seeking to live together as free and equals reflect upon what is constitutive of such an activity to then be guided by the precise version of it. Every time they face a problem situation, they thus seek to restore their social cooperation by searching for mutual understanding in increasingly idealised conditions of justification. Hence, context-transcending normative standards through which current scenarios can be critically evaluated, although pointing *beyond* current social practices, are nonetheless reflexively generated *within* such practices in the first place (Forst, 1999: 186). This leads to a conception of democracy as a multi-perspectival and self-correcting mechanism for problem-solving. It is *multi-perspectival* for it is maximally inclusive of all social perspectives (Bohman, 2004: 24); it is *self-corrective* because it recursively generates the standards for its own criticism and improvement (Forst, 1999: 186); it is for *problem-solving* for it is aimed at solving practical problems, including that of how we can live together as free and equals in ever-changing socio-historical circumstances.

II.III Constitutional Democracy and Its Ailments

In this chapter, I defended a liberty-based model of deliberative democracy that is normatively grounded in the co-originality of private and public autonomy. Before I conclude, I want to briefly mention how this model gives us a distinctive insight into some of the most pressing problems affecting contemporary liberal democracies. This is to clarify the background against which I intend to evaluate the proposal for a generalised use of mini-publics for political decision-making and some of the concerns that such an initiative may raise.

According to the so-called *two-strand model* of constitutional democracy, the latter amounts to a “paradoxical union of contradictory principles” (Habermas, 2001a; Abts and Rummens, 2007: 406). Contemporary constitutional democracies are thought of as comprising liberal and democratic principles in a somewhat uneasy way.⁴⁴ The liberal or constitutional pillar prioritises the principle of private autonomy over its public counterpart, thus emphasising the role of an impartial rule of law in protecting basic individual rights. In institutional terms, it stresses the need for a representative system organised around a principle of division of powers, where alternative institutions hold one another to account through a mechanism of checks and balances. The democratic pillar privileges instead the principle of public autonomy over its private counterpart, thus locating in the will of the people the ultimate source of legitimacy of modern law. Its focus is on finding institutional mechanisms able to provide extensive opportunities for citizens’ participation in public affairs. The uneasy relationship between the two principles is in turn testified by their being conceptualised as restraints on one another. The democratic strand emphasises the importance of popular participation on suspicion that the impartiality of the rule of law may in fact serve as a disguise for a ruling class of property owners seeking to privilege their interest. The liberal strand stresses the importance of constitutional checks out of fear that democratic majorities will assume tyrannical drifts (Abts and Rummens, 2007: 410).

Having acknowledged the tension between liberalism and democracy, advocates of the two-strand model often conclude that the health of constitutional regimes crucially depends on privileging one component over the other at alternate times. It is then on the account that no successful balance or stable equilibrium between liberal and democratic principles can ever be obtained that they conceive of the well-functioning of constitutional systems as only achievable through the pendular motion between the two opposites (Mouffe, 2000: 44-5). This leads them to provide a somewhat positive account of what I rather consider as two of the primary

⁴⁴ Mouffe qualifies the relationship between liberal and democratic principles as not internal or necessary, but rather contingently historical (Mouffe, 2000: 3; see also Plattner, 2010: 83 ff.). In what follows, I rely on (Abts and Rummens, 2007: 408).

ailments of contemporary liberal democracies, that is, *technocracy* and *populism*. According to advocates of the two-strand model, these two extreme opposites function as correctives to one another, thus maintaining the constitutional system in an overall healthy balance. Given its emphasis on the will of the people, populism is thus described as continuous with the logic of democracy. In fact, according to some scholars, it represents its “redemptive” face (Arditi, 2003; Canovan, 1999), for its great virtue is to open up an otherwise unresponsive representative system to ordinary people’s needs and interests. Thanks to its disruptive force, populism compels technocratic regimes to deal with problems and perspectives that would otherwise be systematically neglected (Laclau, 2005). Conversely, the emphasis on experts’ *impartial rule of reason* as a method to secure individual rights brings technocracy into the shadows of liberalism. The progressive depoliticisation of public decision-making is thus increasingly justified as the bulwark against a partisan politics that hinders the production of reasonable policy outcomes (Majone, 1999; Pettit, 2004; Rosanvallon, 2011).

The perspective I endorse takes an opposite stance by stressing two interrelated points. *First*, it considers technocracy and populism as opposite trends that are though also related by one common feature (see Abts and Rummens, 2007; Bickerton and Invernizzi Accetti, 2017; Rummens, 2017; Urbinati, 2014). Their point of convergence is indeed the denial of the co-originality of liberalism and democracy as the core from which institutions and policies derive their legitimacy. Populism gives unconstrained priority to the democratic principle of popular sovereignty, thus missing the fact that the will of the sovereign people can only express itself in the form of an omnilateral will giving equal consideration to everyone’s interests. Technocracy gives instead exclusive importance to citizens’ private liberties, thus failing to acknowledge democratic participation as the necessary constituent of their legitimate interpretation. *Second*, it denies that technocracy and populism work as correctives to one another, thus arguing that they are instead mutually reinforcing phenomena eroding the correct functioning of democratic regimes (see Fawcett et al., 2017; Leonard, 2011; Rummens, 2017). What the co-originality thesis indeed suggests is the conclusion that liberalism and democracy either thrive together or together they perish.

Public displacement from political decision-making is one main cause of political disengagement and distrust towards institutional politics. Having capitalised upon such dissatisfaction, populist leaders often use their majoritarian mandates to bypass democratic procedures of mediation and enact policies that disregard the legitimate interests of minorities. This in turn fuels the quest for more depoliticised forms of decision-making, as it is with the intent of countering such illiberal drifts that the policy-making role for elites of experts evading public notice and accountability is increasingly advocated.

Similar tensions and oppositions can also be found at the core of deliberative democratic theory, with deliberative and democratic desiderata often being thought of as pulling in opposite directions (Lafont, 2006: 3; Parkinson, 2012: 152; Thompson, 2008: 511). Theories of *democratic deliberation* focus on the kind of reasoned exchange of arguments that is necessary to redeem the legitimacy of legal-political enactments. On the account that the mass democratic public is structurally unsuited to host high-quality debates,⁴⁵ such theories usually end up conceiving of deliberative standards as only to be met within small and formal deliberative institutions, such as courts (Rawls, 1993: 231 ff.) or parliaments (Habermas, 1996: 307). Here, the deliberative component is thus identifiable with the liberal pillar, as the primary role for such fora is to seek a mediation between competing interests and values so as to enact policies that go in the equal interest of all. However, given their distinctive focus on deliberation, such theories face the challenge of how to devise institutional systems apt to ensure that deliberation within formal bodies can also be described as democratic. On this account, standard theories of liberal democracy attribute for instance central significance to the institution of voting, as it is through general elections that citizens authorise public officials as their spokespersons and also hold them to account when they fail to act as representatives of their interest. Theories of *deliberative democracy* focus instead on how to increase the opportunities for citizens' political participation. Needless to say, the focus is here on the democratic pillar. The

⁴⁵ As Chambers observes, this is not first of all a problem of citizens lacking the cognitive abilities necessary for genuine deliberation, but rather a structural issue linked to "problems of scale, complexity, lack of information and knowledge and opportunities to speak and be heard" (Chambers, 2009: 330).

challenge that such theories primarily face is thus the opposite one, as they must find solutions apt to ensure that citizens' contribution in public affairs is well-informed and competent. Whereas the former must make deliberation democratic, the latter must make democracy deliberative.⁴⁶

As Chambers rightly observes, theories of democratic deliberation are on the ascendancy, whereas theories of deliberative democracy suffer a decline (Chambers, 2009: 324). Initially, deliberative politics was conceived of as a move towards politicisation, for it brought into question the process of formation and transformation of individual preferences that previous aggregative models of democracy considered as given and private. However, the emphasis that deliberative democrats placed on the rationality of political outcomes as a measure of their legitimacy may have inadvertently paved the way to an institutional practice that privileges the role of experts over that of citizens. A trend that nowadays risks being exacerbated by current epistemic interpretations of democratic deliberation (see Buchstein and Jörke, 2007; Crespy, 2014; Landwehr, 2017). It therefore seems that in general the inherent tension between deliberative and democratic components has led many to pursue the former at the expense of the latter. A similar worry also applies with regards to systemic approaches to deliberative democracy. Whereas Habermas "two-track" model has been criticised for failing to provide a convincing description of how deliberation within formal institutions can be linked to informal discussions in the broad public sphere (Leydet, 1997), more recent systemic approaches have been charged with promoting a complete dissociation of deliberative and democratic components, thus advancing "another vindication of a post-democratic order in which decision-making in elitist expert bodies is shielded by a façade of electoral democracy" (Landwehr, 2014: 41; see also Hendriks, 2016; Owen and Smith, 2015).

Against this background, the proposal for a generalised use of deliberative mini-publics for political decision-making acquires a distinctive interest. By virtue of combining deliberative and democratic aspects in a unique and distinctive way (Goodin and Dryzek, 2006: 220), deliberative mini-publics have been sometimes described as the most promising effort to institutionalise deliberative democracy in

⁴⁶ For this distinction between theories of democratic deliberation and theories of deliberative democracy see (Chambers, 2009: 324; Pettit, 2003: 157-59).

complex societies (Fung, 2003: 339). They may indeed counter both depoliticisation, by increasing the accountability of governance networks via the direct involvement of ordinary citizens in administrative affairs (Ansell and Gingrich, 2003: 165; see Papadopoulos, 2012: 129), and populism, by improving the deliberative quality of public discourse through the enactment of “more perfect public spheres” (Fung, 2003: 338; see Chambers, 2009: 330). However, at a closer look, they also raise the concern of potentially replicating rather than solving the issues above. Other than promoting a kind of democratisation that may display distinctive populist features, deliberative mini-publics may also become instruments of depoliticisation when used to bypass democratic disagreement and contestation in the broad public sphere (Lafont, 2019; Urbinati, 2014: 7). Should we therefore think of mini-publics as part of the solution to the ailments of contemporary representative democracies or as part of the problem? Since I intend to evaluate deliberative mini-publics in terms of their systemic interaction with the remaining institutional framework, in the next chapter, I focus on how we should think of deliberative democracy in institutional terms. Hence, having defended *representative democracy* and the *deliberative systems approach* (Mansbridge et al., 2012) as coherent interpretations of the deliberative democratic ideal, I will consider whether mini-publics may have a role as integrative devices apt to reinforce the deliberative and democratic credentials of contemporary democratic systems.

Conclusions

In this chapter, I defended a deliberative model of democracy that translates the intersubjective idea of autonomy into a practice of political self-legislation. I argued that the normative principle of respect for autonomy, as it is fleshed out in the co-original recognition of individual and moral autonomy, enters the political structure in the institutionalised form of a co-original recognition of citizens’ private and public autonomy (Rummens, 2006: 470; 2007: 339). I thus defended this understanding of deliberative democracy from the charge of being just another instance of either pure or imperfect proceduralism. As I argued, a model of democracy that is normatively

grounded in the co-originality thesis covers a *via media* between procedural and epistemic accounts, precisely for its combining substantive and procedural aspects in a unique way (Rummens, 2007: 335). As I suggested, this understanding of democracy gives us a distinctive insight into some of the most pressing problems of contemporary liberal democracies. It indeed allows us to consider technocracy and populism as two mutually reinforcing trends eroding the correct functioning of contemporary constitutional regimes. In the chapters that follow, I will use this normative framework to critically investigate the proposal of a generalised use of mini-publics for political decision-making as strategy to reinforce the deliberative and democratic credentials of contemporary representative systems.

III. Democracy and Complexity

Introduction

In previous chapters, I defended a deliberative model of democracy by arguing that free and equal citizens are both entitled to intersubjectively establish the conditions of their social cooperation and required to do so by taking part in discursive practices of mutual understanding and reciprocal justification. As it should be clear by now, the argument relied on a particular understanding of the relationship between basic rights and popular sovereignty, according to which the two are to be understood as co-original and mutually supportive. It is only by getting involved in a public discourse that is structured so as to instantiate the “idealised content of a form of practical reason” (Benhabib, 1994: 27) that sovereign citizens can redeem the legitimacy of enacted norms, policies and institutions.

Now, as many have argued, one of the main problems with deliberative democracy concerns the prospects of its practical realisation. When compared to alternative theories of democracy,⁴⁷ the deliberative ideal immediately appears way more demanding so that, having raised the standards of political legitimacy, it may attract some serious scepticism about the possibilities of its concrete attainability (Bohman, 2004: 23). Therefore, a serious philosophical discussion about the sort of political institutions that such a model would eventually require is often considered mandatory. The issue that remains to be specifically addressed concerns thus the social fact of complexity and its inherent tension with the democratic ideal of free and autonomous citizens governing their social interaction through democratic discourse (Bohman, 1996: 151 ff.).

This chapter undertakes an analysis of this sort. *Section I* critically engages with a widely held philosophical view in analytical political theory that conceives of

⁴⁷ Such as the *minimal* or *economic theories* of democracy developed by Schumpeter (1950), Down (1957) and Bobbio (1987), in which democratic legitimacy is achieved by simply respecting some basic principles of political equality and procedural fairness.

deliberative democracy as a theoretical model requiring practical application (see Gledhill, 2017: 486-7). I contrast this view with what I call a *reconstructive approach* to normative democratic theory, of which defining feature is a radically different understanding of the relationship between theory and practice. As we shall see, the standard view proceeds by firstly outlining democratic norms in isolation from social conditions to then identify the best means for their practical attainment only in a subsequent stage of research. Depending on circumstances, this may generate scepticism, resignation or irresponsibility on the part of the social scientist (Bohman, 2004; Dewey, 1937: 489; 1938: 489; Festenstein, 2017: 101; Putnam, 1995: 189). Conversely, the approach I endorse conceives of reasoning about ends and means as proceeding in tandem and reciprocally influencing one another. From this perspective, social facts are no longer viewed as mere obstacles to the realisation of objectives already settled upon, but rather as also resources motivating a reconstruction of democratic norms that does not betray the original democratic commitment to free and equal citizens autonomously regulating their common life by means of discourse (see Bohman, 1999: 25). As a result, the perspective I endorse has the advantage of avoiding both the naivety of a purely normative standpoint, where no consideration of social facts enters the theorisation of democratic principles, and the pitfalls of an excessive realism, where democratic values are too easily dismissed for practical purposes (Bohman, 1996: 176).

Section II elucidates the contrast between these two approaches by addressing the problem of representative government and its contested democratic credentials. According to a well-established view in political theory, representative democracy is either an oxymoron or a second-best adaptation to modern conditions of social complexity. However, the perspective I endorse lets us conceive of political representation as rather a genuine democratic device; that is, as a coherent reconstruction of the democratic ideal preserving its normative core under the renewed social circumstances raised by the development of modern nation-states.

Section III finally examines contemporary socio-political scenarios. I discuss current increases in social complexity to highlight some of the challenges that a normative reconstruction of the democratic ideal faces today. Having raised doubts

about the prospects of traditional liberal democratic institutions in sustaining effective democratic control, I endorse a systemic approach to deliberative democracy as a valid reconstruction of this ideal (Parkinson and Mansbridge, 2012). This sets the stage for an assessment of deliberative mini-publics as genuine democratic devices, that is, as institutional tools consistent with a valid reconstruction of democratic ideals under contemporary renewed social circumstances. When thought of as intermediary bodies strengthening the linkage between the broad public sphere and its representative institutions, deliberative mini-publics may help indeed respond to two of the main challenges that any form of democratic association faces in current scenarios. On the one hand, they can increase the democratic accountability of decision-making sites that may often even evade public notice. On the other hand, when organised as deliberative resources for mass public debate (Lafont, 2019: 141), they can help democratic citizens better understand some of the complex issues they have to deal with, thus enabling less trivial forms of democratic control. In short, deliberative mini-publics can be valuable democratic devices apt to restore the two-way communicative flow between formal decision-making sites and informal public spheres that current increases in social complexity have put into jeopardy.

III.1 Social Facts and Democratic Norms: A Reconstructive Approach to Normative Democratic Theory

Research on deliberative democracy has gone through three different stages of inquiry (Elstub, 2010). The *first*, usually associated with Habermas and Rawls, worked out the philosophical foundations of the deliberative ideal. The *second*, initiated by Bohman (1996) and Gutmann and Thompson (1996), started enquiring about the prospects of its actual realisation, thus shifting the attention to some of the practical constraints this would have faced. The *third*, carried on by Hendriks (2006) and Parkinson (2006), finally started taking a direct look at problems of institutionalisation. As Gledhill observes (2017: 486-7), this way of proceeding reflects a widely held methodological view in political philosophy, according to which normative ideals are to be elaborated first, and in (partial) isolation from the facts of social reality, to then

seek the means for their social attainment only in a second stage of inquiry. Grounding the distinction between ideal and non-ideal theory, this approach encourages a strong division of labour between political philosophy and empirical social science. Whereas the former must work out the normative principles our societies ought to follow, the latter must look at the social facts hindering their practical realisation and devise policy proposals to ease the implementation process.

The problem with this approach is that it rests on an understanding of the relationship between theory and practice that contradicts one of the core premises of deliberative democracy. Indeed, to interpret deliberative democracy as a theoretical ideal in need of practical application fails to acknowledge how, according to such a view, the legitimacy of norms, policies and institutions cannot be redeemed via a process of deduction from more general and substantive principles, but must be rather viewed as the result of democratic procedures of intersubjective justification (Gledhill, 2017: 487). Hence, in what follows, I first set forth a critical assessment of the above perspective to then introduce an alternative approach.

First of all, we are to consider how the clear-cut division between theory and practice, on which the contested view fundamentally relies, follows from a problematic understanding of the relationship between facts and norms. Having conceived of *experience* as a cognitive process providing raw and conceptually unmediated data that the knowing subject passively register, the former are seen as law-like regularities that remain identifiable independently from any value disposition; whereas the latter, when not regarded as unassessable by rational scrutiny, are deemed to be established without any reference to the prospects of their practical attainability. Two controversial implications follow. On the one hand, this clear-cut division between theory and practice, apart from downplaying the business of social inquiry to a mere ascertainment of the best means to attain pre-established ends, also reveals an unscientific approach that risks fostering excessive fervour and irresponsibility on the part of the social scientist (Putnam, 1995: 189; Dewey, 1938: 489). Indeed, the tendency to judge ideas without testing them in reality – which would be immediately ruled out in any other sphere of inquiry as unscientific and pretentious (Dewey, 1938: 497) – can lead in the social sciences to the conclusion that practical objections are only pertinent to current arrangements, but irrelevant and harmless to the advocated

ideal (Bohman, 1996: 9). Hence, with political ends being secured from the possibility of falsification, any social means to their attainment can in principle be justified. On the other hand, a quite opposite consequence may be that of fostering scepticism. For the most part, contemporary criticisms of deliberative democracy are indeed of a sceptical character, pointing to the practical difficulties implied by the realisation of such an ambitious political project (Bohman, 2004: 24). Infeasibility objections target both the deliberative and the democratic components of the established ideal. On the one hand, we find critical arguments addressing the time and resource constraints preventing democratic deliberation from having a legitimating influence on political outcomes (Christiano, 1996: 35 ff.). On the other hand, we also register a sceptical attitude towards the very possibility of implementing any form of democratic association whatsoever.

Therefore, the tendency to elaborate normative ideals in isolation from social reality and with scarce consideration for the practical means to their social attainment does not only lead to the endorsement of principled propositions that are bound to fail as soon as they are submitted to the test of reality, but also induces a contemptuous judgement towards existing social arrangements. The most common conclusion that follows from the adoption of such a methodology is, indeed, that of considering social facts as mere obstacles to the objectives already settled upon and current democratic institutions and practices as only second-bests or realistically constrained approximations to the advocated ideal, whose validity remains tied to a mere regulative function. For instance, the social fact of complexity, that is, the tendency of our societies to always proceed towards more complex forms of social organisation, has often been perceived as a mere hindrance to the realisation of genuine forms of democratic association. Having endorsed an idealistic conception of democracy based on face-to-face deliberations and town meetings, scholars have often been drawn to the conclusion that modern nation-states are unsuitable to host a form of government identifiable as truly democratic. Thus, the conclusion is that modern representative states cannot be considered genuine democracies, but rather second-best adaptations to renewed historical circumstances, whose defining feature is that of merging both democratic and oligarchic components (see Manin, 1997; Dahl, 1998). However, it is precisely by relying on a clear-cut division between theory

and practice that such scholars have made themselves blind to the ways in which increases in social complexity also opened up new opportunities for the exercise of both private and public autonomy (Bohman, 1996: 13), thus foreclosing the conclusion that political representation is not only necessary but also a desirable democratic feature (see Urbinati, 2006).

Analogous considerations have been raised in relation to the social facts of pluralism and normative disagreement, which in turn have raised scepticism about the very possibility of democratic deliberation having a legitimising influence on political outcomes. As we saw in previous chapters, political authority is justified on the basis of a principle of freedom and autonomy that springs simultaneously “from the subjectivity of the individual [private autonomy] and the sovereignty of the people [public autonomy]” (Habermas, 1997: 41). The theoretical project of unifying basic rights and popular sovereignty has led many to emphasise (rational) consensus or unanimity as the bedrock of political legitimacy.⁴⁸ Indeed, whereas from the point of view of private autonomy full consensus is taken to corroborate the presumption of enacted outcomes being in line with the contents of justice, from the point of view of public autonomy it seems necessary to ensure that no one is living on someone else’s terms. However, an unintended consequence of such an emphasis on full consensus has been that of fostering both a normative devaluation of pluralism and the idea that majority rule is nothing but a second-best expedient for taking political decisions in complex societies, where indeed unanimity can hardly be achieved.⁴⁹

Thus, by considering pluralism as only a hindrance, advocates of the contested perspective once again made themselves blind to the ways in which the inclusion of multiple perspectives both fulfils an important critical function and works as an autonomy enhancer. On the one hand, by keeping the public forum open to alternative viewpoints, we reduce the risks of collective outcomes reflecting a “false consensus” (Bohman, 1994: 919). As stated above, a decision-making method that is maximally

⁴⁸ Such an emphasis can already be found in Kant, when he states that “only the unified and consenting will of all [...] can legislate” (Kant, 1999 [1797]: 119; MM 314).

⁴⁹ This point of view is, for instance, explicitly expressed by Sieyès, as he states that “Unanimity being a very difficult objective to attain even among a rather small group of people, it becomes impossible in a society of several million individuals. Since civil association has certain goals, reasonable means must be used to attain them. We must be satisfied with plurality [i.e. majority] [...] Thus, with good reason, plurality becomes legitimately a substitute for unanimity” (Sieyès, 1789: 38; see Manin, 1987: 342).

inclusive of all social perspectives increases the chances of democratic outcomes being progressively in line with the contents of justice. It reduces the risks of majoritarian decisions reflecting merely factional interests or being endorsed just because they remained unchallenged. On the other hand, pluralism is also an autonomy enhancer. As deliberative democrats have traditionally stressed, people cannot be conceived of as entering the public forum with fully formed preferences, for it is rather through confrontation with others that they develop such preferences in the first place. A greater pool of social perspectives helps thus citizens refine their own preferences and life plans, occasionally becoming even an instrument of emancipation. This is not to deny that pluralism does indeed constitute a problem for a deliberative model democracy, especially when it becomes so deep that disagreement ends up extending to the nature and scope of public reason (see Bohman, 1996: 71). However, it remains the case that the social fact of pluralism cannot be seen as just an obstacle, for it also represents a resource for a healthy public debate. This leads us to draw two conclusions: *first*, that to some extent we also have reasons to design public institutions and deliberative practices in ways that promote rather than inhibit the development of alternative perspectives. *Second*, that a coherent reconstruction of the ideal of democratic legitimacy must locate the proper ground of political legitimacy in the deliberative process itself and not in consensus as an outcome (Cooke, 2000: 967). Indeed, what is relevant for the sake of democratic decisions being deemed legitimate is that they can be viewed as stemming from a deliberative process where also minority views have been taken into account, adequately weighted and, to some extent, incorporated in enacted majoritarian outcomes (Manin, 1987: 359).

The *reconstructive approach* to normative democratic theory I put forward breaks up with this whole picture to promote a *practical* or *experimental* interpretation of social inquiry that straightforwardly denies the possibility of a strict separation between facts and norms. Two considerations are crucial. *First*, that the identification of relevant social facts, rather than neutral in character, is always mediated by specific conceptual frameworks and ultimately by the pursuit of some practical goal. The idea of an end to be reached, an “end-in-view” in Dewey’s terminology, is “logically indispensable” for discerning the relevant features of the problematic situation to be overcome, that is, to isolate the empirical data

contributing to the definition of a social fact - "Without it, there is no guide for observation; without it, one can have no conception of what one should look for or even is looking for. One fact would be just as good as another" (Dewey, 1938: 497). *Second*, that prospective ends must be evaluated also on the basis of the available means by which they can be attained (Dewey, 1938: 496). Indeed, to avoid endorsing abstract prescriptions to then retreat into a sceptical attitude concerning the prospects of their practical realisation, normative conceptions of politics must include from the outset a descriptive component of the complex features of our contemporary societies. On this account, the perspective I endorse thus conceives of judgements about facts and judgements about norms as standing towards one another in a relation of critical interaction, with neither of the two being held fixed or enjoying justificatory or theoretical priority (Bohman, 2002: 513).

Two implications follow. The *first* is that we are drawn to conceive of normative and epistemic claims as "embedded in some practical context that in large part determines their relevant standards of justification and conditions of success" (Bohman, 2002: 499). As in the case of discursive propositions, whose validity depends on the consequences of their pragmatic use or practical utterance, the "warranted assertibility" of any claim to knowledge cannot be determined but in connection with the consequences to which it gives rise (Dewey, 1938: 490). This means that also the norms advanced by the democratic theorist are essentially to be treated as mere hypotheses requiring social testing. Prospective solutions to social problems are to be submitted to public scrutiny, appealing to the experience of fellow citizens for confirmation or correction of their results (Dewey, 1938: 490). Insofar as solutions to practical problems must bring about the intended results in a way that is acceptable to all those affected, the ultimate aim of any individual inquirer becomes that of advancing a contextual interpretation of norms that can meet the rational assent of all those involved. The demand for practical verification on the part of those affected and, ultimately, a generalised agreement on the subject at stake becomes thus part of the process of inquiry itself, as a condition of validity of advanced norms (Bohman, 2003: 93).

Before I illustrate the second implication of having conceived of facts and norms on a continuum, rather than as two discrete conceptual entities, let me briefly

address a potential objection that may be moved against the idea of introducing judgements of fact in the elaboration of normative principles. As it has been observed, a pressing worry that such a proceeding may raise concerns the risk of making our political theories inherently conservative, thus offering an uncritical defence of the *status quo* (Valentini, 2012a: 659; Miller, 2013: 28). However, in this case the objection misfires, precisely because the method of inquiry I advocated for conceives of facts and norms as standing in a relation of critical interaction, with none of the two enjoying justificatory or theoretical priority. As I believe, the misunderstanding derives from an erroneous framing of the issue at stake, which conceives of the universal and the particular as necessarily standing in a relation of “fixed subordination and one-way determination”, thus ignoring the possibility of a dialectical interaction between the two (McCarthy and Hoy, 1994: 13). On the contrary, the perspective I endorse conceives of normative statements and factual judgements as reciprocally influencing one another so that, despite its emphasis on the practical, it also makes room for context-transcending norms through which a critical appraisal of current practices becomes available.⁵⁰

At this point, one may argue that it is precisely the balance between the “ought” and the “is” what is actually at stake, and that a convincing response to the above objection has yet to be offered. However, the perspective I endorsed does not aim at finding any conclusive answer to this problem, for a correct balance between normative and factual judgements is always to be found on a case-by-case basis. As Valentini correctly concludes, it is the specific practical question we are trying to answer that determines the “appropriate” balance between the two kinds of judgement, so that the possibility of finding some general rule prescribing the correct factual input that normative theories require is eventually precluded (Valentini, 2012a: 660). Thus, the approach I endorse emphasises the fallibility of any situated judgement and, therefore, the requirement to keep the process of inquiry always open to

⁵⁰ To this, we may add that the opposite tendency to draw ideals without concern for their practical attainment is also subject to the same risk of conservatism. As Dewey puts it “[e]very system of social thought which sets up ends without reference to the means by which they are to be brought about tends in effect to support the *status quo*, no matter how good the intentions of those who paint the picture” (Dewey, 1937: 489). Without a concrete project on how to promote social change “ideals generate only resignation” (Festenstein, 2017: 101).

the possibility of reflective revision and reconstruction of normative ideals. Once we acknowledge the unavailability of any conclusive answer about the appropriate factual input normative theories require, we also reach the conclusion that no absolute certainty can be achieved about the validity of our normative statements, so that the focus must irremediably shift towards a *reflexive method* for the progressive identification and elimination of mistaken results.

Hence, the conclusion above discloses the *second* implication of having conceived of facts and norms as standing towards one another in a relation of critical interaction. The further point to acknowledge concerns indeed the extent to which social facts can no longer be viewed as mere obstacles to the realisation of previously established democratic norms, for they are instead to be recognised also in their role as resources motivating a conceptual reconstruction of normative ideals (Dewey, 1938: 499; Bohman, 2004; 2007: 3-4). Social facts contain elements that both “inhibit and enable the realisation of democratic ideals” (Bohman, 2002: 499), as for the case of social complexity and pluralism mentioned above, where such persistent facts have also been positively appraised for opening up new possibilities for the exercise of both private and public autonomy (Bohman, 1996: 13; 2004: 34). Certainly, social facts immediately present themselves in the distressing form of “problematic situations” (Dewey, 1938). However, rather than throwing the sponge by assuming a sceptical attitude, the role of the social scientist and the democratic public at large is precisely that of transforming a problematic situation “into a unified one”, that is, to produce “changes in the direction that leads to the proposed objective consequence” (Dewey, 1938: 500). The democratic ideal of living together as free and equals is no mean feat, but rather an “*ongoing accomplishment*” that is “never finished, but ha[s] to be constructed, deconstructed, and reconstructed in everchanging circumstances” (McCarthy and Hoy, 1994: 19: emphasis in the original).

This *practical, pluralistic, and reflexive* method of social inquiry, requiring prospective solutions to social problems to be practically verified by a plurality of subjects in an ongoing process of reflective revision, grounds a conception of democracy as a *multi-perspectival* and *self-correcting mechanism for problem-solving*. At the end of the day, it is precisely in virtue of its reliance on a method of experimental inquiry, requiring prospective norms to be practically verified and eventually revised if they

fail the test of reality, that democracy can be seen as embodying an inner critical potential that may assure some normative and technological progress over time.

To be sure, this way of reasoning applies to all kinds of norms and, therefore, also to procedural norms regulating democratic participation itself. Democracy must be understood as a reflexive order “in which people deliberate together concerning both their common life and the normative and institutional framework of democracy itself” (Bohman, 2007: 5). This means prospective solutions to the problem of the opposition between social complexity and democratic control must also be placed under democratic scrutiny so that it is eventually up to citizens themselves to find, from time to time, new institutional arrangements supporting their democratic ideals, in an enduring self-correcting process of institutional innovation (Fung, 2012). As we shall see with more detail in later chapters, when it comes to questions of institutional design, public participation becomes distinctly crucial. Question of institutional design regarding the political structure of justification through which citizens co-determine the specific terms of their social cooperation require wide democratic input and authorisation. Conversely, once procedural rules have been legitimately established, the political process may be somehow left to run on an autonomous basis, so to speak, without the formulation of routine laws and policies necessarily requiring a direct and continuous influence from the democratic citizenry. It is when democratic systems require a reshaping of their organisational structures, like a readjusting of the boundaries of electoral districts or a reform of the electoral law itself, that public approval becomes distinctly needed, for otherwise the risk is that of such decisions being motivated by pure electoral interest or political opportunism. In turn, greater popular input can be for instance achieved by requiring mandatory referenda for decisions of a procedural and organisational kind; by imposing the need of supermajority or, as Fung suggests, by involving citizens directly in the decision-making process through the enactment of deliberative mini-publics (Fung, 2012: 619).⁵¹

⁵¹ Whether the appeal to deliberative mini-publics may constitute a viable or legitimate method for a democratic reform of the organisational structure of democratic systems is a hypothesis that will be investigated in following chapters.

Having compared two different approaches to normative democratic theory, in what follows, I shall now move on to showing how they ground different understandings of the institutions of modern representative states. As I argue, whereas the approach I rejected grounds the well-established view in political theory that representative democracy is nothing but an oxymoron or second-best adaptation to modern conditions of social complexity, the reconstructive approach I defend paves the way to a justification of representative institutions as a genuine democratic device.

III.II Representative Democracy and the Opposition between Will and Reason

As I argued, many social scientists tend to conceive of social facts as merely obstacles constraining the realisation of independently established democratic ideals. This has led to a well-established view in political theory conceiving of the liberal institutions of the representative state as only a second-best adaptation of the democratic ideal to the conditions of social complexity raised by the creation of modern nation-states. Having endorsed a conception of democracy shaped by the historical exemplar of Athenian democracy, this approach ended up conceiving of modern representative democracy as either an oxymoron or a “mixed-constitution”, irremediably merging democratic with undemocratic elements (see Manin, 1997). Contrarily to this view, I contend that political representation is complementary and not antithetical to democratic participation (Urbinati, 2006: 4), which means it should be viewed as a genuine democratic device. Underlying this conclusion is a reconstruction of the democratic ideal that conceives of democratic legitimacy as being grounded in the internal relation between *will* and *reason* that deliberative democracy promotes (Habermas, 2001a: 768).

In the previous chapter, I conceived of deliberative democracy as covering a *via media* between procedural and epistemic accounts of democratic legitimacy. As I argued, it is an ideal that combines procedural and substantive aspects in a unique way so that democratic deliberation must be viewed as an open-ended process geared towards the progressive alignment of these two dimensions of assessment (Rummens, 2007). It is precisely by virtue of having neglected this internal relation

between procedural and substantive aspects as the bedrock of democratic legitimacy that some have concluded that representative democracy is only a second-best adaptation to social complexity, if not just an oxymoron. In what follows, I reconstruct the contrast between two of the greatest traditions in Western political thought – i.e., *rationalism* and *voluntarism* – as well as some of the debates surrounding the raise of representative government shaped in a liberal fashion, to eventually redeem the democratic credentials of representative systems.

To clarify the terminology first: by *political voluntarism*, I refer to the radical democratic ideal developed by French revolutionaries, according to which political power is legitimised only when it flows from the will of the sovereign people. Conversely, the term *political rationalism* exemplifies the ambitions of an impersonal science of politics, through which elites of experts are called to settle conflicts of interests in a supposedly fair manner (see Rosanvallon, 2006). The contrast between the two can once again be recast in terms of the opposition between *classical liberalism* and *civic republicanism*.⁵² Indeed, as it should be clear by now, whereas the former traditionally relied on rationalistic assumptions, the latter undoubtedly developed along voluntaristic lines of thought. It is on these premises that the two approaches ended up holding two radically different understandings of the concepts of basic individual rights and political obligation. As Michelman states: “for republicans rights are nothing but determination of the prevailing political will, while for liberals rights are always grounded in a ‘higher law’ of transpolitical reason or revelation” (Michelman, 1989: 446; Habermas, 1994: 3). Hence, whereas for civic republicanism the compulsory character of political obligation is grounded in a principle of public autonomy, stating the requirement to obey only laws that citizens collectively authored; for classical liberalism political obligation appeals to a principle of private autonomy as warranted by the authority of natural law.

⁵² Falling in between classical liberalism and civic republicanism, deliberative democracy is thus described by Habermas as upholding an ideal of self-legislation as the engendering of an “internal relationship between will and reason” (Habermas, 2001a: 768). Having then, like Habermas, recognised Rousseau as attempting to formulate the co-originality thesis (Habermas, 1996: 100; 2001a: 767), Riley uses this terminology when he describes the *General Will* as the “philosophical paradox of willed non-voluntarism” (Riley, 1970: 87). For clarification about the strands of classical liberalism and civic republicanism I am referring to, see ft. 25.

As already argued, deliberative democracy is normatively grounded in the co-original recognition of citizens' private and public autonomy, thus covering a middle ground between classical liberalism and civic republicanism. It thus can be seen as rightly endorsing the conclusion that a fully adequate account of political legitimacy would have to combine voluntarism and rationalism in a systematic way (Mapel, 1990: 234). However, the problem with social complexity is that it seems to deny the kind of intentionality that democratic control requires (Bohman, 1996: 155). In other words, complex societies are at risk of progressively eroding the mutually supportive relationship between liberal and democratic aspects that the co-originality thesis reveals. The more contemporary democracies become embedded in complex social orders that citizens struggle to either regulate or control, the more we increase the dangers of backlashes undermining the very existence of liberal democratic institutions. The EU offers, alas, a case in point. Technocratic elites having progressively renounced the effort of gaining popular input and support, the EU has now become a fertile ground for populist leaders undermining the continued existence of well-established democracies. Hence, as the reconstructive approach I endorsed suggests, when facing new increases in social complexity, the challenge always become to determine whether new forms of democratic association are still possible and how they can be organised.

The problem firstly arose with the expansion of territories and growth of population density that characterised the shift from city-states to modern nation-states, whose main effect was precisely to call into question the very possibility of an extensive public participation in political affairs. However, far from being a merely organisational issue, the extension of modern societies also highlighted more insidious theoretical questions. Indeed, an issue of which also early revolutionaries had to become immediately aware concerns the equivocal nature of the legitimising principle of the "will of the people", which inevitably suffered from a tension between the value it incarnated and the sociological reality it was supposed to represent (Rosanvallon, 2006: 82). Hence, aside from issues of *unfeasibility*, related to the impossibility of directly involving large numbers of people in political decision-making, democratic government started to be perceived as also *chimerical*, for its invoking a principle of

popular unity that was itself unrealistic, “incoherent or in principle impossible to instantiate” (Richardson, 2002: 57).⁵³ Moreover, by abstractly referring to a social totality that could hardly find any correspondence in the actual composition of the democratic populace, the appeal to the united people unveiled a rhetorical character and lack of consideration for the social fact of pluralism that, nowadays, are commonly considered as probably the most defining features of populism (Canovan, 1999, 1984). On this account, and in concomitance with the extension of the political franchise to lower social classes, democratic government came thus to be regarded as also *dangerous*.⁵⁴ The main risk with rhetorical appeals to the united people is that, by obscuring social differences, they pave the way to oppressive policies that violate the rights of dissenting minorities – a danger that was first-hand experiences by those who lived under the Jacobin terror.

Solutions to these problems were primarily found in modern constitutional states' organisational structure and a representative system shaped in a liberal fashion. We are indeed to acknowledge that the institutions of political representation, although justified in the name of practical feasibility and therefore as a response to increases in social complexity, were also designed to contain rather than encourage democratic participation (Urbinati, 2006: 1). This dual commitment to both make popular rule possible and restrain its dangerous political influence becomes immediately clear once we consider how a preference for elections over decisions by lot was justified as the best way to assemble representative bodies. Although pragmatic motives may also have played a role, the choice for elections was prompted by a whole set of alternative considerations. Indeed, while it was an established view that legitimate political authority had to rely also on the will and consent of the governed, it is

⁵³ The same kind of criticism has been more recently expressed by Riker (1982), who believed the impossibility results of modern social choice theory to justify a rejection of “populist” interpretations of democracy. As he argued, populist interpretations are “empty” or “meaningless”, precisely because they rely on a notion of popular will that is nonsensical if conceived of as independently or pre-existing aggregative procedures.

⁵⁴ To be sure, the idea of democratic government being intrinsically dangerous because of the vagaries of people's will can be found already in Greek philosophy and, thus, in relation to city-states. However, as Habermas notoriously illustrated, the critical public opinion that in the XVI century was cleansed of all its negative connotations to become the only legitimate source of political authority started to be perceived again as dangerous with the extension of democratic franchise to lower social classes (Habermas, 1991: 130).

also true that elections were justified as the best method for selecting a “natural aristocracy” of competent decision-makers. Both Harrington ([1656] 1977: 184; [1657] 1977: 487) and Montesquieu ([1749] 1989: 13), for instance, considered as a general feature of human nature the tendency of free people to spontaneously select the best amongst themselves as their leaders, and it is on this premise that they conceptually linked democracy with decisions by lot and aristocracy with elections (see Manin, 1997: ch. 2). Hence, by relying on the assumption that “the many are better than the few in recognising competent individuals but worse than them in acting competently” (Urbinati, 2006: 9), elective representative government started to be conceived of not only as a second-best adaptation to social complexity but also a hybrid, merging democratic and aristocratic components.⁵⁵

Therefore, far from being considered the exclusive source of political legitimacy, the will of the people was granted authority *only after* an organisational structure ensuring government by reason had been set into place. In other words, whereas the democratic component remained accessorial, for citizens could exercise their power only in the form of approval or disapproval for political proposals received from above, the aristocratic component was firmly ensured by the adoption of what Manin calls a “principle of distinction”, through which access to representative offices was guaranteed only to distinguished citizens or notable people (Manin, 1997: 94 ff.). Ensured either “spontaneously” or by means of legal provisions (Manin, 1997: 97), such restrictions were thought of as safeguards against the vagaries of people’s will and, thus, as preconditions of a good government based on elitist decision-making and reason (Rosanvallon, 2006: 140).

This way of thinking is perfectly reflected in Burke’s trustee model of representation.⁵⁶ In England, the restrictive selection of political representatives was the spontaneous effect of both the extremely high costs of electoral campaigning and a widespread deference towards established elites so that no legal regulation had to be set up to ensure such a result (Manin, 1997: 97). For this reason, Burke had no difficulty in speaking about a “natural aristocracy”, which, thanks to an upbringing based on education and responsibility, could emerge as the most suitable for ruling

⁵⁵ See for instance (Hamilton, Madison, and Jay, 2008: article 10).

⁵⁶ In what follows, I rely on Pitkin (1972: ch. 8)

positions (Burke, 1791: 130). He thought that a well-functioning state would have been one in which such a class is bred and allowed to rule, as only the appointment of wise and notable people could guarantee government by reason. On this point, Burke expressed himself clearly: being political issues a matter of duty and morality, they are subject to right and wrong answers, which means the good of the nation cannot depend on people's will, for "duty and will are ever contradictory terms" (Burke, 1791: 120) and the latter cannot be taken to be "the standard of right and wrong" (Burke, [1790] 1951: 90-91). In Burke's opinion, the advancement of the public good required, thus, a ruling class to exercise its political reason and practical wisdom with a significant degree of latitude. Independence from the will of an incompetent electorate was a fundamental precondition for political representatives to foster the true interests of their constituency. A pressing problem immediately becomes clear, though: although Burke spends a great deal of words stressing the importance of actual elections, their practical necessity remains quite obscure for representation of interests by unaccountable decision-makers is in principle compatible with absolute monarchy (Hutchins, 1943: 65; see Pitkin, 1972: 173).

The idea that political representation is an undemocratic device started to spread and became an established view until recent years.⁵⁷ Its conceptual roots must probably be traced back to both Montesquieu and Rousseau (see Urbinati, 2006: 6), but a similar argument can also be found in Constant, who claimed that representative governments allow their citizenries to exercise sovereignty only "at fixed and rare intervals" and "always only to renounce it" (Constant, [1819] 1988: 312); and Tocqueville describing America as a socially democratic, but politically aristocratic system (Tocqueville, [1835-40] 2000; see Urbinati, 2006: 1-3). In more recent years, then, indicative of this line of thought are both Manin's characterisation of representative democracies as *mixed constitutions*, that is, as political systems combining democratic and non-democratic components (Manin, 1997; see Landemore, 2008); and Dahl's coinage of the term "Polyarchy" to describe modern polities, in

⁵⁷ From this point of view, Urbinati's unapologetic defence of political representation as a genuine democratic device undoubtedly represents a ground-breaking contribution to the debate (see Urbinati, 2006).

which popular self-determination results more from the competing activity of different political agents rather than from the direct involvement of the democratic populace (Dahl, 1998: 225 ff.). Therefore, having all agreed in conceiving of political representation as an adaptation to conditions of social complexity, scholars have started questioning its democratic credentials so that issues about the appropriate relationship between citizens and political representatives have sparked into a lively debate persisting today.

However, this conception of representative democracy as just an oxymoron or second-best adaptation to conditions of social complexity essentially depends on a purely voluntaristic interpretation of popular sovereignty as a source of political legitimacy, whose dangers are in principle to be countered by an impersonal and rationalistic science of politics. Based on the historical exemplar of Athenians face-to-face deliberations, it is an ideal that is no longer feasible in the mutated conditions of modern nation-states, and perhaps not even an altogether desirable one once we recall the experience of Socrates' death. However, if we follow the lead of deliberative democracy and start conceiving of democratic legitimacy as the product of an internal relation between will and reason, we come to see how the reconstruction of democratic practice of modern nation-states is actually to be preferred to its ancient counterpart. On this account, political representation can no longer be considered merely antithetical to democratic participation but must rather be thought of as complementary to it and, thus, a genuine democratic device (Urbinati, 2006: 4).

In fact, representative institutions play a crucial function in the practical realisation of deliberative democracy. *First*, having tracked citizens' interests and opinions, they are responsible for mediating between them so as to advance solutions to social problems that give equal concern to all the parties involved. As seen above, deliberative democracy as grounded in the co-originality thesis requires public deliberation to be geared towards the construction of an impartial perspective giving equal consideration to everyone's interests (Rummens, 2007: 336-7). Citizens do not have "a voluntaristic, carte blanche permission to make whatever decisions they like", but must rather exercise their public autonomy "in the sense of a *reasonable* will-formation" (Habermas, 2001a: 767 emphasis in the original). For this to happen,

the otherwise unilateral will of democratic majorities must go through the deliberative procedures of the constitutional state with separation of powers so as to filter out all non-generalizable interests and acquire the form of an omnilateral will expressing only the general interest (see Rostbøll, 2016: 796). The intuition of co-originality, then, stresses the fact that the form the constitutional state imposes on the will of citizens is neither precedent nor a product of such will, but rather is inscribed within it - the equal recognition of individual and private autonomy is a fundamental presupposition that all participants to moral and political discourse must already accept (Habermas, 2001a: 778-9; Rummens, 2006: 476-7). *Second*, representative institutions also enable a constructive and transformative process that is crucial for citizens to develop their interests and opinions in the first place (Rummens, 2012: 29). The intuition of private and public autonomy being reciprocally constitutive supports this conclusion (Cooke, 2020: 572). Indeed, it grounds a conception of political representation that breaks up with the standard principal-agent model of liberal democracy, either conveyed in the delegate or trustee version, to endorse a more dynamic and constructive account of such a process. In fact, the linear and unidirectional relationship that in the standard model connects pre-existing constituencies to their elected representatives is replaced by an ongoing two-way process of interaction where political representatives are no longer thought of as merely responding to antecedently constituted interests and opinions, but rather as drawing on existing views and values so as to raise representative claims that help citizens (trans)form their preferences and political judgements (Saward, 2006, 2010).⁵⁸

This leads us to conceive of representative democracy as enabling an ongoing and self-corrective deliberative practice for problem-solving that circularly proceeds in and out of representative institutions. On the one hand, this circular process is aimed at ensuring the reasonableness of collective decisions. The idea is that solutions to social problems that are firstly detected in the broad public sphere must be reflexively elaborated within representative institutions to be then brought back to

⁵⁸ As Rummens rightly observes, this should not lead us to conclude that citizens are “a merely passive ‘audience’ influenced and shaped by political actors”, for they rather exercise an active role in either accepting, rejecting or engaging with the representative claim they have been presented (Rummens, 2012: 30; see also Saward, 2006: 303).

public scrutiny and social testing. Were such solutions found flawed, they could always be revised, in an enduring self-corrective process that may in principle ensure some normative and technological progress over time.⁵⁹ On the other hand, the same circular process is also crucial for citizens to shape their interests, judgements and life plans in full awareness and solidarity with others. A shared deliberative practice also involving political representatives and experts from various fields is indeed fundamental for citizens to draw and pursue coherent and reasonable plans of life. It is indeed clear that for the sake of this task citizens must both rely on experts to acquire knowledge about the relevant features of the world and also have access to their fellow citizens' intentions in order to understand how these can be reasonably intertwined with theirs (see Honneth, 2014). Political representation is thus integral to democratic participation for both the people and their will are intersubjectively constructed via an institutionally mediated public dialogue.

This is not to downplay the risk of elitism in representative decision-making. If reliance on political representatives and experts is not per se problematic, it remains certainly true that specific conditions must apply. On the one hand, it is important that political representatives/experts and the lay public stand towards one another in a relationship of "critical interaction" (Habermas, 1970: 66; Bohman, 1999: 597), as the risks of technocracy can be avoided only by instituting an intense communication between the two subjects. This is crucially achieved thanks to the two essential features of political representation, that is, *authorisation* and *accountability*. Whereas through the former ordinary citizens consent to political representatives taking decisions on their behalf, through the latter they incentivise them to maintain the communication flow open and to act in ways they think may be agreeable to their constituents base (Brown, 2006: 210-1). On the other hand, it is important for citizens to be in a position where they can reflexively assess and (re)problematize the terms of their social cooperation with political representatives/experts so as to eventually modify them whenever they think this is necessary (Bohman, 1999: 599 ff.). As already stated, democracy must be viewed as a reflexive order "in which people delib-

⁵⁹ In this regard, Habermas speaks about a progressive alignment between will and reason that "can develop only in the dimension of time" (Habermas, 2001a: 768).

erate together concerning both their common life and the normative and institutional framework of democracy itself” (Bohman, 2007: 5). In the following chapters, I will consider whether deliberative mini-publics may be well-suited for the sake of this task. Indeed, they may have the advantage of both countering for the conflict of interests other institutional actors often display and also help questions of institutional design to be dealt with in a more deliberative fashion.

Having defended representative democracy as a coherent reconstruction of the democratic ideal for the conditions of social complexity raised by the development of modern nation-states, in what follows, I consider some of the aspects contributing to current increases in social complexity to then argue that a further reconstruction of the democratic ideal is nowadays required. This will set the stage for an analysis of deliberative mini-publics as part of this project.

III.III Contemporary Complex Societies: A Systemic Approach to Deliberative Democracy

In the previous section, I rejected the well-established thesis in political theory according to which representative democracy is nothing but an oxymoron or second-best adaptation of democratic ideals to conditions of social complexity. Contrary to this view, I defended the idea that political representation is a genuine democratic device, at least if certain conditions apply. The fundamental aspect I tried to stress concerns the positive effects of a circular process of critical interaction between the lay public and its political representatives, which crucially depends on authorisation and accountability as the two defining features of political representation. As I argued, this is to be viewed as crucial for citizens to foster the exercise of their own private and public autonomy.

The question that remains to be asked concerns whether the institutions of liberal democracy are still suited to fulfil this goal in the actual conditions of renewed social complexity. Although liberal democracy already provides an institutional response to both the social facts of pluralism and modern complexity, its functioning nowadays reveals new organisational issues and legitimacy problems that may seem difficult to overcome. This is especially true if we consider how contemporary

complex societies are characterised by an increased policy-making role for elites of experts that escape public notice and accountability. Delegation to non-majoritarian bodies evading public accountability is problematic for it risks undermining the circular process of interaction that links citizens to their political decision-makers, which we saw constitutes the cornerstone of the legitimacy of representative institutions (Papadopoulos, 2013: 4). Hence, the question is whether current increases in social complexity are sufficiently high to motivate a further reconstruction of democracy's theory and practice. We need to establish whether the advocated deliberative model must either maintain the perhaps outdated organisational structures of liberal democracy, thus inheriting its current problems of legitimacy, or rather shift to an alternative institutional framework, which may well raise renewed scepticisms about the prospects of its concrete realisation – as Bohman phrase the problem “either deliberation is confined to the institutions of liberal democracy and thus inherits all their problems of legitimacy; or it proposes its own institutions and decision-making procedures, at the cost of making its own democratic legitimacy infeasible” (Bohman, 2004: 23).

In what follows, I examine some of the main aspects contributing to current increases in social complexity to outline three of the main challenges that a solid reconstruction of democratic theory and practice must face. On the account that standard representative institutions of liberal democracy no longer possess the deliberative capacity to regulate complex societies, I endorse a systemic approach to deliberative democracy as a valid normative reconstruction of the democratic ideal (Parkinson and Mansbridge, 2012). As we shall see, the problem that remains is to determine whether deliberative systems can be made democratic. This sets the stage for a discussion about the generalised use of deliberative mini-publics for political decision-making as an innovative institutional proposal aimed at solving the democratic deficit of contemporary complex societies.

To begin with, we may note how Dahl described the process of institutional adaptation to conditions of social complexity as progressively taking place in consecutive stages of organisational development, thus speaking about *Polyarchy I*,

II, and III (Dahl, 1998: 338).⁶⁰ An argument with which I will not directly engage conceives indeed of social complexity on an evolutionary basis; that is, as a process of variation through which social schemes, by stabilising their forms of adaptation, tend to produce the conditions for further change, thus proceeding towards ever more complex forms of social organisation (Luhmann, 1977: 42; see Zolo, 1992: 4). Nonetheless, it is beyond doubt that current conditions of social complexity seem more intractable than ever. This led Dahl to sceptically wonder whether any further adjustment of democratic institutions constitutes indeed a real possibility (Dahl, 1998: 224). Following his lead, Bohman argues that what was before a problem of feasibility may have become now an issue of mere possibility, for further reconstructions of democratic ideals impose nowadays so many hard choices upon us that it may even seem unreasonable to still identify them as an instance of democracy (Bohman, 2002: 516). Several aspects concur at increasing our worries about the real prospects of realisation of any democratic ideal in contemporary complex societies. Before illustrating three main challenges a contemporary reconstruction of the democratic ideal must face, I briefly list some of the main factors contributing to current increases in social complexity.

The first factor we need to consider concerns the functional differentiation and ever-growing division of labour between different spheres of activity (political, economic, scientific, etc.). The problem is that, by seeking specialisation, each subsystem tends to produce its own language, techniques and values, thus withdrawing in what Simon called forms of “bounded rationality” (Simon, 1957). In other words, by each producing its own autonomous functional code, subsystems have a tendency to embed themselves into specific forms of understanding that reduce their capacities for reciprocal interaction. However, at the same time, processes of specialisation and functional differentiation also increase the interdependence between each of the subsystems, as they all end up relying upon and being conditioned by the activity

⁶⁰ In the words of Dahl “Polyarchy I resulted from the creation of new institutions necessary in order to adapt democracy to the nation-state [e.g. representative government; elections], and Polyarchy II resulted from the addition of new institutions in order to adapt democracy to the growing need for the mobilization of specialized knowledge to the solution of public problems [e.g. parliamentary commissions, administrative agencies], so Polyarchy III would result from the need to narrow the growing gap that separates policy elites from the demos” (Dahl, 1998: 338).

performed by those with which they must coordinate and interact. The main result of such an increased interdependence is a reduced capacity for prediction and social intervention, resulting from each system having to seek solutions in the absence of full information (Simon, 1957; Zolo, 1992: 4-5).

A significant consequence of the increased functional differentiation and interdependence of the various subsystems in a given political order is the erosion of the hierarchical structures for social organisation and, thus, a transition towards the “polycentric distribution of power” that is typical of non-elementary societies (Habermas, 1996: 317). The scenario we face today is that of a fragmentation of the nation-state on two distinct fronts. On the external side, we witness an increased cooperation between governments of the same political alignment, from which it follows the establishment of effective political authorities operating across national boundaries. As a result, normative power is exercised by regional governments (EU), regional alliances (NATO), global bodies (WTO) and multinational corporations and banks (Dryzek and Niemeyer, 2010: 119). On the internal side, we observe instead a tendency on behalf of the state to both delegate the provision of formerly governmental services to the private sector and entrust a consistent portion of its policy-making activity to the management of administrative and regulatory agencies. If at first service management was regulated by the state through the passing of regulatory statutes or the establishment of regulatory authorities – with the state doing “less rowing but more steering” (Osborne and Gaebler, 1992; see Braithwaite, 2007: 163) – in a second step, the regulation of service provision is institutionalised as self-audit, with the state “auditing the quality of self-audits” (Braithwaite, 2007: 163). Furthermore, it also happens that the state is itself subject to regulation, as global corporations like Moody’s and Standard and Poor have assumed regulatory functions over states by setting credit ratings, whereas international organisations like the International Monetary Fund (IMF) regulate states by imposing conditions for debt repayment (Braithwaite, 2008: 424). Upwards and downwards processes of state’s erosion may then also overlap, as when standards for the quality of different services are set up by international organisations to harmonise the work of different regulatory bodies or corporations operating at the national level. Some of these organisations belong to supranational unions or intergovernmental organisations, whereas

others result from spontaneous initiatives, like the Basle Committee or the increased dialogue between Supreme Courts belonging to different legal orders (see Slaughter, 1997). This plethora of networked institutions characterises the often-mentioned shift from *government* to *governance* – an adaptation to complexity that, according to many, constitutes a new focus for normative democratic theory (Richardson, 2002: 8; Braithwaite, 2007; Dryzek and Niemeyer, 2010: 120).

A further aspect requiring attention concerns the raise of social problems that no single state can autonomously tackle. The increased mobility of financial capitals, climate change and mass migrations all pose challenges whose solution depends on the cooperation between different national units. The result is a deepened interdependence among states at the global level so that today's social complexity culminates in the social fact of globalisation (Bohman, 2002: 509). In the complex system of global interdependencies, smaller polities are often exposed to the dominating power of larger ones, with their governments thus turning unable to meet their constituencies' demands and needs. However, not even the most powerful ones "remain unaffected by the changing conditions and processes of regional and global entrenchment" (Held, 1999: 102-3). The pressing question concerns thus the possibility to organise some form of fair political organisation beyond national boundaries.

Given these factors, any attempt to provide a reconstruction of democracy's theory and practice faces at least three main challenges. The *first* concerns the problem of conceptualising popular sovereignty in the absence of both a homogeneous public sphere and a well-defined *demos*. The dispersion of democratic discourse in diffuse communicative networks and the erosion of territorial outlines through which a *demos* could have been traditionally defined once again force us to raise the question about who are "the people" whose will can legitimate political authority. The *second* concerns the fact that, under current conditions of social complexity, "no single forum, however ideally constituted, could possess deliberative capacity sufficient to legitimate most of the decisions and policies that democracies adopt" (Parkinson and Mansbridge, 2012: 1). On the one hand, many institutions may lack in their internal discussions the sort of impartiality that is required by the advocated ideal. On the other hand, in highly differentiated societies, each institution is doomed to take decisions in the absence of full information so that the problem is about how to organise

institutional interactions so to enhance the prospects for reliable policy outcomes. The *third* problem concerns the possibility to institutionalise some form of democratic control in complex policy environments. This is a twofold question: in formal terms, it is about how to structure the relationship between majoritarian and non-majoritarian bodies so as to prevent the latter from carrying out their functions democratically unchecked; in substantive terms, it is about how the people and their representatives can ever acquire the competence they need to exercise democratic control in a non-trivial way.

The recent systemic turn in deliberative democracy suggests itself as a coherent reconstruction of the democratic ideal for contemporary complex societies (see Parkinson and Mansbridge, 2012). Its main precept is to broaden the scope of analysis by shifting the normative focus from single institutions to complex “deliberative systems”. The starting premise is that in complex societies no single institution can possibly jointly satisfy deliberative and democratic desiderata up to a suitable degree. However, evaluating institutions by focusing on their inherent features without considering how they interact with the remaining institutional framework is likely to produce mistaken verdicts. This is because, in many circumstances, institutions that seem weak in either one or the other respect may still turn out to have a positive impact on the system overall by making up for the shortcomings of others. Normative assessments should thus always be carried out from a systemic perspective that takes into account how institutions interact with one another. Attempts to improve the legitimacy of political systems should be in turn mainly concerned with providing suitable arrangements for each venue to be adequately connected with the whole institutional framework.

For instance, research on deliberative democracy has often neglected the topic of political parties and their role in a democratic system, as it conceived of them “as belonging to the wrong side of the aggregation-deliberation dichotomy” (Van Biezen and Saward, 2008: 24; see also Johnson, 2006: 48; Muirhead, 2010). Given their reliance on group loyalties and adversarial rhetoric, political parties have often been thought of as scoring low in deliberative terms and indeed more as a hindrance to a reasoned debate aimed at reaching consensus. Conversely, deliberative mini-publics have often been emphasised as the most promising effort to institutionalise

deliberative democracy in contemporary societies (Elstub, 2014: 166; Elstub and McLaverty, 2014: 14; Fung, 2003: 339; see Curato and Böker, 2015: 173). However, the verdict may slightly change once we focus on how such institutions interact with their surroundings. Certainly, political parties exert crucial democratic functions, as they mobilise people, synthesize political projects using the vocabulary of the common good, and also frame political issues in ways that are intelligible to the general public (White and Ypi, 2016: 64). However, once we consider political parties in relation to one another – and we should, because parties are parts of a bigger whole (Bluntschli, [1869] 2002; see Ypi, 2016: 612) – we may conclude that their adversarial interactions can even further the deliberative goal, for conflictual discourse is after all also a stimulus for deepening the understanding of political issues (White and Ypi, 2011: 62 ff.).⁶¹ Conversely, although exemplary in deliberative terms, mini-publics may attract less enthusiasm once we consider them from a systemic perspective, as potentially having the undemocratic effect of replacing mass deliberation in the broad public sphere (Chambers, 2009; Lafont, 2014, 2019). Hence, as I will argue more in detail in the following chapter, any attempt to improve the legitimacy of deliberative systems via the generalised use of mini-publics should focus on their systemic integration within the whole institutional framework. As Mansbridge et al. (2012: 3) argue, when assessing institutions from a systemic perspective, it becomes particularly important to look at relationships of *complementarity* and *displacement*. Whereas the former indicate situations where two institutions make up for each other's weaknesses by way of their interaction, the latter refer to circumstances where the activity of one institution displaces, inhibits or nullifies that of another. For mini-publics to be justified on democratic grounds, it will thus be necessary to show that they can be integrated within the overall deliberative systems in ways that complement rather than displace the activity carried out within the broad democratic public sphere.

⁶¹ This is not to deny that partisanship has also its drawbacks. As even White and Ypi explicitly acknowledge, political parties remain exposed to certain “pathologies”. Depending on circumstances, they may indeed be subject to the incentive of presenting policy issues in either an “obscure” or “less-than-reasonable” way. They may also often display a conformist behaviour that reduce their ability to autonomously correct for such shortcomings (White and Ypi, 2016: 68 ff.).

It is thus by virtue of its emphasis on shifting the normative focus at the systemic perspective that the deliberative system approach suggests itself as a coherent reconstruction of the democratic ideal for contemporary complex societies. It rightly captures how, in today's conditions of social complexity, democratic deliberation occurs across a wide array of formal and informal decision-making sites so that research should focus on their reciprocal interaction. Hence, on the one hand, it acknowledges that contemporary democracies can no longer rely on the idea of a unitary and relatively independent public sphere whose critical opinion must be translated into legislative will (see Fraser, 1992: 117-8). As the advocated constructive account of democratic representation explicitly suggests, we cannot think of the "sovereign people" as a pre-existing entity to be found somewhere so that its will can be channelled into representative decision-making. On the contrary, we must conceive of the broad public sphere as comprising a wide array of competing publics activated and shaped by political discourse around specific problem situations (Dewey, 2012 [1927]: 126; Fraser, 1992: 116). On the other hand, it also acknowledges that in complex societies public deliberation does not only take place in some unitary and privileged institution, such as the parliament or courts, but is rather sequentially "distributed" across multiple stages involving different actors with different roles and intentions so that deliberative standards must be searched as the product of this complex system of networked interaction (Goodin, 2008: 186; Parkinson, 2006: 166-73).

However, the point on which the deliberative system approach scores significantly lower is that concerning the prospects of institutionalising some form of democratic control in complex policy environments. Indeed, the conclusion that no single decision-making site has to necessarily qualify as both democratic and deliberative risks translating into "another vindication of a post-democratic order in which decision-making in elitist expert bodies is shielded by a façade of electoral democracy" (Landwehr, 2014: 41; see also Owen and Smith, 2015; Hendriks, 2016). As already anticipated, this problem comprises two interrelated aspects: a *formal* one concerns how citizens can, either directly or through their representatives, control the way deliberative systems proceed in taking formal decisions; and a *substantive* one concerning how they can gain the competence they need to exercise such control in a non-trivial way.

Concerning the first issue, we already pointed out how elected legislatures face increasing difficulties in steering the policy-making activity of the administrative sector. Administrative agencies operate with a large degree of discretion and are, thus, responsible for an unchecked and arbitrary influence on policy outcomes – as Richardson observes, the arbitrary power of administrative agencies “plainly coexists with a democratically elected legislature when that legislature lacks the effective legal tools to control what the administrative agencies do” (Richardson, 2002: 4). At first, administrative discretion was considered unproblematic on the premises of a sharp distinction between means and ends. As long as agency rule-making abstained from making value-judgement to merely provide the instruments for the realisation of governmental mandates, no issue of legitimacy could possibly arise (Christiano, 1996: 215 ff.).⁶² However, as I argued above, this clear-cut divide between means and ends does not withstand scrutiny. Indeed, nowadays, pure instrumentalism in agencies’ mode of reasoning is often dismissed as “unrealistic”, “naïve”, or even “stupid” (Richardson, 2002: 97 ff.; 2000). In fact, whereas the choice between alternative means inevitably involves value trade-offs, the pursuit of specific ends must also necessarily vary in consideration of practical difficulties and available means. Hence, whereas legislatures cannot set ends that are definite enough “to preclude a pressing need for further reasoning about ends at the agency level” (Richardson, 2005: 193), agencies cannot proceed democratically unchecked in the choice of alternative means. Given these facts, the deliberative systems approach must provide an answer on what organisational arrangements may be needed for systemically distributed deliberations to be also considered democratic.

The second aspect concerns the ability of both citizens and their elected legislatures to effectively exercise some form of democratic control over systems in a non-trivial way. As already said, the increased division of labour and functional differentiation of non-elementary societies engender an ever-growing specialisation

⁶² On this account, the so-called “transmission belt theory” relied on a sharp division of labour, where elected legislature had the responsibility to solve value disagreements about the ends of policies, administrative agencies that of identifying the best possible means to realise such ends, and courts that of preventing any unauthorised deviation from the legislative diktat (Seidenfeld, 1992: 1516).

and discontinuity of languages that reduce the ability of interaction between different decision-making fora. Noticeably, this is also true in the case of elected legislatures, whose capacity to steer the decision-making activity carried out in other subsystems encounters today increasing epistemic difficulties. This means that, even possessing all the necessary legal tools to monitor experts' bodies, elected legislatures may still be unable to competently scrutinise their activity. Notoriously, this is also true about citizens, who are often despised for even lacking the minimal competence for a meaningful exercise of their voting rights. On this account, one may conclude that contemporary democracies are inevitably bound to evolve in techno-oligarchic modes of governance, where public decisions are taken by oligopolistic power networks that make no room for democratic control (Zolo, 1992). Others may favour a depoliticisation of public decisions so that experts can remain undisturbed from the noise of democratic politics while seeking well-informed solutions to pressing social problems (Pettit, 2004). Still, others may support new forms of disenfranchisement in an attempt to cleanse public decision-making from the polluting influence of ignorant citizens (Brennan, 2009, 2016; Caplan, 2007).

However, from a systemic perspective, we cannot but conclude that ignorance is a common condition nowadays and knowledge a widely dispersed good. Effective solutions to social problems require cooperative effort precisely because "only the full collective knowledge of the group can achieve social control and effective social policies" (Bohman, 1999: 594). Having then conceived of epistemic competence in systemic terms, we must conclude that the reliability of every single forum is itself a function of its integration with the overall system, whose main goal is to promote a truth-sensitive channelling of information across fields. The same conclusion applies to ordinary citizens. Whereas contemporary critics (and supporters) of epistemic democracy focus on the wisdom of democratic publics as a function of individual competences, my suggestion is to consider also the reverse of the picture. From a systemic perspective, the capacity of single forums and individual citizens to express sensible judgements is itself a function of the institutional framework in

which they are integrated.⁶³ The design of deliberative systems should thus take advantage of that branch of social epistemology that goes under the name of “institutional epistemology” (Anderson, 2006), whose fundamental task is to investigate how socially dispersed information can be institutionally gathered so to bear on the solution of social problems. Hence, a fundamental parameter for the evaluation of alternative institutional designs will concern their aptitude to produce knowledge as a shared and usable resource (Bohman, 1999: 592) – an aspect this latter that was firmly stressed by Dewey, who emphasised the importance of a free distribution of the conclusions of social inquiry (Dewey, 2012 [1927]: 119 ff.).

In the following chapters, I will consider whether deliberative mini-publics may have a role in the systemic reconstruction of the deliberative democratic ideal. I will consider them mainly as tools apt to promote a non-trivial form of democratic control within deliberative systems. Hence, on the one hand, I will investigate them as devices apt to strengthen the chain of transmission between informal public spheres and formal decision-making sites. On the other hand, I will also consider them as tools for redistributing the results of social inquiry to democratic publics and, thus, as resources for discussions within the broad public sphere to be carried out in a more deliberative fashion.

Conclusions

In this chapter, I endorsed a reconstructive approach to normative democratic theory that conceives of social changes as triggering the need for progressive reconstructions of democratic norms and practices. I thus challenged the widely held view in political theory that considers representative democracy as either an oxymoron or

⁶³ A similar perspective can be found in Talisse, who refutes Richard Posner’s (2002, 2003, 2004) and Ilya Somin’s (1998, 2004) “public Ignorance Objection” to deliberative democracy, by arguing that, for their argument to be valid, it is insufficient to show that citizens are misinformed, for we must instead prove that they are “incompetent and hence *unable* to muster the cognitive resources necessary for deliberative democracy”. Indeed, if it were simply the case that citizens are found holding false beliefs because of missing access to correct information, then the problem in front of us would be more that of a failure of “civic institutions that are responsible for enabling deliberation” (Talisse, 2004: 459 emphasis in the original).

second-best adaption to the conditions of social complexity raised by the development of modern nation-states. Conversely, I argued that representative democracy counts as a coherent reconstruction of the democratic ideal and that political representation must be viewed as complementary rather than antithetical to democratic participation. Finally, I scrutinised some of the aspects concurring to current increases in social complexity, arguing that a further reconstruction of the democratic ideal is nowadays needed. I thus defended the systemic approach to deliberative democracy as a coherent reconstruction for the conditions of social complexity raised by the development of polycentric societies. As I argued, despite its points of strength, the systemic approach must still provide a convincing answer about how to organise non-trivial forms of democratic control within deliberative systems. The next chapter discusses whether a generalised use of deliberative mini-publics for political decision-making can positively contribute to such an effort.

IV. Democratic Reconstructions: Representing a Decentred Public Sphere

Introduction

In the previous chapters, I defended a liberty-based account of deliberative democracy by arguing that free and equal citizens are entitled to discursively determine the terms of their social cooperation, including the democratic practices and institutions through which they can do so (Bohman, 2007: 2). Having endorsed an ideal of democratic legitimacy that covers a *via media* between procedural and epistemic accounts, I ended up conceiving of democracy as a reflexive method for problem-solving, through which abstract norms are contextually specified and experimentally tested by a plurality of subjects in an ongoing and self-correcting process of critical revision and progressive adjustment. Importantly, the inclusion of democratic norms among those requiring contextual specification and practical testing has grounded what I called a reconstructive approach to normative democratic theory, whereby social changes are conceived of as triggering the need for progressive reconstructions of democratic norms and practices. Having indeed conceived of abstract norms as always in need of contextual specification, I refrained from searching for an optimal model of democracy that is always applicable to all societies, instead arguing for a more pragmatic approach constantly reinterpreting democratic norms and practices in response to ever-changing socio-historical circumstances.

To clarify this way of proceeding, I examined the case of representative democracy and its highly contested democratic credentials. Whereas many have conceived of representative democracy as either an oxymoron or second-best adaptation to conditions of social complexity, the methodological approach I advocated allowed me to consider political representation as a genuine democratic device. Not only, but given the account of democratic legitimacy I endorsed, representative institutions had to be seen as even marking a democratic improvement. I indeed praised them

for fostering an alignment of the procedural and epistemic dimensions of democratic legitimacy by means of an institutionally mediated deliberative process that is aimed at progressively refining and adjusting prospective solutions to social problems. I thus set forth an understanding of representative institutions as enabling an ongoing and self-correcting circular process of deliberation that is aimed at ensuring the reasonableness of collective decisions. According to this view, social problems that are firstly detected in the broad public sphere must be then taken up by receptive parliamentary institutions with the aim of finding impartial solutions to be in turn re-submitted to democratic scrutiny and social testing.

However, I concluded the previous chapter with an analysis of how current increases in social complexity risk putting into question the correct functioning of the model above. I thus referred to the progressive erosion of the hierarchical structures of the nation-state, and the resulting move towards a polycentric society characterised by a proliferation of interdependent decision-making sites, as all factors motivating a further reconstruction of deliberative democracy. As I argued, the systemic approach provides such an answer. It rightly captures how democratic deliberation is today distributed across a wide array of formal and informal decision-making sites so that democratic publics and deliberative standards should be searched as a product of their systemic interactions. However, I also noted how the systemic approach was considerably weak in not having yet provided a convincing answer about how non-trivial forms of democratic control can be instituted in complex policy environments. Different strategies have been put forward to secure this result. Here, I briefly review two of them, which I find relevant and worthy to be pursued. I focus then on a third, concerning the enactment of micro-deliberative *fora* aimed at generating an uptake in the wider political system (Goodin and Dryzek, 2006). I concentrate on so-called deliberative mini-publics because of their novelty and need for systematic investigation and because they may serve as integrative tools for the two other strategies I am now going to mention.

The *first* project of reform I want to briefly highlight concerns the possibility of granting governments specific powers of meta-governance over the formation and

functioning of governance networks.⁶⁴ By virtue of their ability to gather both widely dispersed information and various forms of expertise, as well as their reliance on a kind of *reflexive rationality* progressively adjusting prospective solutions to social problems, governance networks are often perceived as a promising route to increasing the problem-solving capacity of political systems.⁶⁵ However, the points of strength of governance networks may also become their irremediable weaknesses. This is because each unit comprising the network participates in the cooperative scheme with a different set of goals, only in part overlapping (O'Toole and Meier, 2004: 685). Therefore, the risk is either that of having enacted policies based on the lowest possible common denominator of individual interests or the occurrence of deadlocks in the negotiation process. As the argument goes, then, granting governments special prerogatives over the formation and functioning of networks could not only increase the democratic legitimacy of the system overall, but also enhance the substantive quality of policy outcomes. Both the risk of having enacted public policies on the lowest possible common denominator and the occurrence of deadlocks could indeed be warded off by means of democratic authorities having powers of ratification, veto and amendment through which they can supervise the functioning of networks or have the last word on policy enactments (O'Toole, 2007: 218-19).

A *second* widely discussed reform project concerns the need to rethink the organisational structure of political parties, with particular attention to intra-party deliberation (Wolkenstein, 2016; see Invernizzi Accetti and Wolkenstein, 2017; Biale and Ottonelli, 2018). The aim is to restore political parties in their crucial function of linkage and mediation between the broad public sphere and its decision-making sites (see Sartori, 1976; Wolkenstein and Ebeling, 2018). Having acknowledged their attested crisis (Daalder, 2002; Whiteley, 2010; Mair, 2013; see Invernizzi Accetti and

⁶⁴ By network governance I refer to a non-hierarchical mode of political organisation in which a plurality of actors (both public and private) exert regulatory functions by cooperating on a mostly consensual basis (see Hazenberg, 2015).

⁶⁵ As Sørensen and Torfing suggest, this is especially true if the terms of comparison are: on the one hand, the *substantive rationality* of centrally organised governments, exerting regulatory functions by imperatively translating societal aims into definite policies and regulations; and, on the other hand, the *procedural rationality* of competitive markets, seeking Pareto-optimal results through the unconcerted action of individual economic actors. This is because, whereas hierarchical modes of organisation seem nowadays virtually impossible due to the complexity of issues to be dealt with, the prospects of deregulation must also remain limited due to the systematic occurrence of market failures (see Sørensen and Torfing, 2007: 12).

Wolkenstein, 2017: 97),⁶⁶ scholars have sought to both redeem the role of partisanship in deliberative democratic theory (see Ypi, 2016; White and Ypi, 2016) and to reorganise intra-party deliberation so to make party leaderships more tied and responsive to their electoral base (see Invernizzi Accetti and Wolkenstein, 2017). As it is worth reminding, the role of linkage political parties are to perform remains crucial to enabling the kind of reflexive control deliberative democrats consider fundamental for the legitimacy of political systems (see Biale and Ottonelli, 2018: 2).

A *third* project of reform, on which this research focuses, aims instead at improving the deliberative quality of the public sphere, as well as its connections with relevant decision-making sites, by institutionalising the more or less periodical enactment of micro-deliberative *fora*, where randomly selected citizens are called to discuss specific public issues with the aim of generating an uptake in the macro-political system – call these *deliberative mini-publics* (Goodin and Dryzek, 2006). As it is worth noting, mini-publics can also be used as integrative devices for the two strategies above. In the next chapter, I will clarify further how they may serve in both decisions of meta-governance and as deliberative tools in the hands of more traditional political actors, such as political parties and advocacy groups.

Section I considers three alternative definitions of what counts as a deliberative mini-public. Having compared their relative merits, I eventually adopt an *intermediate* definition, which stresses the values of deliberation and representativeness as defining features of deliberative mini-publics (see Ryan and Smith, 2014; Pomatto, 2016). As the term itself suggests, for an institution to be considered as such, it must both seek deliberative solutions to social problems and be representative enough to count as a “mini-public”. I conclude with an analysis of the reasons that prompted an interest in such innovative institutional devices.

Section II highlights some of the worries that a generalised use of mini-publics for political decision-making may raise. I first question whether epistemic reasons

⁶⁶ Factors contributing to such a crisis are the lowering of citizens’ trust towards political parties, high rates of abstention and the increasing dependency of political parties on large donors, whose effect is that of parties’ programs being often more responding to the interests of the latter rather than to the needs of their electoral bases (see Lawson, 2006: 483).

alone are sufficient to warrant the organisational structure of mini-publics and conclude that further appeals to procedural reasons are necessary to justify their participants' selection techniques.⁶⁷ I thus proceed to an analysis of some objections addressing the distinctly procedural aspects of deliberative mini-publics. Mini-publics are predominantly justified for promoting the value of democratic equality. I argue that, although from a systemic perspective mini-publics may still be justifiable on such grounds, the kind of political equality they promote is incompatible with freedom as the most fundamental commitment of democratic legitimacy (see Leydet, 2016). It thus remains to be established whether a liberty-based systemic justification of mini-publics is possible.

Section III starts to open up such a possibility, which will be further explored in the next chapter. I first lay down an understanding of the broad public sphere as comprising a wide array of competing and overlapping publics that are activated by political discourse in relation to specific problem situations. Thus, I also put forward a systemic understanding of political representation that conceives of the latter as comprising a wide array of practices and institutions all representing the people but in different ways (Brown, 2006: 207). I then consider whether mini-publics may deserve a place in such a representative system, putting forward the hypothesis that mini-publics may be useful tools for both specific publics to make their voice heard and as catalysts for the formation of new publics.

IV.I Deliberative Mini-Publics

The model of representative democracy I defended in the previous chapter, which conceives of political representation as enabling a circular deliberative process aimed at ensuring the reasonableness of collective decisions, is inspired by both Habermas' two-track model of deliberative democracy (Habermas, 1996: 304 ff.) and Dewey's ideas of experimental inquiry and democratic experimentalism (see Dewey, 2012 [1927], 1938). As such, it is a model that constitutes already a first step towards the systemic account of deliberative democracy I eventually endorsed. Habermas' first

⁶⁷ I will return on this problem in the next chapter to provide a more nuanced answer.

intention in advancing his own understanding of deliberative politics was to reject Joshua Cohen's account of deliberative democracy as a "model for all social institutions" (Habermas, 1996: 305; see Cohen, 1989). Conversely, Habermas advocated a systemic view that relies on the separation and interchange between "weak" publics autonomously forming in informal public spheres and "strong" ones organised within political legislatures (see Habermas, 1996: 307; Fraser, 1992: 134). The basic idea was to conceive of the former, labelled as weak for their lack of decisional power, as shaping the "context of discovery" by virtue of their "greater sensitivity in detecting and identifying new problem situation" (Habermas, 1996: 381). The latter, given their role in finding impartial solutions to emerging social problems, were instead seen as comprising the "context of justification" (Habermas, 1996: 307). This means that Habermas conceived of the standard of high-quality deliberation as to be met only within parliamentary institutions, whereas the broad public sphere could be left carrying on its informal discussions in an unregulated and anarchic form. Hence, in systemic terms, the deliberative quality of parliamentary decisions could retain its democratic credentials by virtue of a steady relation with the informal discussions carried out within the broad public sphere.

However, Habermas' attempt to rethink the project of radical democracy in renewed conditions of social complexity was arguably weak in two main respects.⁶⁸ On the one hand, Habermas overestimated the deliberative capacity and steering power of parliamentary assemblies. Yet, serious doubts about the prospects of such assemblies to exert their core functions had already been raised since the beginning of the last century.⁶⁹ Most pressing concerns were related to an increased tendency to make decisions behind the closed doors of party committees often co-opted by strong and organised interests, with debates and decisions within parliaments thus becoming a mere façade (Schmitt, 1985: 50). As I already argued, similar concerns are more seriously felt in the conditions of a polycentric distribution of power that is

⁶⁸ In what follows, I rely on (Leydet, 1997).

⁶⁹ Amongst the others, Leydet mentions Carl Schmitt's study on *The Crisis of Parliamentary Democracy* (1985) as particularly indicative, and indeed well-known to Habermas since his work on *The Structural Transformation of the Public Sphere* (1991; see Leydet, 1997: 43).

distinctive of network governance. What we increasingly experience is indeed a reduction of governments' steering capacity and a tantamount expanded administrative power that is both responsible for an unchecked influence on political outcomes (Richardson, 2002) and more easily co-opted by organised interests groups (Lowi, 1979; O'Toole and Meier, 2004; O'Toole, 2007). It is on this account that the above-mentioned reforms aimed at granting governments special powers of meta-governance over networks become pertinent.

On the other hand, Habermas left unspecified the precise functioning of the link between the broad public sphere and its elected legislatures. As Leydet observes, the language he used to describe such a connection is "extremely vague and metaphorical".⁷⁰ If then were the case that Habermas thought of this transmission as limited to the selection of political representatives via general elections, then it would become unclear to what extent he proposed a model that is different from standard liberal democracy (Leydet, 1997: 41). It is against this background that the suggested reforms of political parties also become pertinent, for intra-party deliberation may be viewed as strengthening the linkage between the broad public and its representatives.

Nonetheless, the proposal I am going to investigate is of a slightly different kind. Although still aimed at both improving the deliberative quality of democratic systems and their connections with the broad public sphere, it concerns the enactment of micro deliberative *fora*, where randomly selected citizens are called to express their opinion on specific public issues with the aim of generating an uptake in the macro-political system (Goodin and Dryzek, 2006). In other words, the reform project I am going to discuss concerns the generalised use of deliberative mini-publics for political decision-making. Three sorts of questions are relevant here: the *first* concerns the definition of deliberative mini-publics and thus the identification of some minimal conditions for specific assemblies to be considered as such. The *second* revolves around design issues and investigates what kind of arrangements may grant

⁷⁰ "He says that formal political institutions must remain 'porous' to the concerns, needs, demands, reasons which are expressed in the general public sphere. He talks about 'communication flows' that come from the periphery and pass through the 'sluices' of democratic and constitutional procedures of parliamentary bodies and the courts, etc. But, nothing more precise comes out of his analysis" (Leydet, 1997: 41).

deliberative mini-publics the best prospects of achieving specified goals. The *third* addresses the possible role deliberative mini-publics may play in deliberative systems (Pomatto, 2016: 239). Having reviewed the alternative definitions of deliberative mini-publics advanced in the literature and having endorsed the one that goes under the name of “intermediate” (see Ryan and Smith, 2014; Pomatto, 2016), I focus on the third question. Questions of design can indeed only be sensibly and comprehensively investigated once we know how deliberative mini-publics are embedded in wider deliberative systems, as well as the specific functions they can serve according to circumstances. Therefore, having argued that mini-publics can both strengthen the linkage between civil society and institutional decision-making and act as catalysts for the formation of new publics, in the next chapter, I discuss the specific functions they may eventually exert. Based on this, I will also make some specific suggestions as to their design.

The first aspect to observe is that, at present, there is no consistent usage of the concept of deliberative mini-public. Different scholars include in such a category a variety of institutional devices, whose differences can be quite significant (Ryan and Smith, 2014: 9). Nonetheless, we can single out three alternative definitions that have been so far predominant: (I) An *expansive* one, proposed by Fung (2003), which includes a wide array of different designs, all promoting a diverse combination of democratic values;⁷¹ (II) a *restrictive* one, advanced by Fishkin (1997, 2009), which focuses on the random selection of a microcosm of participants that is statistically representative of the wider population as the best way to realise the values of political equality and deliberation;⁷² and (III) an *intermediate* one, advocated by Ryan and Smith (2014), which seeks a mediation between the previous two (see Ryan and Smith, 2014; Pomatto, 2016).⁷³ An analysis of their differences paves the way to a better understanding of the reasons and aspects underlying scholars’ interest in this

⁷¹ Within Fung’s definition are included: Deliberative Polls; the British Columbia Citizens Assembly; Planning Cells; Citizens Juries; Consensus Conferences; the 21st Century Town Meetings; Participatory Budgeting; the Chicago Community Policing; the Oregon Health Plan; and potentially others (see Fung, 2003; Ryan and Smith, 2014).

⁷² Notoriously, Fishkin’s restricts his focus on deliberative polls (see Fishkin, 2009).

⁷³ Beside deliberative polls, the intermediate definition also includes: the British Columbia Citizens’ Assembly; Planning Cells; Citizens Juries; Consensus Conferences; the 21st Century Town Meetings (see Ryan and Smith, 2014).

sort of democratic innovation. It is on the basis of such highlighted characteristics that I proceed towards an assessment of whether a generalised use of deliberative mini-publics can be defended on democratic grounds.

In a seminal survey article (2003), Fung provides an *expansive* definition of mini-publics by including within such a category a wide array of institutional devices, respectively advancing diverse trade-offs of democratic values. Despite their differences, the institutional forms Fung investigates all share the following characteristics: (I) They “reside in the middle range of democratic institutions – in the neighbourhood of administrative agencies and secondary associations rather than constitutions and basic structures” (Fung, 2003: 339). This implies that Fung conceives of deliberative mini-publics as primarily employed in the administrative sector and for the improvement of regulatory policies. A conclusion strengthened by the second commonality, according to which deliberative mini-publics (II) mainly focus on specific practical problems, such as “providing public safety, training workers, caring for habitats, or constructing sensible municipal budgets”. Then, a further relevant aspect shared by all definitions is that (III) they involve ordinary citizens affected by the problem at hand and the officials close to them. One general aim of deliberative mini-publics is indeed to compensate for the disproportionate influence that organised interests exercise in political decision-making by empowering ordinary citizens. From this point of view, deliberative mini-publics should thus be read as a distinctly systemic attempt to restore the value of democratic equality (see Leydet, 2016). Finally, (IV) they seek deliberative solutions to social problems (see Fung and Wright, 2003: 15-16). On further aspects, such as the number of participants or the recruitment method, Fung allows a leeway, assuming that different circumstances will imply alternative institutional choices.

Conversely, these two criteria (i.e. numbers of participants and selection method) play a crucial role in Fishkin’s *restrictive* definition. The institutional form Fishkin advocates for goes under the name of Deliberative Poll. Deliberative Polls are deliberative *fora* where a large group of randomly selected citizens is brought together to be informed by experts about specific practical problems to which a deliberative solution is to be found. Hence, the main features of Fishkin’s restrictive account are: (I) random selection of a microcosm that is statistically representative

of the wider population; and (II) deliberation. The former aspect, on which Fishkin places great emphasis, is conceived of as fundamental to both realise the democratic values of political equality and representativeness and to let the deliberative process achieve the required quality standard. Indeed, on the one hand, random sampling realises political equality both by giving each an equal chance of being selected and by generating a microcosm that is statistically representative of the wider population (Fishkin, 2009: 44). On the other hand, it also contributes to deliberative quality both by ensuring a sufficient diversity of viewpoints and by reducing the influence of partisan feelings of passionate and engaged citizens (Fishkin, 2009: 23; Leydet, 2016: 359). The number of participants is equally important because small groups would fail to be representative of the wider population – to be considered a “mini-public”, the deliberative forum must include enough participants to count as a microcosm of the wider population (Fishkin, 2009: 114). It is thus on these grounds that Fishkin differentiates his advocated deliberative polls from other kinds of deliberative *fora* included in Fung’s definition. Small numbers, self-selection, and quasi-random techniques⁷⁴ all violate the principles of political equality and representativeness so that deliberative *fora* relying on such features cannot be properly considered “mini-publics”.

Finally, *intermediate* definitions, sponsored by Ryan and Smith (2014) and Goodin and Dryzek (2006), follow Fishkin in stressing the importance of representativeness and deliberation without though insisting too much on the requirement of “pure” random sampling (Ryan and Smith, 2014). This is not only because it is often difficult to achieve it for practical reasons but also because, in many contexts, it seems undesirable. For instance, in circumstances where the policy to be decided significantly affects a minority, or in situations where degrees of affectedness clearly differ to a significant degree, over-sampling techniques may well be welcomed as a

⁷⁴ By quasi-random I mean stratification and quota sampling methods aimed at ensuring the participation of specific social groups, whose viewpoints may be deemed particularly relevant depending on the policy-issues to be discussed. When stratification and quota sampling methods are adopted, the population is divided in non-overlapping sub-groups, from each of which a simple random sample is eventually selected. Stratification can in turn be proportioned or disproportionate; whereas in the former an equal sample is taken from each stratum, the latter allows diverse samples to be taken from different strata. Disproportionate stratification is usually aimed at oversampling specific disadvantaged groups (Leydet, 2016: 365 ft. 8).

way of ensuring that the voice of such groups is adequately heard and eventually taken into account (Ryan and Smith, 2014: 17).

For the purpose of this research, I follow the intermediate definition by stressing the importance of representativeness and deliberation. While the reasons to depart from the more restrictive definition are the ones just stated, taking distance from the more expansive one is justified by the fact that it also includes devices that rely completely on self-selection (see Goodin and Dryzek, 2006: 220; Ryan and Smith, 2014: 19). The problem with self-selection is that, by vitiating representativeness, it also impinges on the kind of deliberation mini-publics seek to realise, which remains a core feature under all the definitions considered. By relying on self-selection, we irremediably run the risk of participation in panels being affected by factors such as political involvement and availability of time, thus paving the way to a deliberative process that is both marked by the disproportionate presence of certain social groups and contaminated by strong partisan feelings. After all, then, holding deliberation and representativeness as the core defining features of deliberative mini-publics seems reasonable once we consider the term itself, for what the word “mini-public” implicitly suggest is the idea of such deliberative *fora* mirroring the composition of the wider democratic society.

Having endorsed the intermediate definition, in the next chapter, I also consider some institutional devices that can be considered in analogy to more standard deliberative mini-publics. It is worth reminding that a feature of Fung’s definition, which seems to remain unquestioned by others, is to conceive of mini-publics as residing in the “middle range of democratic institutions” (Fung, 2003: 339) and, thus, as being employed mainly in the administrative sector. In the next chapter, I slightly broaden the perspective by including some analogous institutional experiments that, although they maintain the other defining features of a deliberative mini-public, have been thought of for higher institutional levels, namely the constitutional and legislative. What I have in mind is, on the one hand, the institutional experiment of the National Forum preceding the drafting of Iceland’s crowdsourced constitution, where a group of quasi-randomly selected citizens set up the guidelines the Constitutional Council had to follow in drafting the new document in 2011. Although the National Forum cannot be considered a deliberative mini-public under any of the definitions

above,⁷⁵ it still counts as an institutional experiment pointing in that direction. Furthermore, according to Hélène Landemore, a shaping along the lines of a deliberative mini-public also for the Constitutional Council itself may have had positive effects in terms of both procedural legitimacy and epistemic reliability (Landemore, 2015). Hence, the idea of a deliberative mini-public being employed at the constitutional level still figures as a proposal in normative democratic theory and is worthy of being considered.⁷⁶

On the other hand, I also consider institutional proposals such as McCormick's People's Tribune, which have yet not been tested in contemporary political practice (McCormick, 2011). What McCormick suggests is a revival of some institutional devices proper of republican Rome, which Machiavelli later endorsed for the shape of Renaissance republics. His primary goal is to strengthen elite accountability by combining electoral institutions with lottery procedures aimed at empowering ordinary citizens. It is in consideration of the disproportionate influence that economic elites tend to exercise on political outcomes that he puts forward the case for a People's Tribune. This institutional proposal would consist of fifty-one ordinary citizens, randomly selected from lower social classes or disadvantaged groups, gathering for a one-year non-renewable term to study and discuss governmental programmes and policy proposals. Amongst their special prerogatives are: (I) that of vetoing one piece of congressional legislation, one executive order and one Supreme Court decision in the course of one year; (II) that of calling one national referendum on an issue of their choice; and (III) that of initiating an impeachment proceeding against one federal official from each of the three branches of government (McCormick, 2011: 183-4).⁷⁷ The analogies between the People's Tribune and a deliberative mini-publics are evident and even stressed by McCormick himself (McCormick, 2011: 182). The two main unusual aspects concern the timing and the fact that participants are sampled from

⁷⁵ As Landemore observes, its internal proceedings were thought more in terms of preference aggregation rather than genuine deliberation and the number of participants was too small for the diversity of viewpoints to be representative of the wider population (Landemore, 2015: 184 ff.).

⁷⁶ On the same grounds, I will also consider the example of the 2012-2014 Irish Constitutional Convention.

⁷⁷ McCormick's proposal is structured so to address the Constitutional framework of United States. However, as he explicitly states, he can easily be adapted to other polities' institutional arrangements (McCormick, 2011: 171).

only non-wealthy or disadvantaged social classes so that the Tribune is not representative of the wider population in the same way as Fishkin would suggest. However, on the one hand, the frequency with which participants to a deliberative mini-public are supposed to be gathering is not crucial to its definition. Whereas, on the other hand, the fact that they are selected only among lower social classes or disadvantaged groups is perfectly compatible with the oversampling strategies emphasized by the intermediate definition above and also in line with the abovementioned idea of mini-publics comprising ordinary citizens as a compensatory strategy for restoring the value of political equality from a systemic logic. Therefore, it should not sound problematic to consider the Tribune at least as an analogue to more traditional mini-publics. What is most peculiar about it, though, is precisely the fact that it would become a stable institution among the remaining branches of government, regularly contributing to the overall legislative process, as well as its operating at a legislative level.

To sum up, then, following the intermediate definition I endorsed, a deliberative mini-public can be defined as an institution where a sufficiently large of (quasi)randomly selected citizens from affected populations receives relevant information from experts to then seek deliberative solutions to specific social problems with the intent of generating an uptake in the broader political system (see Goodin and Dryzek, 2006; Ryan and Smith, 2014). Having then put forward a definition that stresses the values of deliberation and representativeness, I opened to the consideration of analogous institutional devices deployed at the constitutional and legislative levels. I now proceed to a more detailed analysis of the reasons that prompted an interest in such democratic innovations. As we shall see, it is in response to three sorts of problems that scholars have started advocating for a generalised use of deliberative mini-publics for political decision-making. I briefly discuss them before addressing the criticisms that such a form of democratic renewal has recently received.

First of all, it is by acknowledging the low quality of discussions carried on in the broad public sphere that scholars started advocating for a generalised use of deliberative mini-publics. The enactment of small and more or less issue-specific deliberative venues, where citizens can confront their respective positions by taking part in a face-to-face kind of dialogues, was at first perceived as a promising strategy to

enhance the quality of citizens' input in political decision-making. Mini-publics were thus introduced as corrective substitutes for a mass public that seems structurally inadequate to achieve deliberative standards sufficient to legitimate public decisions. Aspects such as the scale of modern polities, the complexity of social problems, as well as the generalised lack of information and opportunities to speak and be heard all warrant such a conclusion. These structural deficiencies are then also compounded by a series of pathologies endemic to democratic regimes. Indeed, the "plebiscitary rhetoric" that affects them directly results from the way democratic power is organised, with competing leaders having to prioritise gaining citizens' support over finding the truth about political matters (Chambers, 2009: 337). These are aspects that had already been pointed out by Plato, who criticised democratic discourse for being rhetorical by its very nature, thereby lacking the kind of reasoned dialogue that only could serve as the basis of legitimate political authority. According to him, the best democracies could ever achieve is a series of Socrates' like deliberative encounters, where citizens involved in face-to-face dialogues may increase their political skills, thus becoming less liable to the deceitful rhetoric of demagogues (Chambers, 2009: 340). Deliberative quality has always been perceived as a distinctive feature of small deliberative venues, for what it essentially requires is a reasoned practice of question and answer that the broad public is structurally unable to achieve (Chambers, 2009: 326-27). After all, the public opinion that in the eighteenth century was cleansed of its negative connotations to become the only legitimate source of public authority was initially the opinion of only a small and educated portion of the public – an avant-garde bourgeoisie gathering in coffee houses, salons and table societies to discuss issues of common concern (Habermas, 1991: 30 ff.). According to Habermas, it is then precisely one century later, when political rights were extended to all social classes and the mass public started to make its own appearance, that philosophical exponents of economic liberalism felt compelled to almost deny the legitimising force of the principle of public opinion. Thus, philosophers like Mill and Tocqueville, fearing the "tyranny of the majority", started treating the opinion of the public as something that can at best work as a check on powers but that nonetheless has to be controlled and limited through adequate constitutional and organisational rules (Habermas, 1991: 130 ff). If then they mostly attributed the low quality of public

discourse to the scarce education and mediocrity of the mass public, more of an acknowledgement of its structural causes can already be found in Madison, for whom “confusion and intemperance” are distinctive features of any multitude. According to him, within large groups, “passion never fails to wrest the sceptre from reason” so that “had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob” (Madison, 1788a).

Secondly, it is given the shift of power from political legislatures to bureaucratic institutions, administrative agencies, and international bodies that deliberative democrats advocated for the use of deliberative mini-publics as a way of bringing back under democratic scrutiny an otherwise unchecked exercise of political power. From this point of view, deliberative mini-publics have also been conceived of as a way of retrieving the second important meaning of the term deliberation; that is, not only a reasoned question and answer kind of dialogue, but also a speech aimed at choosing specific courses of action (Chambers, 2009: 332). To be considered as such, deliberation must indeed not only be reasoned and dialogical, but also directly connected to decision-making so that, with political decision-making sites moving away from the boundaries of a well-defined *demos*, projects of reconstruction of the deliberative democratic ideal have sought a parcellation of the broad public sphere into more perfect deliberative *fora* built around all the relevant *loci* of decision-making. It is from this point of view that deliberative mini-publics can be thought of as falling in between the “weak” publics autonomously forming in the broad public sphere and the “strong” ones with decision-making power (Brown, 2006: 203; Fraser, 1992: 134; see Habermas, 1996: 307). Indeed, given their proximity to decision-making sites, their ability to constrain political decision-making is arguably superior to the weak influence exercised by the broad public sphere. This is particularly true in cases where a symbolic contract has been issued between mini-publics and governing institutions, obliging the latter to publicly explain the reasons for their rejections (see Brown, 2006: 211; Smith and Wales, 2000: 60-1).⁷⁸

⁷⁸ As it often underlined, the enactment of deliberative-mini-publics is part of a “democratic accountability agenda” aimed at making policy making and administrative agencies more “accessible, accountable, and transparent by ensuring direct participation or representation of citizens in administrative affairs” (Ansell and Gingrich, 2003: 165; see Papadopoulos, 2012: 129).

Thirdly, as becomes particularly evident from McCormick's proposal of the People's Tribunal, deliberative mini-publics have also been perceived as an effective strategy to realise the value of democratic equality; especially in current circumstances, where strong organised interests often succeed in bending the political process to their advantage and at the expense of ordinary citizens. Again, this worry may be more sensibly felt given the shift from government to governance for, as we have seen above, governance networks are often more susceptible to being co-opted by organised interests (Lowi, 1979; O'Toole and Meier, 2004; O'Toole, 2007). As the argument goes, by bringing ordinary citizens close to decision-making sites and bestowing them with special prerogatives of contestation, we may somehow succeed in levelling the playing field. The logic is distinctly systemic, for democratic equality is not achieved in every decision-making site but rather at the level of the system overall by means of strategies of "compensatory democratic inequality", so to speak.

As it should be clear by now, whereas the first aspect I mentioned seeks to strengthen the deliberative component of the democratic ideal, the latter two mainly touch on democratic dimensions. It is for this reason that deliberative mini-publics have attracted the attention of a third generation of deliberative democrats, particularly interested in finding institutional solutions to achieve their advocated ideal in practice.⁷⁹ As Goodin and Dryzek emphasised, the attractive feature of deliberative mini-publics is that they are "designed to be groups small enough to be genuinely deliberative, and representative enough to be genuinely democratic" (Goodin and Dryzek, 2006: 220). Nonetheless, as we shall see in the next section, deliberative mini-publics have also been criticised for not being genuine democratic institutions. Now I turn to a detailed analysis of such recent criticisms.

⁷⁹ Here, I follow Elstub (2010) in marking three different stages research on deliberative democracy has gone through. The first, exemplified by the work of Habermas and Rawls focused on the normative justification of the deliberative model of democracy. The second, mainly referring to the work of Bohman (1996) and Gutmann and Thompson (1996) has started shifting the focus to processes of institutionalisation, giving particular attention to the preference-transformative process deliberative democracy implies. The third, taking shape in the works of Baber and Bartlett (2005), O'Flynn (2006) and Parkinson (2006), has finally focused on the concrete institutions that are necessary to a practical implementation of deliberative democracy, which is a line of research still currently ongoing.

IV.II Deliberative Mini-Publics: Objections

As anticipated above, a third generation of deliberative democrats has conceived of the generalised use of deliberative mini-publics for political decision-making as a very promising strategy to realise deliberative democracy. According to some, mini-publics either “comprise an indispensable institution for deliberative democracy” (Elstub, 2014: 166) or represent a necessary step for a deliberative renewal of representative democracy (Ferejohn, 2008: 212). As Curato and Böker argue, “The surge of experimental studies with small-scale deliberation has been so dominant that, for some time, one could get the impression that mini-publics *were* deliberative democracy” (Curato and Böker, 2015: 174 emphasis in the original). However, some strong arguments against deliberative mini-publics have also been raised precisely from the perspective of deliberative democracy.

As Simone Chamber (2009), Carole Pateman (2012) and Christina Lafont (2014, 2017) all point out, research on deliberative mini-publics often discloses an epistemic understanding of deliberative democracy, where the achievement of high deliberative standards is aimed at enhancing the substantive quality of political outcomes. However, were deliberative mini-publics advocated only for epistemic reasons, some doubts concerning their methods for participants’ selection would inevitably follow. First of all, we may wonder why citizens’ participation has to be seen as necessary at all. Why not leave all decisions about complex political issues to experts and professional politicians? In short, from the point of view of epistemic quality alone, the use of mini-publics for political decision-making must be comparatively justified taking into account epistocratic alternatives (see Lafont, 2017: 88-9). Importantly, the objection still stands even if we consider the cognitive diversity members of the public may bring about in the decision-making process as likely to produce epistemic gains.⁸⁰ Indeed, if cognitive diversity is the factor we intend to increase, then it becomes unclear why participation in panels should be limited to members of

⁸⁰ By relying on Hong’s and Page’s “diversity trumps ability theorem” (Hong and Page, 2004), Hélène Landemore set forth a case for deliberative mini-publics by appealing to the cognitive diversity that citizens would bring about in policy-making discussions, a factor that is taken to increase the quality of outcomes independently from levels of expertise (see Landemore, 2013). For a recent analysis about the epistemic value of cognitive diversity in the dealing with complex problems see (Benson, 2021).

the polity in question or why further adjustments to their composition would be in principle ruled out. As Lafont rightly observes, it is for instance standard procedure for the empanelment of jurors in a trial to exclude those who are likely to be biased towards the issue under scrutiny – on what basis are we to judge a similar way of proceeding inadmissible when it comes to deliberative mini-publics? (Lafont, 2017: 89).⁸¹

Advocates of deliberative mini-publics would respond to this objection by arguing that, however comparatively small their epistemic achievements, mini-publics are still to be preferred to alternative arrangements precisely because of their democratic credentials. Recall that they are “designed to be groups small enough to be genuinely deliberative, and representative enough to be genuinely democratic” (Goodin and Dryzek, 2006: 220). It is thus on account of their promising a mirroring of the democratic public that they come about as a proposal of democratic institution-building. To justify their adopted methods for participants’ selection, mini-publics must necessarily appeal to further procedural considerations (Lafont, 2019: 92 ff.). It becomes therefore crucial to understand what specific procedural values mini-publics intend to promote and how.

Justifications for deliberative mini-publics are predominantly found in conceptions of democracy that appeal to equality as the most fundamental principle of democracy’s value (see Landemore, 2020). Political equality is commonly understood as equality of opportunity for influence. Although participation in political affairs remains facultative, political rights are devised to allow every single citizen the opportunity to exercise equal influence in the democratic process (Christiano, 2004: 275; Cohen and Fung, 2004: 171; Knight and Johnson, 1997: 280; Swift, 2006: 189; see Leydet, 2016: 349-50).⁸² However, how is it exactly that deliberative mini-publics seeks to promote the value of democratic equality? According to Fishkin (2009), sortition secures the value of political equality both by giving each an equal chance of

⁸¹ As stated above, reliance on (quasi)random sampling (rather than self-selection) is already aimed at minimising the affluence of passionate and engaged citizens who may hold partisan views, so to favour an impartial and non-polarised deliberative process. However, although kept in small numbers, such citizens are not formally excluded from participation (see Leydet, 2016: 359), whereas the objection under analysis would eventually consider such a possibility, as well as further adjustments.

⁸² In what follows, I rely on (Leydet, 2016).

being selected as a participant in the forum and by guaranteeing mini-publics to be statistically representative of the wider population – equal chances of being selected and statistical representativeness together ensure equality of opportunity for influence. However, other than potentially running into conflict,⁸³ these two components promote an understanding of political equality that is incompatible with freedom as the grounding value of democratic legitimacy.

Concerning the first component, Fishkin explicitly states that there is no difference between having an equal chance of influencing political outcomes by being a decisive voter in the electoral process and having an equal chance of being selected in a microcosm where votes are counted equally (Fishkin, 2009: 44). However, Leydet contends that sortition can neither formally nor substantively ensure equality of opportunity for influence (Leydet, 2016: 352-3). Whereas formal equality of opportunity requires equal rights to access political offices, substantive equality of opportunity requires an effort to guarantee the same prospects of success to all citizens with the same willingness, talents, and ability. One may wonder why random sortition should be viewed as falling short of this goal. After all, a legal right to be included in the draw may be seen as satisfying the formal condition, whereas in substantive terms sortition may score even better, as the obstacles to be removed to ensure equal access are significantly less.⁸⁴ However, and here lies the crucial point, sortition grants these opportunities in a way that fails to respect the political agency⁸⁵ of citizens. Access to political offices is granted “by invitation only” (Sanders, 2010; see Leydet, 2016: 352) so that it does not allow those willing to take part in the decision-making process an effective opportunity to do so. It is a kind of political equality that treats citizens as recipients rather than free and active political agents.

Concerning the second component, similar conclusions follow. Representativeness is taken to uphold the value of political equality by giving equal presence and

⁸³ Since there is no “necessary relation” between the principle of equal chances of being selected and representativeness, sometimes ensuring the latter may require a departure from the former (Leydet, 2016: 353). It is on these terms that (quasi)random techniques of participants’ selections are commonly justified.

⁸⁴ As it is worth noting, this is only true for the first stage of sortition, when citizens are randomly selected as potential participants to the panel. Various kinds of social barriers may indeed have an impact at later stages, when selected citizens must accept or deny the invitation (Leydet, 2016: 352).

⁸⁵ For the idea of respect for political agency as fundamental for the legitimacy of democratic systems see (Ottonelli, 2012).

consideration to each of the viewpoints present in the wider society. However, as Leydet rightly observes, when representativeness is produced by sampling techniques, the result is that of denying “the basic separateness of persons” (Leydet, 2016: 354).⁸⁶ Indeed, (quasi)random sampling techniques produce assemblies that are representative only in a descriptive sense (Brown, 2006: 217 ff.), thus proceeding on the assumption of some sort of identity or similarity of viewpoints between those selected and those who are not. Whereas political representation links the political agency of citizens to that of their representatives, descriptive representation “severs the bond of accountability and authorisation between poll participants and outsiders” (Lafont, 2014: 13; see also Parkinson, 2012: 163), thus once again falling short of respecting citizens’ political agency.

To be sure, we may stress that mini-publics are never sponsored in isolation but rather as complementary devices running aside current electoral institutions (Leydet, 2016: 350; Parkinson, 2012: 170). As explicitly stated in the case of McCormick’s People Tribunal, the general aim is to strengthen elite accountability by combining electoral institutions with lottery procedures aimed at empowering lower social classes. Contrary to elections, random sortition does not require individual citizens to display any particular trait of excellence so that, in principle, it is a valid candidate for the circumvention of background inequalities affecting political participation (Leydet, 2016: 352).⁸⁷ In the presence of background inequalities, lotteries may be justified as compensatory mechanisms aimed at restoring political equality from a systemic perspective. Although they do not uphold the value of political equality within themselves, mini-publics may still promote this goal through their systemic interaction with other institutions. This applies not only in conditions where strong organised interests hijack the political process but also in the less controversial case of persistent minorities. When specific social groups are systematically outnumbered in majoritarian electoral processes, their views can hardly be viewed as receiving equal opportunities for influence. Random mechanisms

⁸⁶ For the notion of separateness of persons see Rawls and his critique of utilitarianism (Rawls, 1971: 27).

⁸⁷ It is precisely on this basis, that writers such as Montesquieu and Harrington have traditionally associated democracy with lot and aristocracy with elections (see Manin, 1997: 70).

of political choice may correct this (Saunders, 2010). Equality-based arguments for democracy may thus still advocate for a generalised use of mini-publics, albeit only from a systemic perspective.

However, in the first chapters, I argued that democracy has to do with liberty first and uses political equality to serve such a fundamental value. Does the equality-based argument just made still work when it is put into service of an ultimately liberty-based view of democracy? In this regard, one main worry concerns the fact that a generalised use of mini-publics seems to go at the expense of mass participation in public affairs (Chambers, 2009; Lafont, 2014, 2019). The issue is made explicit by Fishkin himself, who frames the problem in terms of a “pattern of conflict” between the three democratic principles of political equality, deliberation and participation – “any attempt to realise any two will undermine the achievement of the third” (Fishkin, 2009: 46). Hence, within a mass democracy system, where citizens participate in political affairs only by casting their ballot in general elections, the values of political equality and participation are realised at the expense of deliberation. Conversely, in circumstances of mobilized deliberation, that is, when consistent efforts are made to encourage the mass public to participate in deliberative forums, the value of political equality is likely to be sacrificed. This is because, in the attempt to gather large numbers of people, such forums are likely to rely on some form of self-selection, which eventually violates political equality by undermining representativeness.⁸⁸ If then mini-publics promote deliberation and political equality, they also risk sacrificing mass public participation. However, from a liberty-based perspective, the weakening of mass participation is particularly concerning, for the risk is to deprive citizens of the opportunity to “exercise *reflexive control* over the process through which political decisions are made” (Biale and Ottonelli, 2018: 2 emphasis in the original). Were this the case, citizens would no longer be able to conceive of themselves as the authors of the collective decisions to which they are subject, and this runs against the respect we owe them as free and autonomous beings.

⁸⁸ For the reasons explained above, this would actually also weaken the deliberative quality, inasmuch as the diversity of viewpoints may result insufficient to grasp all the relevant aspects of the problem at stake.

A criticism of this kind is put forward by Cristina Lafont, who forcefully criticises deliberative mini-publics for being either *illegitimate* or *superfluous* (Lafont, 2014: 3). On the one hand, were mini-publics involved only indirectly in the shaping of public policies, they would risk becoming utterly superfluous and indeed a waste of time and public resources. After all, elected officials would still have to undertake the effort to convince the democratic public of the goodness of their suggested proposals, having the latter retained its prerogatives of ratification. This is, for instance, how we may look at the two experiments of the British Columbia Citizens' Assemblies of 2004 and 2007. Although participants in such deliberative panels displayed both high deliberative capacities and a great deal of effort in reaching well-justified proposals, the latter were eventually rejected by the mass public in a referendum so that one may wonder whether spending public funds for such experiments was sensible at all.⁸⁹ On the other hand, were deliberative mini-publics playing a direct role in the shaping of public policies, with their proposals being directly implemented bypassing deliberation in the broad public sphere, then we would have to conclude that their use is illegitimate according to the standard of deliberative democracy. Indeed, using mini-publics' deliberations as "shortcuts" to displace macro-deliberations in the broad public sphere would imply depriving citizens of the opportunity to reflexively engage with the content and rationale of public decisions. Having lost this opportunity, they would no longer be able to conceive of public decisions as the product of their activity as free and equals (Lafont, 2019).

This concern is accentuated if we consider how the aim of enhancing the quality of deliberation often translates into a demand for less publicity. As it is often argued, one way of achieving higher deliberative quality is by insulating deliberative *fora* from the partisan pressures of the broad public sphere, as this may help deliberators to follow the "unforced force of the better argument" without distractions (Habermas, 1996; see Chambers, 2005; Lafont, 2014: 7). It is on this basis,

⁸⁹ The case I am referring to has attracted much scholarly attention. Randomly selected citizens met for several weekend in British Columbia to decide whether to replace their current majoritarian system with a more proportional one. As many have argued, although the issue at stake was both complex and divisive, citizens managed to engage in high quality deliberations. Their recommendations, though, were submitted to democratic scrutiny via a referendum, whose result eventually led to a rejection (Warren and Pearse, 2008; Thompson, 2008: 515-16; Chambers, 2009: 331).

for instance, that Pettit advocates for the use of deliberative mini-publics as part of a wider project of de-politicisation. According to him, highly contested political decisions that are likely to generate polarisation amongst the wider public should be discussed and taken behind the somewhat closed doors of smaller deliberative *fora*, for otherwise the risk is that of “letting loose a rule of kneejerk emotional politics” (Pettit, 2006: 54; see Lafont, 2014: 7). The fact that deliberation within mini-publics is often thought of as somehow insulated from the broad public sphere is corroborated by the frequent claim that citizens should trust the conclusions reached by their randomly selected fellows, with not much critical engagement. As the argument based on descriptive representation goes, citizens have good reasons to trust the outputs of deliberative mini-publics to be the same ones they would have endorsed had they been informed about and carefully examined all the aspects relevant to the issue at stake (Fishkin, 2009: 35).⁹⁰

These conclusions remain highly controversial. First of all, especially in the case of highly contested decisions, it is unlikely that mini-publics will reach full consensus before issuing their recommendations. Their proposals will always reflect the opinion of a majority so that it is not clear why citizens should believe their own considered judgement would have reflected the majoritarian position rather than the minoritarian one, even though this position too has gone through the deliberative process and passed the test, so to speak (Lafont, 2014: 16). Mackenzie and Warren respond to this objection by pointing out that trust “should also be a matter of degree: the closer a minipublic’s decision is to consensus, the more it makes sense to trust. The closer a minipublic’s decision is to a split decision, the more it makes sense for citizens to learn, deliberate, and participate” (Mackenzie and Warren, 2012).⁹¹ However, in previous chapters, I argued that full consensus must be thought of as only an end-in-view or regulative ideal that can never be fully achieved in practice, whose role is rather to structure and orient public deliberation. This means we should always be wary and suspicious of empirically reached consensus and that democratic

⁹⁰ On trust-based uses of mini-publics see also (Mackenzie and Warren, 2012).

⁹¹ Mackenzie and Warren advance their case for a trust-based used of mini-publics in conditions where citizens are inevitably doomed to rely on a variety of trust judgements so that the goal becomes to discern those which are more or less warranted (Mackenzie and Warren, 2012: 98 ff.). Against this background, their proposal surely acquires greater force. I will come back on this in the next chapter.

deliberation should sometimes be aimed “not at creating consensus but at breaking an existing consensus” (Rostbøll, 2008: 23). As Madison wisely observed, disagreement is endemic to the free use of reason, whereas consensus is often the result of passion (Madison, 1788b). Having mini-publics reached consensus in issuing their recommendations, we may be reasonably suspicious that some passions have infiltrated the deliberative process and that, therefore, its conclusions should not be trusted at all.

Secondly, the problem with mini-publics being used as shortcuts to bypass democratic deliberation is that they risk becoming just another instrument of depoliticisation (see Urbinati, 2014: 81 ff.). As seen above, interest in such innovative devices was motivated both by the aim to improve the quality of public discourse and the need to strengthen the chain of transmission between the broad public sphere and its decision-making sites. However, when used as shortcuts, mini-publics risk advancing the former goal at the expense of the latter. As I argued, in complex societies, the increased policy-making role for elites of experts risks weakening the circular process of deliberation between citizens and their representatives, which is however crucial for justifying the legitimacy of representative institutions. This is because the interaction between formal and informal publics crucially depends on the two core features of electoral representation, that is, authorisation and accountability. Whereas through the former ordinary citizens consent to political representatives taking decisions on their behalf, through the latter they incentivise them to maintain the communication flow open and to act in ways they think may be agreeable to their constituents base (Brown, 2006: 210-1). Increased delegation to non-majoritarian bodies weakens this mechanism for the latter only enjoy indirect democratic authorisation and also evade democratic accountability.⁹² The same applies to mini-publics. On the one hand, they lack citizens’ direct authorisation and, therefore, the procedural authority to make decisions.⁹³ Analogously to other experts’ bodies, they may

⁹² Here, by democratic accountability I mean accountability to the broad public. Non-majoritarian institutions usually operate in “pluralistic accountability systems” as they may have to respond to supervisory authorities, courts, investors and markets, and other organisations with similar remits. These forms of accountability may be more or less strong depending on circumstances (see Keohane, 2006: 82 ff.).

⁹³ This problem of a lack of authorisation may be circumvented were citizens consenting to certain decisions being taken through mini-publics (see Lafont, 2014: 14). However, in the absence of

be strong of an indirect mandate and some sort of substantive authority rooted in the expertise they develop within deliberative settings. However, this is not enough for them to be granted more than either a consultative role or weak contestatory powers, at least not on the account of legitimacy of deliberative democracy. On the other hand, since their participants remain unaccountable and not required to act on behalf of others, they also lack any strong incentive to keep open the communication flow with outside citizens.⁹⁴ When used as shortcuts, mini-publics risk thus becoming just another institution concurring to a weakening of the linkage between the broad public sphere and its decision-making sites.

The conclusions reached so far are thus quite negative. Providing mini-publics with strong decision-making powers is illegitimate because they lack the authority to take decisions and because bypassing mass deliberation risks building a gap between citizens and the policies to which they are subject (Lafont, 2014: 14). From a liberty-based perspective of democratic legitimacy, citizens' reduced ability to exercise reflexive control over public policies is to be viewed as particularly problematic. Indeed, being no longer able to conceive of such policies as the product of their activity as free and equals, citizens would end up living a social world where they cannot "feel at home". On the other hand, when used as tools to produce policy recommendations to be resubmitted to the scrutiny of the broad public sphere, mini-publics may turn out to be superfluous. In what follows, I seek to revise these negative results by countering this last claim. Mini-publics are not superfluous and can indeed be justified on democratic grounds when used as both deliberative resources for mass public deliberation and as tools apt to strengthen the link between the latter and formal decision-making sites.⁹⁵

accountability, the transfer of decision-making powers seems to amount more to an instance of alienation rather than delegation.

⁹⁴ They may have a weak incentive to do so if they share a democratic ethos. However, reliance on their good will does not seem enough to fully redeem their legitimacy.

⁹⁵ See also (Lafont, 2019: 138 ff.).

IV.III Democratic Reconstructions: The Concepts of Public Sphere and Political Representation from a Systemic Perspective

Having introduced the normative proposal for a generalised use of deliberative mini-publics, I also considered some of the strongest objections against it. Conclusions were quite negative, as I argued that mini-publics seem at best superfluous and at worst illegitimate, especially from a liberty-based perspective. As I argued, were deliberative mini-publics being granted decisional power – thus becoming mini-*demoi* in Bohman’s terminology (Bohman, 2012) – they would end up bypassing deliberation in the broad public sphere, thus producing a shortcut that is to be judged illegitimate on democratic grounds. On the other hand, were they used only as anticipatory tools for policy recommendations to be further resubmitted to public scrutiny, their role may well risk being superfluous. Indeed, with the mass public still keeping its prerogatives of ratification, political officials would still have to eventually convince outside citizens of the rightness of mini-publics’ suggested proposals (Lafont, 2014).

In what follows, I seek to revisit such negative results. I contend that mini-publics should not be seen as superfluous if used as deliberative resources for mass public deliberation and as tools apt to strengthen the linkage between the broad public sphere and its decision-making sites. In short, deliberative mini-publics can be considered useful and legitimate democratic innovations when devised as instruments of (re)politicisation. Although this is a thesis I will fully develop in the next chapter, here I set the ground by pursuing two lines of inquiry. *First*, I advance an understanding of the broad public sphere as comprising a wide array of competing and overlapping publics activated around specific problem situations by means of political discourse. *Second*, I also advance a systemic understanding of political representation, which conceives of the latter as comprising a wide array of practices and institutions all representing the people but in different ways (Brown, 2006: 207). The upshot will be to consider deliberative systems as embracing a principle of “institutional pluralism” (Bohman, 2012: 77), where deliberative mini-publics figure as just another kind of representative institution helping citizens to make their voices heard, structure their debates and even facilitate their gathering as a public. In the following chapter,

I will clarify further how mini-publics should be integrated within a deliberative system in order for them to perform these tasks effectively. Overall, the perspective on mini-publics I seek to develop is thus neither optimistic nor wholly critical. It rather covers a middle ground trying to differentiate between “good” and “bad” mini-publics, so to speak (see Curato and Böker, 2015).

The first general idea I intend to explore concerns the possibility to proceed towards a reconstruction of the normative idea of “the public sphere” (see Fraser, 1992). In Habermas’ seminal understanding, the broad public sphere designates a forum of free and open discussion that is conceptually distinct from the systemic mechanisms of both the state and the economy. Indeed, other than exerting a critical function towards the state apparatus, discussions within the public sphere are also driven by a kind of rationality that is diametrically opposed to the strategic one of market relations (see also Elster, 1999). Hence, together with the sphere of intimate relations, the public sphere comes to be conceived of as a space of human interaction driven by social solidarity and a communicative rationality aimed at mutual understanding. To be protected from the systemic tendencies towards domination and reification, the “lifeworld”⁹⁶ embedded in the public sphere becomes a non-substitutable source of political legitimacy precisely in virtue of both its independence from governmental apparatuses and the interest-transcending communicative interactions shaping public opinion (see Habermas, 1981, 1991). However, how are we to conceive of the broad public sphere?

Another criticism that Habermas’ two-track model of democracy has received concerns the very idea of the broad public sphere as a single comprehensive arena of rational discussion. Habermas’ analysis focused indeed on what he considers a “bourgeois conception” of the public sphere (see Habermas, 1991). According to this idea, the public sphere had to be seen as a space of unconstrained rational discussion aimed at mediating between civil society and the state by holding public authorities accountable to the citizenry via a principle of publicity applied to public decisions (see Habermas, 1991: 102 ff.; Fraser, 1992: 112). At first, in the eighteenth century, the

⁹⁶ Habermas uses the concept of “lifeworld” to indicate the sphere of human relationships and communicative interactions aimed at mutual understanding and action (Habermas, 1981; see also Fairtlough, 1991).

idea was negative in character, for all that the principle of publicity required was the public accessibility of information concerning state functions. This was essentially a measure aimed at granting a public of property-owners the opportunity to both organise their commercial activities without fear of unexpected and arbitrary interference from the state and to scrutinise such interference via the force of public opinion. At a later time, then, public opinion also acquired positive functions, becoming the tool through which the “general interest” of a bourgeois public could be transmitted to the state apparatus with the aim of translating it into law.⁹⁷ From this point of view, then, the public sphere could be seen as both a mechanism for the rationalisation and control of public domination and a space for communicative interactions aimed at a consensus concerning the common good (see Fraser, 1992: 112-3). There are two fundamental premises at the core of such a conception of the public sphere: *first*, the idea of the public as a uniform entity, with no significant differences among its members and, *second*, the assumption of a sharp distinction between civil society and the state (see Fraser, 1992: 117-8).

However, as Habermas himself acknowledged, such a utopian understanding of the broad public sphere was never fully realised in practice. On the one hand, the bourgeois public sphere has never been fully inclusive, for by referring to a public of white male property owners it excluded women and all subordinate social classes. When these subjects slowly gained access to the public sphere by means of political enfranchisement, the arena of free and unconstrained discussion became strained by class struggle and by an antagonism of competing interests that are by definition difficult to harmonise. On the other hand, the “structural transformation of the public sphere” was presented from the outset to highlight its aporetic character. As Habermas argued, it is with the emergence of the welfare-state that the demarcation between state and society started to fade out, with the two reciprocally compenetrating one another. On the one hand, the state started to regulate formerly private issues (i.e. work contracts, landlord-tenant relations, family relations, etc.) to provide substantive guarantees for the exercise of liberal freedoms. On the other hand, political

⁹⁷ As already said, it is on these terms that Habermas justified the co-originality of negative and positive freedoms not only conceptually, but also historically (see Habermas, 1991: 223).

functions started to be taken over by societal powers, such as trade unions and economic associations (Habermas, 1991: 231).

Therefore, the upshot is that of a public sphere that is anything but a homogeneous and overreaching entity. On the contrary, the public sphere is to be conceived of as comprising an array of competing publics, each of them advancing their peculiar interests and perspectives. As Fraser correctly argues, this was even true in the nineteenth and twentieth centuries, for aside from the bourgeois public sphere we could already observe the emergence of “competing counterpublics” such as “nationalist publics, popular peasant publics, elite women’s publics, and working-class publics” so that “the exclusions and conflicts that appeared as accidental in his [Habermas’s] perspective become constitutive in the revisionists’ view” (Fraser, 1992: 116). Furthermore, the progressive compenetration of state and civil society leads us beyond the juridical conception of representative democracy – conceiving of both political representation as a “private contract of commission” and of voting as merely a tool through which citizens authorise and control their political representatives – to reach an understanding of representative government as a complex political process activating the sovereign people through the means of judgement and the framing of political issues (Urbinati, 2006: 21). As seen above, indeed, the understanding of representative democracy I put forward does not conceive of political representation as antithetical to democratic participation, but rather as complementary to it. The “sovereign people” are thus no longer conceived of as a pre-existing entity transferring its powers to an assembly of delegates in general elections, but rather as a subject that is constantly shaped and re-shaped around specific problem situations by means of political discourse (Urbinati, 2006: 24).

The idea is not new, as Dewey had already developed a similar line of argument in response to Lippmann’s criticisms of democracy and the conception of “the public” found in democratic theory (Lippmann, 1922, [1927] 1993). The originality of Dewey’s argument was precisely to conceive of the democratic public as comprising an array of different publics, all activating around specific problem situations through the medium of political discourse (Dewey, 2012 [1927]: 126). Inasmuch as this way to conceptualise the public sphere may be seen as acquiring increasing significance in current scenarios, the hypothesis I intent to investigate concerns the possibility of

proceeding towards a normative reconstruction of the public sphere itself. The image of a unitary public contained within national boundaries would thus give way to a decentred understanding of the broad public sphere, where the latter is conceived of as a “plurality of partial, territorially and functionally demarcated, and mutually overlapping publics with complex, unclear, and relatively unstable points of identification” (see Sørensen, 2012: 519). How may this renewed understanding of the public sphere shed new light on the problems highlighted above?

Such a normative reconstruction of the broad public sphere increases the relevance of a quite established view concerning the concept of political representation, that is, the idea that in complex societies the latter articulates through a wide series of practices and institutions all comprising different elements (see Brown, 2006: 207). As Brown correctly argues, contrarily to the ancient idea of a “mixed constitution”, in which different classes of citizens are represented by different chambers, our contemporary polities are organised around a wide array of political institutions each representing all citizens but in distinct ways. The justification for such a practice is to be found in the republican doctrine of the separation of powers, according to which different institutions, built around alternative modes of representation, are necessary to disperse power and ensure that no single forum dominates the others. Hence, aside from the elected legislatures strong of a direct public mandate, we find both indirectly authorised branches of government, such as courts, cabinets or bureaucracies, and appointed committees, whose members usually boast an independent source of authority grounded in professional or technical expertise (Brown, 2006: 207-8). Do mini-publics deserve any place in such a complex and widely articulated representative system?

The hypothesis I put forward is that they do, especially on the premises of a decentred public sphere comprising an array of competing and overlapping publics activating around specific problem situations by means of political discourse (Bohman, 2004: 25). This leads us to conceive of deliberative systems as embracing a form of institutional pluralism that is aimed at providing citizens with various channels through which they can make their voice heard (Bohman, 2012: 77). Take for instance the case with courts and the process of judicial review. Whereas many conceive of courts as anti-majoritarian bodies thwarting the will of the people, a focus

on the fact that the process of judicial review is mostly activated by citizens themselves leads us to conceive of it as just another method through which they can express disagreement about policies. As Lafont argues, although judicial review “harbour[s] a ‘counter-majoritarian difficulty’ [...] it is important to keep in mind that this difficulty concerns a disagreement *among the people*” (Lafont, 2019: 227 emphasis in the original; see also Bohman, 2007: 54). Mini-publics can provide a similar service, as they can become tools for citizens to initiate deliberation around specific problem situations. Having then considered democratic publics as “fluid things called into being by representative claims” (Parkinson, 2012: 163; see also Saward, 2006; Saward, 2010), mini-publics can also be thought of as catalysts for the formation of new publics. Enacting them may indeed be just another way to raise public attention and initiate deliberation about particular social issues. Hence, notwithstanding the conclusion that it would be illegitimate to grant them formal decision-making powers, the alternative remark that their consultative or contestatory use would be superfluous is perhaps too hasty. Certainly, on these premises, the assumed perspective must be distinctly systemic, as the crucial question remains to determine what linkages mini-publics ought to entertain with both the broad public sphere and its formal decision-making sites. In the next chapter, I delve deeper into these issues to discuss what specific functions mini-publics may be called to exert and how they must be integrated within a deliberative system in order to perform effectively. As I will argue, whether mini-publics can be conceived of as democratic instruments of (re)politicisation, rather than as undemocratic fora aimed at bypassing disagreement in the broad public sphere, essentially depends on their systemic interactions.

Conclusions

Having presented mini-publics as part of a project of reconstruction of democracy’s institutional practice for contemporary complex societies, I reviewed some of the most pressing objections against their generalised use for political decision-making. As I noted, most supportive arguments come from an equality-based understanding of democracy’s value. Although within their institutional setting mini-publics pro-

mote a kind of political equality that is incompatible with liberty as the most fundamental principle of democratic legitimacy, when viewed from a systemic perspective they still can be commended for reducing the negative effects of background inequalities on political participation. However, most pressing concerns arise once we assume a liberty-based conception. Indeed, when used as instruments of depoliticisation, mini-publics risks contributing to the existing trend of displacing democratic publics from political decision-making. Their use as shortcuts to bypass wide democratic deliberation and disagreement is to be viewed as illegitimate according to the standards of deliberative democracy. This is because mini-publics so-construed deprive citizens of the opportunity to exercise reflexive control over policy enactments, meaning that they can no longer conceive of the latter as the product of their activity as free and equals. However, notwithstanding this conclusion, I also set forth the hypothesis that consultative and contestatory mini-publics may not be altogether superfluous. Having conceived of the broad public sphere as comprising a wide array of publics all activating around specific problem situations by means of political discourse, I set forth a defence of mini-publics as embedded in a context of institutional pluralism. Thus, I argued that, together and analogously to other representative institutions, they may be useful democratic devices apt to both help citizens make their voice heard and work as catalysts for the formation of new publics. In the next chapter, I will explore this possibility further by investigating what specific functions mini-publics may exert within deliberative systems and how they should be integrated within the latter in order to perform effectively. The overall thesis I intend to defend is that mini-publics can be justified on democratic grounds when used as instruments of (re)politicisation.

V. Democratic Innovations: The Functions and Linkage of Mini-Publics in Deliberative Systems

Introduction

In the previous chapter, I considered a recent proposal in democratic theory that advocates for the enactment of small-scale deliberative venues as a way to improve both the quality of democratic deliberation and the linkage between the broad public sphere and its decision-making sites. Broadly falling under the name of deliberative mini-publics, this kind of institutional innovation is meant to facilitate the delivery of some crucial democratic goods in complex policy environments. However, most supportive arguments usually come from those who appeal to an equality-based conception of democracy's value, as mini-publics are often championed as an effective strategy to alleviate the effects of background inequalities on democratic participation and, thus, as a method to fulfil the too often unrealised democratic promise of an equal opportunity to influence public affairs. Conversely, I contended that the conception of democratic equality that mini-publics promote is incompatible with a more fundamental commitment to liberty as the grounding principle of democracy's value.⁹⁸ Having thus endorsed a view that is neither wholly optimistic nor thoroughly critical, the task to be undertaken now is to determine what role mini-publics should play in order to foster, rather than threaten, the liberty-based, systemic view of deliberative democracy I endorse. On this account, I argue that deliberative mini-publics can be considered as genuine democratic innovations only when devised as instru-

⁹⁸ As it is worth a reminder, this is for two main reasons: *first*, an equal chance of being selected as participants in the decision-making process falls short of the realisation of a properly understood principle of equality of opportunity. Participations "by invitation only" disregards indeed a more fundamental commitment to respect citizens' political agency (Sanders, 2010: 43; Leydet, 2016: 352). *Second*, sortition severs the bond that links traditional representative institutions to the broad public sphere, as this is made possible by electoral authorisation and accountability. Were mini-publics used as shortcuts to shape public policies, citizens would lack the opportunity to reflexively engage with the rationale underlying public policies (Lafont, 2014; Biale and Ottonelli, 2018).

ments of (re)politicisation. Their function should be both to increase citizens' oversight over formal decision-making and to help shape informal processes of opinion-formation in a more deliberative fashion. Hence, in what follows, while clarifying the specific functions mini-publics are expected to exert within deliberative systems, I will also investigate issues concerning their systemic integration. In line with the systemic approach to deliberative democracy, I seek to evaluate deliberative mini-publics in terms of their contribution to the overall democratic system. As we shall see, the quality of such contribution largely depends on the systemic linkages mini-publics entertain with other units of the system. Institutional linkages must be thus carefully designed if we want deliberative mini-publics to deliver the democratic goods they have been designed for.

In what follows, I classify three different functions that mini-publics are suitable to exert and discuss the kind of systemic linkages that are needed in each of these cases. *Section I* defends a use of mini-publics in processes of meta-deliberation and, thus, as tools apt to promote inclusive deliberation in decisions of institutional design and meta-governance. I argue that inclusive meta-deliberation is a key strategy to (re)politicise governance (see Sørensen and Torfing, 1997), as it constitutes a democratically legitimate way to address and solve the systemic tensions between the democratic and epistemic features of deliberative systems. I also argue that traditional institutions are often ill-placed for taking decisions of this kind and, for this reason, mini-publics can provide a valuable institutional support. Given the importance that such issues acquire within a liberty-based account of democracy, mini-publics involved in such a task should enjoy the strongest links with both the broad public sphere and its decision-making sites. *Section II* shifts the focus to more ordinary policy-making processes to assess the role mini-publics can play as devices apt to enhance deliberative systems' input- and output-legitimacy. Concerning their link with the broad public sphere, I argue in favour of granting citizens with basic powers of agenda-setting, thus stressing their prerogatives to call for the enactment of mini-publics every time they think some issues require public attention or debate. Concerning their linkage with formal decision-making sites, I instead consider the role of other auxiliary institutions and political actors as crucial to avoid either a mere stra-

tegic use of mini-publics or the tendency to systematically neglect their policy recommendations. *Section III* finally considers the use of mini-publics in conditions where a unified public sphere is absent. In this regard, I defend a role for mini-publics as both tools apt to prefigure a public sphere that is not yet in place and as catalysts for the formation of new publics. As with the previous case, I argue that auxiliary institutions and more traditional political actors are crucial to help mini-publics perform successfully.

V.I Mini-Publics' (Meta)Deliberation over Decisions of Institutional Design and Processes of Meta-governance

According to the liberty-based account of democracy I defended so far, free and equal citizens are entitled to discursively determine the terms of their social cooperation by taking part in intersubjective practices of mutual understanding and reciprocal justification. Importantly, I argued that such an entitlement also reflexively extends to democracy itself, that is, to the set of democratic practices and institutions through which citizens can carry out the above task (see Bohman, 2007: 2). Citizens should retain the power to determine the ways in which popular control is structurally organised for three main reasons. *First*, because otherwise they run the risk of social and political elites being able to seize political power via institutional reforms that are claimed to be democratic. *Second*, because there is no such a thing as an outcome-neutral political decision-making procedure (Landwehr, 2014: 47) so that, for citizens to be able to conceive of themselves as the authors of law, they must also be in a position to control the procedures through which law is enacted. *Third*, because greater inclusiveness in deliberation about how the system is structurally and procedurally organised is likely to produce epistemic gains via the correction of systematic biases (Holdo, 2019: 109).

I conceive of inclusive public debate regarding decisions of institutional design and meta-governance as a form of meta-deliberation that is crucial to the legitimacy of deliberative systems. I use the term “meta-deliberation” to indicate a reflexive process of analysis concerning the ways in which we deliberate (see Holdo, 2019). Institutional design and meta-governance refer instead to decisions concerning the

structural and procedural organisation of systems of government and governance networks, respectively. Inasmuch as within deliberative systems democratic deliberation is taken to proceed in an institutionally-mediated fashion, I also conceive of meta-deliberation and institutional design or meta-governance as internally related processes (Steiner et al., 2004: 135; see Thompson, 2008: 510, 15). Here, I defend a role for mini-publics as both devices apt to increase the accountability of public officials involved in decisions of institutional design and meta-governance and as deliberative resources for an inclusive public debate regarding the same questions. Having provided some examples, I will advance some recommendations on how to integrate mini-publics in the existing institutional framework so as to enable them to perform these tasks successfully.

The *first* reason why citizens must retain the power to control the ways in which popular control is structurally organised has to do with the risk that technocratic elites serving strong and organised interests may otherwise be able to seize political power via institutional reforms that are claimed to be unavoidable and yet still democratic. This is an issue I already discussed in *Chapter III.II*, and in relation to the well-known critique of representative democracy as a mixed constitution, which critics claim introduced oligarchic features under the pretence of adapting the democratic ideal to the complexity of large-scale modern polities. As I noted, deliberative democracy has also been charged with having inadvertently provided normative justification to such an elitist reconfiguration of democratic systems. This is especially in the shift from theory to practice, as the emphasis it placed on the rationality of democratic outcomes as a measure of their legitimacy has been deemed to translate into an institutional practice that privileges the contribution of expert politicians over the participation of the democratic public at large (Buchstein and Jörke, 2007; Crespy, 2014). In contrast to this view, I defended the deliberative democratic ideal of legitimacy and sought to relieve representative institutions from the charge of necessary elitism by endorsing a constructive account of political representation that better suited the above normative framework (Brown, 2018: 180; see Saward, 2006; Saward, 2010).

However, I further noted how governance networks and the deliberative systems approach that legitimised them also raised similar concerns. With political decision-making having become extensively knowledge-based (Holst, 2012), political systems have started delegating portions of their policy-making activity to appointed bodies of experts that escape public notice and accountability. Decision-making power having been transferred to independent regulatory institutions, parliaments have now become sites for the staged presentation of policy conclusions that are drawn elsewhere, and within policy-making bodies they struggle to steer (Rummens, 2012). As a result, we started experiencing a growing gap between citizens' opinions and the policy enactments they must comply with (Page and Gilens, 2014), with the latter often being justified as functional imperatives beyond democratic contestation. Although as such parliaments still play an important democratic function in disclosing the rationale underpinning collective decisions (see Rummens, 2012), their proceedings can hardly be described as deliberative, whereas deliberation in appointed bodies still lacks the relevant features to count as democratic (Landwehr, 2014: 2).

The delegation of competencies to non-majoritarian bodies is commonly justified as the result of an evolutionary process of adaptation to conditions of increased social complexity (Zolo, 1992) and thus as the bulwark against a partisan politics that hinders the production of credible and/or reasonable policy outcomes (Majone, 1999; Pettit, 2004). By virtue of being shielded from the partisan pressures of electoral politics, public managers are considered more suited than politicians to achieve the reasoned exchange of arguments that qualifies as genuine deliberation. Their technical expertise, impartial use of reason and consensus-seeking collaboration are thus presented as the best guarantee for long-term effective policy decisions, which in turn are deemed to compensate for the lack of democratic legitimacy of governance arrangements (e.g. Reinicke, 1998; see Börzel and Panke, 2007: 153; see also Cengiz, 2018: 3). However, the depoliticisation of governance has also become a governing strategy through which politicians can externalise responsibility for unpopular policies that often serve elite interests (Burnham, 2001). Hence, triggered by current increases in social complexity, the shift towards distributed forms of governance has also brought in an institutional reshaping that often allows elites to protect their established interests.

Current developments in democratic theory disclose the risk of providing normative justification to such a post-democratic order where formal decision-making sites remain unreceptive to the democratic input of informal public spheres. This is the case with current understandings of the practice of deliberation. Initially, deliberative politics was conceived of as a move towards politicisation, for it brought into question the process of formation and transformation of preferences that previous aggregative models of democracy considered as given and private. Conversely, with deliberative democracy having undergone an epistemic turn, deliberation is nowadays seen as a practice for the impartial identification of correct policy outcomes, which is eventually deemed to require a certain degree of depoliticisation (Landwehr, 2017: 50). What is lost is thus the crucial function that deliberation plays in tracking the justifiability of policy outcomes to those who must comply with them (Lafont, 2019: 98). On the other hand, with its emphasis on legitimacy checks to be applied at the systemic level rather in relation to each institutional unit, the deliberative system approach risks justifying a complete disassociation of the deliberative and democratic components of the deliberative democratic ideal. With no decision-making unit having to necessarily qualify as both democratic and deliberative, the risk is that of “another vindication of a post-democratic order in which decision-making in elitist expert bodies is shielded by a façade of electoral democracy” (Landwehr, 2014: 41).

To avoid this objection, the systemic approach must now shift the focus on issues concerning the systemic integration of each decision-making site belonging to a deliberative system (see Hendriks, 2016: 43). It must clarify how majoritarian and non-majoritarian bodies are to be linked with one another, their methods of interaction and, more generally, how the democratic and epistemic components of the system overall are to be distributed and counterbalanced amongst its dispersed institutional units. However, this cannot be another task for experts, for otherwise we are back to square one. The account of democracy I set forth requires this to be rather a political task. Like other norms, the rules governing the structural and procedural organisation of democratic systems require democratic validation to be held legitimate. In other words, I set forth an approach that considers meta-governance as a task for politicians and citizens rather than public managers only and, thus, as a strategy to

repoliticise systems of network governance that otherwise lack democratic legitimacy (Sørensen and Torfing, 1997: 41 ff.).

To be sure, rather than being merely procedural, this is an issue with clear substantive implications. A *second* reason for seeking democratic participation on issues of institutional design has to do with the fact that alternative procedures and organisational arrangements are likely to realise both different combinations of conflicting values and diverse allocations of burdens and benefits among competing factions. The first myth to debunk is that of an outcome-neutral decision-making procedure (see Riker, 1982). In some cases, procedures and outcomes are so tightly coupled that substantial conflict is simply transferred to the procedural level, whereas in other cases the connection is more loose or long-term, but not less significant (Landwehr, 2014: 46). If citizens have the right to jointly determine the substantive terms of their social cooperation, they are also entitled to co-exercise control over the procedures leading to them. In a representative system, this applies both to the overall set of institutions and procedures governing the legislative process and to the alternative electoral methods through which citizens can choose their political representatives – “If citizens have the right to choose representatives, then they have the right to choose the system by which they choose representatives” (Thompson, 2008: 21).

Furthermore, a *third* genuinely epistemic reason to promote democratic inclusiveness in decisions of institutional design and meta-governance has to do with the fact that epistemic deficiencies are often the product of either exclusion from or inequalities within the deliberative process (Holdo, 2019: 4). The advocated conception of democracy as a multi-perspectival method of inquiry explicitly acknowledges the systematic under-representation of particular viewpoints as causing distortions or built-in biases in the process of argumentation that supports policy enactments, with evident repercussions on their substantive quality. By enhancing the reflexive capacity of deliberative systems, inclusive meta-deliberation may serve as a corrector for the problem of uneven epistemic contributions. Admittedly, it may not always solve the issue, as meta-deliberation may end up suffering itself from the same built-in biases and inequalities that affect standard deliberation (Holdo, 2019: 8). However, it does constitute an advantage that in processes of meta-deliberation ordinary

sources of exclusion and distortion are at this stage directly addressed. At the end of the day, a multi-perspectival method of inquiry aimed at progressively detecting and solving deliberative vices is the best we can hope for.

By virtue of these reasons, democracy has to be understood as a reflexive political order whose institutional framework and procedural organisation are made themselves subject to citizens' deliberation (Bohman, 2007: 5). In the case of governments' institutional design, this implies seeking democratic participation both at moments of constitutional convention or revision⁹⁹ and for decisions of a procedural and organisational kind, such as the choice between alternative electoral methods, institutional arrangements, and legislative processes. For what concerns decisions of meta-governance, the aim is to increase citizens' oversight over the creation and framing of governance networks and the methods of interaction between experts and political decision-makers. The question that remains to be answered is whether deliberative mini-publics are well-suited to play a role in decisions of this kind.

One may wonder why decisions of a procedural or organisational kind within representative systems may not be simply viewed as an exclusive prerogative of elected legislatures or even courts or independent commissions. However, for various reasons, such bodies are often not best suited for decisions of this kind. Whereas elected legislatures suffer from a conflict of interests, which may lead to decisions that are not in the public interest or to gridlocks due to parties' intractable disagreement, courts are usually reluctant to interfere with what they rightly perceive as distinctly political issues. The case with independent commissions is instead more nuanced, as they may indeed constitute a viable alternative that should not be straightforwardly rejected. Strong of an indirect electoral mandate, their relative advantages are both that of bringing a good deal of expertise in decisions of a highly technical nature and that of enjoying a good degree of public visibility due to their integration in the democratic system. However, according to Thompson, they also suffer from some flaws: *first*, it is unrealistic to assume their perspective to be outside of partisan politics; *second*, their distance from the experiences of citizens may not be altogether

⁹⁹ This is in line with Ackerman's notion of a *dualist democracy*, stating the need for greater participation by the democratic people in constitutional moments of "higher lawmaking" (Ackerman, 1991).

desirable; and *third*, they lack electoral accountability (Thompson, 2008: 24-5). Although mini-publics lack electoral accountability too, they score better on the previous two points. This means their use for decisions concerning the structural and organisational set-up of deliberative systems can reveal some relative advantage.¹⁰⁰ Whether mini-public should then be thought of as either operating alone or as coupled with other bodies of experts is another question, concerning more the kind of linkages they should enjoy with the existing institutional framework.

One forceful objection points to the fact that mini-publics may themselves promote a dissociation of the democratic and deliberative components of the system overall, as the intent to achieve higher standards of deliberation often translates into a weakening of mass participation (see Chambers, 2009; Lafont, 2014, 2017). As instruments of depoliticisation (Urbinati, 2014: 81 ff), they replicate, rather than solve, the problem of a progressive displacement of the democratic public from political decision-making via institutional reforms that are claimed to be democratic (Smith, 2013b: 462). However, here I advocate using mini-publics not as shortcuts to bypass democratic participation, but rather as both devices apt to increase the public accountability of governance institutions and as deliberative resources for mass public debate (Lafont, 2019: 141). In short, I argue that mini-publics should be thought of as tools for the (re)politicization of decisions that are often removed from public oversight. To be defensible on a liberty-based account of democracy, mini-publics must be devised so as to strengthen, rather than weaken, the linkage between the broad public sphere and its decision-making sites.

When deployed for decisions of institutional design, mini-publics can serve their function as resources for public deliberation especially by increasing the visibility of decisions that too often escape public notice despite their huge impact on citizens' lives. Once their proceedings and conclusions are made accessible, they can

¹⁰⁰ This case is well exemplified by controversies over the correct assignment of the authority to draw electoral districts. Elected legislatures have often been found guilty of partisan gerrymandering, which brought them under the allegation of cultivating a deeply undemocratic practice where "politicians pick voters instead of the other way around" (Altman and McDonald, 2010: 70). Courts have generally refused to adjudicate on such cases, judging them nonjusticiable political questions (see *Lamone v. Benisek*, 588 U.S. _2019; *Rucho v. Common Cause*, No. 18-422, 58 U.S. _2019). The goals of commissions' independence and neutrality of process are instead to be pursued through further measures, if at all desirable (McDonald, 2006: 238; 2007: 676). Hence, the possibility of "citizens' redistricting juries" is now attracting increasing interest (see Snider, 2009a, 2009b).

provide the general public with valuable information concerning the pros and cons and potential value trade-offs implicated in alternative institutional arrangements. By virtue of their participants lacking any conflict of interests, they can also help the public reveal when such choices are motivated by either electoral interest or pure political opportunism. Take the case of the Brexit referendum or the failed ratification of the EU drafted Constitution, where public debates in the respective countries had been so overshadowed by domestic controversies that it was arduous for citizens to engage in undistorted processes of opinion-formation. A recourse to mini-publics in the build-up of the referendum campaigns would have proved useful to inform and orient public debate, thus allowing citizens to deliver a more informed opinion on such crucial issues. At the same time, in conditions where organised citizens have been granted the prerogative to commission mini-publics, these can become powerful tools at their disposal to hold politicians to account for their choices. In having to confront mini-publics' recommendations, public officials would find themselves in a situation where they have to justify their decision to either endorse or reject mini-publics' suggested proposals. This would increase their "discursive accountability" and force them to engage with a variety of opposing discourses (Goodin, 2008: 155 ff.).¹⁰¹

Instances of mini-publics being used for decisions of institutional design and meta-governance are not lacking. (I) Concerning the institutional design of government, two exemplary cases are the British Columbia Citizens' Assembly initiated in September 2002¹⁰² and the Ontario Citizens' Assembly of 2006.¹⁰³ In both cases, a deliberative assembly of randomly selected citizens was called to discuss the possibility of electoral reform. Although citizens did not directly deliberate over the role nor the quality of deliberation itself, their activity counts as an instance of meta-deliberation since the object of discussion was an institutional change affecting how deliberation is carried out in the system as a whole (Thompson, 2008: 515). Both as-

¹⁰¹ I will delve deeper into these aspects in what follows, where I will explain why the general public should be granted with the prerogative to commission mini-publics and why decision-makers should be contractually bound to issue a statement in response to mini-publics' recommendations.

¹⁰² For an overview see (Warren and Pearse, 2008).

¹⁰³ For an overview see (LeDuc, 2008).

semblies were intended not to be used as shortcuts, for in both cases it was recognised that any legislative change would have required public approval. The assemblies were thus tasked with issuing a recommendation to be ratified by the general public via a referendum. In both cases, the reform proposal was not passed as the referenda did not reach the established legal threshold. Evidence shows that voters had little knowledge of the assemblies and a poor understanding of both the reform proposal and the stakes involved. Negative results are thus not surprising, for one *datum* research on referenda confirms is that lack of information and poor understanding are, for citizens, sufficient reasons to vote against a reform (Thomas, Hug, and Sciarini, 2003; see Pilon, 2010: 80; LeDuc, 2011: 558). Therefore, in such cases, although the assemblies can *per se* be seen as successful experiments, their failure in having their recommendations accepted is to be accounted for in terms of an ineffective linkage with the broad public sphere.

(II) Concerning democratic innovations dealing with the general aspects of the organisation of governments, we started experiencing in Europe what Suiter and Reuchamps call a “constitutional turn” for deliberative mini-publics (Suiter and Reuchamps, 2016). The most cited examples are the 2010-2013 Icelandic Constitutional Process,¹⁰⁴ the 2012-2014 Irish Constitutional Convention¹⁰⁵ and the 2011-2012 G1000 in Belgium.¹⁰⁶ Whereas the G1000 in Belgium focused more on policy issues, both the Icelandic Constitutional Process and the Irish Constitutional Convention explicitly addressed problems of institutional design. In the case of Iceland, the 2010 National Forum was given the task to establish “the principal viewpoints and points of emphasis of the public concerning the organisation of the country’s government and its constitution” (Kok, 2011; see Landemore, 2020: 159). The constitution draft that issued from the deliberations of the Constitutional Council included various proposals of institutional design, such as the enactment of participatory mechanisms aimed at enhancing citizens’ opportunities to influence legislation, the promotion of both intergovernmental and intragovernmental deliberation with lower local branches, and various requirements of transparency for public administration

¹⁰⁴ For an overview see (Landemore, 2015, 2020).

¹⁰⁵ For an overview see (Suiter, Farrell, and Harris, 2016).

¹⁰⁶ For an overview see (Jacquet et al., 2016).

(Landemore, 2020: 168 ff.). Within the remit of the Irish Constitutional Convention, we find instead the reviewing of the lower house of parliament electoral system and other provisions concerning the presidential term of office and the direct role of citizens in nominating presidential candidates (Suiter, Farrell, and Harris, 2016: 36-37).¹⁰⁷ Among the other issues, the Irish Citizens' Assembly constituted in relation to the Constitutional Convention discussed questions of fixed-term parliaments and the manner in which referenda are held. Striking differences with the experiments mentioned above concern the ways in which such constitutional democratic innovations were linked to the outside public. In all such cases, significant attention and funding was allocated to publicise the existence and proceedings of deliberative *fora*, via traditional media, interactive technology, and postal services. As a result, referenda generally registered high turnouts and a positive public response so that relative failures are to be explained this time in terms of a lack of adequate connections with traditional representative institutions.

(III) Concerning the use of mini-publics in complex policy environments and for decisions of meta-governance, an example can be found in the case of Ontario's Local Health Integration Network (LHIN), introduced in 2004.¹⁰⁸ LHINs are local health authorities responsible for the delivery of health care services. Their main goal is to promote a more integrated and democratically accountable health care system (Doberstein, 2020: 4). In this case, one of the stated objectives was to increase the democratic accountability of the governance system by involving mini-publics in decisions on how to structure the governance framework under which LHINs operate. As Doberstein argues, although ideally citizens and the state would have joined their efforts in the creation of the governance framework, it was the latter that eventually had a primary role in driving the process, and this may be one of the reasons why LHINs fell into disfavour in many segments of society (Doberstein, 2020).

¹⁰⁷ To be sure, although they share significant features, not all these experiments count as deliberative mini-publics under the definition I provided. For instance, in the Icelandic Constitutional Process, quasi-random methods of selection were employed only for the National Forum, whereas the Constitutional Council comprised elected delegates from various social roles so that it cannot be viewed as descriptively representative of the wider population. At the same time, only the Council proceeded deliberatively, whereas the Forum followed more a rationale of judgement and preference aggregation (Landemore, 2020: 173 ff.).

¹⁰⁸ For an overview see (Doberstein, 2020).

Hence, in all the above cases, mini-publics' shortcomings were mainly the result of a lack of adequate integration with the existing institutional framework. Alongside cases in which they had been used for strategic manipulation or reasons of pure political convenience, their failure in seeing their recommendations translated into policy has often been a consequence of a poorly framed connection with either the broad public sphere or its decision-making sites. As the systemic approach to deliberative democracy acknowledges, the evaluation of each institutional unit belonging to a deliberative system must proceed in consideration of their interactions with the remaining institutional framework. Hence, questions of institutional linkage become crucial to the assessment of how mini-publics can contribute to the overall functioning of democratic systems. We must thus now establish how mini-publics should be integrated within deliberative systems for their activity to be both effective and legitimate under a liberty-based account of democracy's value.

One first consideration we can draw from the evidence above is that, given the high stakes involved, questions of institutional design are suitable to require mini-publics' recommendations to be approved by referendum in order to become law. It is, after all, a common practice in contemporary democracies to pass policy reforms concerning the structural and procedural organisation of government systems only after wide and direct democratic approval has been secured. Given the conflict of interest that public officials often display in decisions of this kind, referenda are a good device to ensure that institutional changes are carried out in a democratically legitimate fashion. Their main advantage would be to provide a check on an executive power that may promote institutional reforms for reasons of pure political opportunism. Accordingly, it is also sensible to require such referenda to be mandatory, as this would prevent political elites from calling a plebiscite only when it best suits their electoral interests (see Lacey, 2018: 528).

However, referenda per se may not be enough to provide an effective institutional linkage. In the cases of Columbia and Ontario Citizens' Assemblies, we saw that mini-publics' recommendations had been rejected precisely because the two referenda had not reached the established legal thresholds. In both cases, the failure to promote an institutional change that was perceived as very much needed must be

explained as a consequence of having inserted the conclusions of a high-quality deliberative practice in a context where the same process did not occur. What evidence showed is that the main reason why citizens did not vote (or voted against) the mini-publics' suggested proposals is that they were both unaware of the assemblies and had a poor understanding of the issues under their scrutiny (Thomas, Hug, and Sciarini, 2003; see Pilon, 2010: 80; LeDuc, 2011: 558). As Lafont argued, the risk for mini-publics is thus that of becoming superfluous whenever their conclusions are meant to be resubmitted to the approval of the broad public sphere and no attempt to improve the deliberative quality of the latter has been undertaken (Lafont, 2014: 19). To be sure, to improve the deliberative activity of contained groups of citizens with no corresponding effort in the broad public sphere would eventually amount to a great waste of time and resources.

However, the two options are not to be taken as mutually exclusive, and indeed the proposal I advocate concerns the use of micro-deliberative strategies as a way to improve macro-deliberative ones. In their role as resources for collective processes of opinion-formation, deliberative mini-publics can be useful to shape and orient public debate in referendum campaigns that would otherwise be marked by the distortions of plebiscitary politics (see Runciman, 2003). Their advantage is that of helping citizens focus on the relevant aspects of alternative institutional choices, thus fostering a deliberative component in processes that often can hardly be described as such.¹⁰⁹ However, for mini-publics to exert this role, their existence and proceedings must be advertised to the general public. One step forward in such a direction is to require mini-publics to be also mandatory for decisions of an institutional and procedural kind (Setälä, 2017: 853). This has two main advantages. *First*, it helps reduce the chances of mini-publics being used for mere strategic purposes, as *ad hoc* mini-publics are more subject to this risk.¹¹⁰ *Second*, the mandatory character of mini-publics helps citizens become familiar with them as an institution playing a specific role

¹⁰⁹ This in line with a post-Brexit strand of research suggesting the institution of recursive mechanisms of communication between mini-publics and the mass voting public as a way to improve the deliberative quality of referendum campaigns (Offe, 2017; Renwick, 2017; see McKay, 2019).

¹¹⁰ For instance, the much-praised initiative of the British Columbia Citizens Assembly counts more as a case of manipulative politics rather than as one of genuine democratic experimentalism. The Liberal party started pushing forward the need for an electoral reform after the 1996 elections, when they were assigned to the opposition despite having won the popular vote. After the 2001 elections, which

in political decision-making (Setälä, 2017: 853), thus easing the process of making their proceedings more accessible.

Obviously, for mini-publics to fully disclose their potential as resources for public deliberation, other political actors also have to come into play. The role of the media, for instance, is crucial in calling attention to mini-publics' activity and their recommendations. However, would-be representatives, parliamentary oppositions, and other non-state actors may also find interest in advertising the reasons and conclusions mini-publics highlight with regard to alternative institutional arrangements. They may use such information to either orient the judgement of their respective constituencies or simply call their attention to issues that will profoundly affect the political landscape. Hence, by virtue of their mandatory character and via the political action of organised groups, mini-publics can increase the deliberative character of democratic decisions of institutional design.

Assigning mandatory mini-publics with the task of issuing recommendations that would automatically go on the ballot as referendum proposals already constitutes an effective strategy to ensure their reception also by political decision-makers. This is because, although parliaments retain sovereignty and can always in principle overturn a decision that has received direct support from the people, this is an option that often represents political suicide for representatives seeking re-election. Were then the motion that received wide democratic approval also be the one that mini-publics initially endorsed after reasoned debate, political leaders would face additional costs when trying to reject it as merely the result of fleeting popular passions or uninformed political judgement. In such cases, rejection would require politicians to engage with the reasoning mini-publics provided in support of their recommendations, and this would increase their exposure to public contestation.

gave them a striking majority of seats with only 57% of the popular vote, they were no longer interested in reforming the electoral law. They thus commissioned a mini-public mainly to trump an evidently needed institutional change without appearing self-interested. In short, mini-publics offered them the perfect strategy to dodge their responsibility to keep an electoral promise. On the one hand, they could be used to delay a decision without compromising, and indeed even strengthening, the public perception of the party's commitment to democratic values. On the other hand, the low budget allocated to advertise the mini-public's proceedings, as well as the unprecedented super-majority threshold the party established for the referendum to pass, significantly lowered the chances for the reform to be eventually approved (Pilon, 2010: 74-6). It is by being less at the mercy of politicians that mandatory mini-publics would help preventing this sort of scenario.

However, this is not an option for all cases, as for instance many decisions of meta-governance operate at the local or regional level (Gjaltema, Biesbroek, and Termeer, 2019) and are therefore not suitable to be resubmitted to wide democratic scrutiny via referenda. Nonetheless, other options to empower mini-publics as correctors for the self-interested choices of politicians and public managers are available. A viable alternative is, for instance, to grant mini-publics involved in questions of meta-governance with suspensive veto powers. The formal power to delay decisions made by representatives would give mini-publics significant opportunities to influence decision-making, for political representatives are in this way incentivised to entertain a serious dialogue with them in an attempt not to see their proposals declined. Their role can also be devised in more than a merely critical fashion, as mini-publics can be consultatively involved at the policy drafting stage to be given then the power to veto decisions that do not adequately reflect their initial deliberations. This would engender a recursive communicative process between mini-publics and traditional institutions, which is an instance of the kind of “iterated deliberation” that is crucial for the corrective capacity of deliberative systems and indeed a defining feature of a conception of democracy as a self-correcting mechanism for problem-solving (Thompson, 2008: 515). Admittedly, the link with the broad public may be in such a case weaker. However, the recommendation to either require mini-publics to be mandatory or grant organised citizens with the prerogative to commission them where they feel the need to increase the accountability of decision-makers remains valid.

Other forms of institutional coupling are also available. As I anticipated above, independent commissions are also well placed to address issues of this kind. They have the relative advantages of bringing a good deal of expertise in decisions of a highly technical nature and enjoying already a good degree of visibility. Given that mini-publics also have their relative advantages, due to their perspective being closer to that of citizens and somewhat outside the competition of partisan politics, an iterated deliberation between the two would allow one to correct for the shortcomings of the other, thus improving the quality of the process overall. Whereas independent commissions would be forced to look closer at the experience of citizens, mini-publics would gain both in terms of expertise and visibility. The perspective here endorsed

does not dismiss public managers' expertise, it just seeks to counteract today's leading trend towards a depoliticisation that progressively discharges democratic citizens from taking decisions they are entitled to.

To sum up: I argued that deliberative mini-publics are useful devices apt to promote public debate over questions of institutional design and meta-governance. According to the liberty-based account of democracy I endorsed, citizens must retain control over questions concerning deliberative systems' structural and procedural organisation. This is both because they risk otherwise experiencing a progressive fading of their power of influence and because procedural issues always have an impact on substantive outcomes. Given the importance of such questions, I argued that deliberative mini-publics should enjoy the strongest possible link with both the broad public sphere and its decision-making sites. In this respect, two alternatives have been set forth. On the one hand, I suggested the possibility of requiring mandatory mini-publics to issue recommendations to be resubmitted to wide democratic scrutiny via mandatory referenda. On the other hand, I suggested the alternative possibility of granting mini-publics involved in questions of meta-governance with suspensive veto powers. Both these measures have the advantage of enabling mini-publics in both their role as devices apt to increase the public accountability of decision-makers and as deliberative resources for collective processes of opinion-formation.

V.II Deliberative Mini-Publics and the Ordinary Policy-Making Activity of Deliberative Systems

In this section, I shift the focus to deliberative systems' ordinary policy-making activity to investigate mini-publics' role as devices apt to increase the input- and output-legitimacy of the systems overall. To clarify the terminology, whereas input-legitimacy refers to popular control over policy-making processes, output-legitimacy concerns the quality and effectiveness of policy outcomes (Scharpf, 1999; Hazenberg, 2015). Some scholars conceive of input- and output-legitimacy as separate dimensions in a trade-off relationship. They contend that greater input-legitimacy comes at the cost of good policy outcomes and that ensuring effective policies requires thus some distance from public pressures, that is, a certain degree of depoliticisation. They

therefore conclude with the claim that increases in output-legitimacy sufficiently compensate for the lack of democratic input (e.g. Reinicke, 1998; see Börzel and Panke, 2007: 153; see also Cengiz, 2018: 3). On the contrary, I in effect argued that input- and output-legitimacy are both necessary to the overall legitimacy of deliberative systems and that, given the right conditions, they are complementary and mutually reinforcing (see Börzel and Panke, 2007: 154).¹¹¹ In what follows, I argue that properly devised mini-publics are suitable for simultaneously promoting the input- and output-legitimacy of deliberative systems when a more fundamental power of agenda-setting is granted to the population at large.

A generalised use of mini-publics for political decision-making has recently been advocated by epistemic democrats as a strategy to improve the quality of democratic outcomes. In contrast to a recent surge in epistocratic objections challenging the ability of democracy to make good public choices, epistemic democrats have argued that given the right conditions the many can outperform the competent few in taking the right decisions (see Landemore, 2013). Deliberative mini-publics have thus been praised precisely for offering such favourable conditions. As the argument goes, apart from providing a positive environment for reasoned deliberation, their advantage is that of ensuring a higher degree of cognitive diversity in the decision-making process. By mirroring the composition of the wider population, deliberative mini-publics succeed both in gathering the dispersed knowledge of democratic societies in one situated deliberative forum and providing the perfect environment for different viewpoints to be adequately confronted and counterweighted.

One issue with the epistemic argument for mini-publics is that it lacks sufficient reasons to limit participation only to those belonging to the relevant *demos* (Lafont, 2019: 92 ff.). Since limiting the pool of possible participants to all those and only those who are either *affected* or *subjected* to the decisions being taken is likely

¹¹¹ This is implicit in the conception of democracy I advocated for in the first two chapters, which has been thought as covering a *via media* between procedural and epistemic accounts. Having endorsed a procedurally-dependent understanding of epistemic standards (Chambers, 2017: 60), where the notion of normative validity is defined in terms of intersubjective justifiability (Habermas, 2003c: 248), I conceived of democratic procedures not only as justified in terms of respect for citizens' autonomy, but also as indispensable for the determination of the specific contents of justice and, thus, the validation of concrete policy outcomes (see Rummens, 2018).

to require independent normative criteria, a purely epistemic argument turns out inevitably committed to a *principle of humanity* as the relevant criterion for the demarcation of the *demos*.¹¹² It is clear that any person, from any side of the world, may in principle bring to the forum particles of knowledge, experiences or perspectives that positively contribute to the resolution of the problem at stake. This conclusion retains plausibility. The contribution of foreigners who have dealt with similar problems in their communities may indeed help the community in question address and solve issues on the agenda (Lafont, 2019: 93). This is after all a common practice in our contemporary democratic politics, as it is testified for instance by the increased dialogue between Supreme Courts of different countries.¹¹³ Moreover, a similar practice has also been tried out in some of the experiments mentioned above. In the case of the Icelandic Constitutional process, foreigners were allowed to post comments during the “crowdsourcing” phase that the Council opened up when drafting the new constitution (Landemore, 2020: 161). Furthermore, granting access to a greater variety of viewpoints is also a valuable strategy to avoid the risk of parochialism in the determination of policies that are still to be assessed in justice terms.¹¹⁴

However, notwithstanding this conclusion, it is also true that a principle of humanity for the demarcation of the democratic *demos* turns out overinclusive, and that there are in fact good reasons for privileging the contribution of those who are either affected or subjected to the policy in question. On the one hand, it is possible to highlight independent procedural reasons to prioritise the democratic input of given political communities. What is neglected by the epistemic argument for democratic deliberation is the crucial function the latter plays in tracking the justifiability of policy outcomes to those who must comply with them (Lafont, 2019: 98). As seen

¹¹² By way of clarification, apart from a *principle of membership*, which defines the *demos* in terms of belonging to pre-designed national boundaries, we find in the literature today three alternative principles for the demarcation of the democratic *demos*. (I) The *all-affected principle* states that all those whose interests are relevantly affected by certain decisions should have a say in the process leading to them; (II) The *all-subjected principle* states that all those who are subject to a normative order should be granted equal authority as its co-authors (see Forst, 2015, 2020); and (III) a *principle of humanity*, which grants inclusion to all those possessing the defining features of personhood (see Fraser, 2009: 61 ff.).

¹¹³ As Slaughter observes “The Israeli Supreme Court and the German and Canadian constitutional courts have long researched U.S. Supreme Court precedents in reaching their own conclusions on questions like freedom of speech, privacy rights, and due process” (Slaughter, 1997: 186).

¹¹⁴ For the risk of parochialism in the determination of the requirements of justice see (Sen, 2009: 70).

above, an adequate understanding of the principle of respect for autonomy inevitably commands the institution of democratic procedures for the legitimate appropriation of political decisions – no matter how good they may seem, policy outcomes can never be paternalistically imposed from above, but must rather be always appropriated by the democratic populace via intersubjective practices of mutual justification. If this is the reason why deliberative mini-publics cannot be used as shortcuts, but rather only as resources for the improvement of democratic participation, then it is also the reason why it remains sensible to devise them so as to mirror the composition of the community for which they are set-up.

On the other hand, the internal relationship between input- and output-legitimacy I argued for further discloses more substantive reasons for privileging the democratic contribution of the all-affected or -subjected people. What we are to remember is that the substantive quality of democratic outcomes can never be assessed in isolation from the sociological context in which they apply, and this is because political problems always imply the resolution of ethical and pragmatic questions to which only situated political communities can provide an answer. The point is that, within certain limits, there is no such a thing as an unconditionally good policy outcome, for the latter are instead always to be viewed as good for some specific political community. In other words, the determination of the specific requirements of justice is always subject to a certain degree of contextualism, for general and abstract norms are always to be concretely specified in view of particular socio-historical circumstances. It is precisely in this respect that the internal relationship between input- and output-legitimacy reassert itself in all its strength, for the conclusion we are to draw is that there cannot be output-legitimacy without democratic input.

Concerning mini-publics' participants' composition, the conclusion I endorse is thus somewhat nuanced. To the extent that political outcomes deal with the unconditional aspects of justice, we have reasons not to *exclude* the contribution of outsiders, as widening critical perspectives better ensures our ability to deal with such questions. However, to the extent that political outcomes are also aimed at settling ethical and pragmatic issues, we have reasons to *privilege* the participation of insiders, as they enjoy a unique standpoint for the correct resolution of such aspects. Mini-publics should thus be devised to allow different modes of participation. On the

one hand, they should prioritise citizens' input by drawing the pool of their participants from members of the relevant *demos*. On the other hand, they should also leave outsiders the opportunity to influence deliberative proceedings by submitting considerations in the form of *amicus briefs*.

Having now clarified what reason we have to prioritise the input of those who must comply with policy outcomes, it remains to be established how mini-publics should organise their deliberative practice in order to make the best use of it. One option is to devise mini-publics as proceeding in a critical fashion, with participants critically assessing the respective merits of alternative policy reforms as they are submitted to their scrutiny by traditional decision-makers. Philip Pettit has recently put forward a strong argument in favour of mini-publics as contestatory institutions of this kind, where participants enjoy an editorial power over policy proposals that are *de facto* authored by political decision-makers in the name of the democratic people (Pettit, 2004: 61). As mechanisms for democratic contestation, mini-publics give the people an *ex-ante* opportunity to reject proposed policies that may otherwise raise *ex-post* contestation and appeal in the broad public sphere (Pettit, 2004: 63; 2005: 25). However, the problem with merely contestatory mini-publics is both that they are more exposed to the risks of strategic manipulation and that they remain all things considered weaker channels for democratic input. After all, Pettit introduces them as part of a depoliticising agenda, where executive agencies operating at governments' arms-length retain significant discretion in policy-making, and public participation is mainly exercised in its critical function.

Consider first the risks of strategic manipulation. Imagine a case with three alternative policy options (x , y , z) and a decision-maker disavouring x and being indifferent between y and z . In principle, the decision-maker could commission a mini-public and ask its participants to comparatively evaluate only the two options the decision-maker does not disfavour. At the end of the proceeding, the decision-maker could present the mini-public's choice as the one that citizens are more likely to approve. However, there is an important sense in which it was the decision-maker choosing the policy reform, whereas the commissioning of a mini-public may have just helped them present such a policy in a garment of democratic legitimacy. To be sure, the public would still retain the power to contest, reject and, therefore, ask for

a revision of the proposed policy. However, this by no means precludes decision-makers from keeping certain options off the table and offering to public scrutiny only those they already favour. In such cases, decision-makers may even use mini-publics to co-opt opponents of proposed policies to then dismiss further criticism raised in the broad public sphere as unreasonable (Goodin, 2008: 34-5). It is then clear that merely contestatory mini-publics can only be weak channels for democratic input, for they do not allow any communication flow from citizens to decision-makers that is not merely reactive.

A first step to reduce the risks of manipulation and enable mini-publics as devices apt to promote democratic input is thus to involve them at the policy-drafting stage with genuine consultative powers besides their contestatory ones. This entails granting participants to mini-publics the prerogative to either shape or alter the policy options under their scrutiny, as well as to introduce new ones whenever they think this is appropriate. Conversely, the role of experts would be in this case twofold. On the one hand, they are there to provide participants in mini-publics with the information they need to shape the policy in question. On the other hand, they can exert a reversed critical function, for their prerogative would be to raise concerns of feasibility or highlight either internal inconsistencies or the risk of incompatibility with other existing policies.¹¹⁵ Participants in mini-publics could also receive budgets to commission experts' briefs, were they wanting either to hear other technical opinions or to challenge the informational framework they initially received. Overall, the goal is to establish a to-and-fro policy-making negotiation between experts and participants to mini-publics.

However, this only constitutes a first step for, as Bohman argues, consultation and contestation still fall short of democratisation (Bohman, 2007: 52). To further lower the risks of strategic manipulation and enable mini-publics as genuine devices

¹¹⁵ Arguably, the Icelandic Constitutional process lacked precisely this kind of contribution from experts. As Landemore observes, although not strictly an assembly of lay citizens, the Constitutional Council in charge of writing the draft was mainly composed by political "amateurs". Notwithstanding its points of strength, the constitutional draft they produced was at a later stage judged inconsistent by the Venice Commission, a group of European legal experts consulted by the Icelandic parliament. Although Landemore tries to partly dismiss this kind of problem, by describing a principle of coherence as "very academic and abstract" (Landemore, 2020: 160 ff.), it is clear that it remains pretty important for a constitution to be internally consistent; otherwise it risks becoming a non-workable document.

apt to promote democratic input, a more fundamental power of agenda-setting must be granted to the population at large. On the one hand, we are to avoid the risk of politicians resorting to mini-publics only when they are likely to serve their electoral interests, by for instance allowing them to dodge costly or difficult responsibilities. An example of this is found in the Irish Citizens' Assembly, whose recommendation on ending the constitutional ban on abortion was approved by referendum in 2018. As some have argued, the reason why of all the recommendations the Assembly issued only the one on abortion went a long way is that it suited the interests of political representatives. Given the contentiousness of the issue in a country such as Ireland, politicians found in mini-publics an effective tool for outsourcing a decision that would have alienated a segment of their electorate either way. Having the responsibility of the decision been attributed to the mini-public, political leaders would still have had the margin to withdraw their endorsement if necessary (O'Leary, 2019).¹¹⁶ Granting the population at large the prerogative to commission mini-publics every time they feel specific problem situations deserve public attention would significantly mitigate against this risk. On the other hand, it is only by granting the democratic people with the prerogative to initiate deliberation via the enactment of mini-publics that the latter can become genuine devices apt to promote democratic input in a governance system that has been progressively depoliticised. In the absence of such a link with the broad public sphere, mini-publics cannot be defended as tools for democratic freedom. As Bohman argues, the right to initiate deliberation is indeed crucial to achieving non-domination, for it is precisely this right that ultimately distinguishes the citizens from the rightless person. Without the right to initiate deliberation, people lack the fundamental normative power to command a reshaping of their basic rights and duties. In other words, they lack the most fundamental right to have rights and are, thus, inevitably subject to arbitrary political authority (Bohman, 2007: 8). Conversely, once such a fundamental right is granted to the democratic people, mini-publics can become a powerful tool in their hands to challenge given policies or

¹¹⁶ A similar case is described by O'Toole and Meyer in relation to US governments' response to the spread of HIV/AIDS epidemic (O'Toole and Meier, 2004: 683). Although in this case the non-governmental units that governments used to dodge their responsibilities were not mini-publics but community-based organisations, I believe the two situations to display evident similarities

majoritarian decisions they disagree with (Lafont, 2019: 146 ff).¹¹⁷ It is by becoming another channel of communication and contestation, through which new opinions can be formed in view of subverting established norms and practices, that mini-publics become an instrument of repoliticization and a tool for political freedom.

Granting the general public with the opportunity to initiate deliberation via the enactment of mini-publics already constitutes an instance of the kind of linkages that mini-publics should enjoy with the broad public sphere in order to become resources for macro-deliberations carried on within the latter. However, we must still establish what provisions are needed to ensure that mini-publics are visible and that their recommendations are heard by political decision-makers rather than ignored. As seen above, concerning decisions of institutional design, this result is obtained either by requiring mandatory mini-publics to issue recommendations to be resubmitted to wide democratic scrutiny via mandatory referenda or by granting mini-publics with suspensive veto powers. However, these measures are inadequate for decisions of a legislative and administrative kind, as the risk would be that of slowing down decision-making up to the point of generating gridlocks. Moreover, veto powers are justifiable for mini-publics involved in decisions of institutional design, given the conflicts of interest other institutional actors often display in adjudicating such issues. However, this condition does not necessarily hold in circumstances of ordinary policy-making, and it seems therefore inappropriate to grant such strong powers to an institution that lacks electoral authorisation and thus has no authority to impose legislation. Hence, alternative solutions to ensure that mini-publics' recommendations are given adequate consideration must be explored.

One proposal that has recently attracted considerable attention concerns the enacting of a randomly selected citizens' second chamber with the power to review and potentially delay legislation (Barnett and Carty, 2008; Mackenzie, 2016; McCormick, 2011; O'Leary, 2006; Zakaras, 2010). Despite the analogies, a chamber of this kind displays some significant differences to more traditional mini-publics. *First,*

¹¹⁷ To clarify this point, Lafont draws an analogy with the institution of judicial review. In contrast to a well-established view that conceives of courts as anti-majoritarian bodies thwarting the will of the people, Lafont argues that the focus on the right of citizens to initiate deliberation via judicial review allows us to conceive of the latter as a powerful device apt to increase democratic control (Lafont, 2019: 226-7; see also Bohman, 2007: 54).

it would not be issue-specific, as its members would gather for a one year non-renewable and non-repeatable term. *Second*, in at least its commonly advocated forms, such a chamber would exclude from the draw of its participants wealthy citizens who already enjoy good chances to influence public affairs (McCormick, 2011: 183). This should not concern us much, as excluding wealthy citizens is consistent with the kind of stratified random sampling I advocated for in the previous chapter. Nonetheless, it seems more accurate to consider a second chamber of this kind as only an analogue to more traditional mini-publics, which discloses advantages both on its own and as a side-institutions helping standard mini-publics to perform successfully.

A first advantage a randomly selected citizens' second chamber discloses is that of functioning as a deliberative corrector of adversarial debates carried on within the first chamber. As seen above, parliaments play a crucial democratic function in giving visibility to both majoritarian and minoritarian positions regarding given problem situations (Rummens, 2012: 39). By opening up to informal discussions in the broad public sphere the structure of the debate underpinning collective decisions, they frame public debate and help citizens shape their own judgement on matters of common concern (Goodin, 2005: 194; White and Ypi, 2016: 382; see Leydet, 2015: 236). However, adversarial debates within parliaments can hardly be described as deliberative. Deliberation often being moved behind the closed doors of party committees and discussions within parliaments being regulated by party discipline, the latter often fail to achieve the standard of a reasoned exchange of arguments. In judicial proceedings, legal procedures and the presence of a jury/judge with formal adjudicative powers have the effect of constraining and disciplining adversarial debates so as to settle them in the form of a reasoned exchange of argument. The same does not happen in parliamentary debates, where rights to freedom of speech and the informal and indirect influence of the democratic public are insufficient for such a result to obtain. On the contrary, the distant and indirect relationship partisan representatives have with the democratic audience often incentivises them to adopt plebiscitary discourses (Leydet, 2015: 245 ff.). By bringing the audience closer and by providing it with formal powers to review and delay legislation, a second chamber of randomly selected citizens would instead have the effect of imposing a deliberative discipline to parliamentary debates. Knowing that citizens gathered in a second

chamber have the chance to scrutinise and deliberate over the details of proposed legislative acts would constitute a sufficient incentive for public officials to structure their debates in ways that are more sensitive to their adversaries' arguments and objections. The enactment of a tightly coupled deliberative chamber of randomly selected citizens thus holds the promise of rejoining the democratic and deliberative components of political systems at the core of their legislative institutions.

Concerning the objection that a chamber of this kind may increase the chances of gridlocks in political decision-making, we are to remember that the proposal under consideration does not advocate for an additional branch of government to be set aside existing institutions, but rather for the substitution of current second chambers with ones comprising randomly selected citizens. Hence, although gridlocks may still constitute a possibility, the proposal has at least the advantage of not exacerbating their occurrence (Zakaras, 2010: 458). Additional measures may also be put into place, as we could for instance follow McCormick and limit the number of vetoes such a chamber would be allowed to express in the course of one year of activity (McCormick, 2011: 184). However, it is reasonable to believe that an extensive use of veto powers at the end of the day would be unlikely to occur. The presence itself of a chamber with such powers would indeed be sufficient to discipline parliamentary debates and constrain their decision-making activity. Members of the second chamber would often find it unnecessary to actually interfere with the activity of the first chamber, for the mere possibility of interference would be enough to discipline the activity of the latter. In Pettit's terms, randomly selected citizens would enjoy "virtual control" over political representatives, inducing the latter to anticipate their judgement and thus draw policies that track their constituencies' needs and interests (Pettit, 2005: 6).

However, although legislative power would still importantly reside in the first chamber with the second one only having the prerogative to delay legislation and no power of initiative, the question of whether it is admissible to assign veto powers to randomly selected citizens lacking electoral authorisation and accountability is likely to remain a highly controversial one. For this reason, I intend to stress more the advantages that a second chamber of this kind would bring as a side-institution helping standard mini-publics to perform successfully. The first aspect worth considering is

that a randomly selected citizens' second chamber would enjoy a high degree of visibility due to its persistence and central position in the institutional framework. Were we including within its remit the prerogative to commission issue-specific mini-publics, the same institutional visibility would be transferred to the latter.¹¹⁸ On the one hand, this would reduce the chances of issue-specific mini-publics being ignored by formal decision-makers. On the other hand, it would also help them function as resources for public deliberation, for their institutional visibility would make it easier for citizens to refer to them in the process of forging their opinions on given problem situations.¹¹⁹ Moreover, were such an institution to be organised so as to remain open to citizens' input, it would help the public to make use of their power of agenda-setting. By way of petitions, citizens could submit to the scrutiny of the second chamber specific cases upon which they want to call its attention. Participants to the second chamber would then decide which cases the commissioning of an issue-specific mini-public constitutes a viable answer.

To sum up: In this section, I argued that properly devised mini-publics are apt to increase deliberative systems' input- and output-legitimacy when a more fundamental power of agenda-setting is granted to the public at large. I first noted how the acknowledgement of an internal relationship between the two dimensions of legitimacy gives us reasons to privilege the contribution of citizens, while at the same time allowing outsiders the opportunity to influence mini-publics' deliberative proceedings by submitting comments to the attention of their participants via the form of *amicus briefs*. Secondly, I argued that deliberative mini-publics should be organised as consultative bodies rather than as mere contestatory ones, as this would reduce the risks of strategic manipulation by political elites. Thus, I set forth two distinct considerations concerning their linkages with the broad public sphere and its decision-

¹¹⁸ This would be in line with Dahl's proposal of a mini-populus defining the agenda for other mini-populi (Dahl, 1998).

¹¹⁹ Here, the notion of visibility is conceptually different from that of transparency, which commonly features as a fundamental requisite for the legitimacy of democratic institutions. Whereas the latter refers to the requirement for formal proceedings to be publicly accessible, the former indicates the "staged" presentation and opening up of the structure of public debates to democratic citizens (Rummens, 2012: 32). From this point of view, visible institutions become a point of reference for citizens engaged in the process of forging their opinions on given subject matters. Precisely because of their being situated at the peripheries of public debate, mini-publics often score low in terms of visibility. However, a second chamber bringing them at the centre of political life may enable them in their role as resources for public deliberation.

making sites. On the one hand, I argued that mini-publics can become instruments of political freedom and devices apt to promote citizens' input in otherwise depoliticised governance systems only when a more fundamental power to initiate deliberation is granted to the public at large. On the other hand, I considered the possibility of instituting a second chamber of randomly selected citizens at the core of legislative institutions. I argued that a second chamber of this kind would have the advantage of imposing a deliberative discipline on the adversarial debates held within the first chamber, thus advancing a realignment of the democratic and deliberative components of the deliberative democratic ideal at the core of parliamentary institutions. On the other hand, I stressed its merits as a side-institution helping traditional mini-publics to perform successfully. I argued that within its remit there should be the prerogative to commission issue-specific mini-publics. This would transfer their visibility and thus both reduce the risk of traditional decision-makers ignoring them and enable them in their role as resources for public deliberation. I also argued that a second chamber with such powers should be devised so to allow lay citizens to submit petitions in order to request the enactment of a mini-public every time they believe some issue requires public attention. In this way, the second chamber would thus help citizens exercise their right of agenda-setting.

V.III Deliberative Mini-Publics in the Absence of a Political Public Sphere

So far, I have discussed mini-publics as devices apt to strengthen the linkage between the broad public sphere and its decision-making sites. In what follows, I defend a role for mini-publics in conditions where a political public sphere is absent. I consider two different contexts in which this may be the case and argue that mini-publics can be useful devices aimed at both prefiguring a political public sphere that is yet not in place and creating communities of interest from scratch.

In the sections above, I argued that one main reason why mini-publics acquire particular interest today has to do with the development of polycentric societies, where political power is exercised in a variety of remote decision-making sites that often escape public notice and accountability. In other words, the problem I have

been dealing with has to do with an inverse relationship between the two core components of the concept of democracy itself (Dahl, 1998, 1999). Every time governments seek to increase their capacity for control (*kratos*) and, thus, their ability to tackle a greater number of socially important matters, they also risk reducing people's opportunities for influence (*demos*).¹²⁰ When this happens, a reconstruction of the democratic ideal is often needed, as we are to rethink democratic theory and practice under renewed circumstances. On this account, I considered mini-publics as part of an effort to reconceive democracy under current conditions of social complexity. However, the decentralisation and fragmentation of political power have not only occurred within but also across states' boundaries. With the intent to handle a wide array of problems, the solution of which often requires coordination with other political units (e.g., immigration, global warming, increased capital mobility etc.), national governments have started intensifying their mutual relations by both establishing international agreements and entering supranational unions. The rise of supranational organisations, institutions, and processes that no single government can effectively control has raised serious concerns about the democratic legitimacy of the international order. The undeniable democratic deficit of institutions operating at that level has led many even to question the very possibility of establishing democracy beyond the nation-state. The challenge we face is indeed that of rethinking democratic theory and practice in contexts where the most basic features of a democratic order are lacking. Amongst these, the absence of a global *demos* has attracted considerable debate, with some arguing that a global *demos* is not only an unachievable practical goal but also a conceptually incoherent idea (see Miller, 2010).

Given that the democratic deficit of supranational institutions is firstly accounted for in terms of lack of a corresponding unified public sphere, we can no longer justify mini-publics as devices apt to promote the linkage between the two. However, in the preceding chapter, I defended an understanding of the public sphere as comprising an array of alternative publics gathering around specific problem situ-

¹²⁰ Conversely, smaller or less functionally differentiated political units, although capable of organising effective democratic control, are often inconsequential in their decision-making activity (see Dahl, 1999).

ations and argued that mini-publics are suited to play a role in facilitating their formation. Hence, in what follows, I defend a role for transnational mini-publics as devices aimed at both prefiguring a political public sphere that is yet not in place and creating constituencies of interest from scratch (see Smith, 2013b).

To be sure, the transfer of mini-publics from the domestic level to the supranational one is not straightforward, for such a shift inevitably raises both practical and theoretical obstacles. On the one hand, we face practical difficulties related to both the costs of such an ambitious enterprise and the organisation of face-to-face deliberation among people who speak different languages. However, these are not insurmountable problems. Trans-lingual deliberation can be easily attained via the technical facilities for simultaneous translation that are daily used in the European Parliament and the UN.¹²¹ The remaining costs are worth bearing to alleviate the legitimisation crisis of supranational institutions and given the return in policy compliance that may follow (Smith, 2009: 26-7; see Smith, 2013b: 464).

More difficult to deal with is instead the theoretical question of how to conceive of representation within deliberative venues at the supranational level, where it becomes impossible to gather a sample of participants that is descriptively representative of the wider population. The selection of a proportional number of members from each national identity and social group would in this case inevitably lead to a number of participants that is unsuitable for the kind of deliberation we expect to take place within mini-publics. This means that transnational mini-publics cannot rely on the same kind of descriptive representation their domestic counterparts were designed for. However, a possible way out is that of abandoning the proportionality that descriptive representation requires to shift to a representation of discourses as opposed to a representation of people.¹²² By this, I mean that, rather than selecting a proportionate number of participants for each social group, transnational mini-publics should be devised so to include a discrete number of participants for each discourse that may be relevant to the assessment of given problem situations.

¹²¹ For the same opinion see (Smith, 2013a), who also provides some evidence of how this worked in three experiments of transnational citizens' engagement sponsored by the EU (i.e. Futurum, Tomorrow's Europe and EuroPolis).

¹²² The discussion that follows relies on (Dryzek and Niemeyer, 2008).

The shift from the representation of people to the representation of discourses fits well with the deliberative ideal, particularly when it is conceived of under the aim of improving the rationality of democratic outcomes. Indeed, the promotion of rational outcomes firstly requires all relevant viewpoints to be adequately represented and confronted with one another, whereas their proportional distribution and extent to which such discourses are actually endorsed by the people are for this sake less fundamental. The promotion of rational outcomes may even require either the inclusion of discourses that are not held by any of the members of the polity in question or the effective countering of perspectives that are excessively predominant among the population (Dryzek and Niemeyer, 2008: 482). Moreover, given that representation of the people is more directly connected to aggregative forms of democracy and representation of discourses to more deliberative ones,¹²³ it makes sense to think of deliberative venues representing discourses as not necessarily the product of elections but rather as the result of some other method of selection. However, the first problem we encounter concerns the identification of a method for selecting all relevant discourses on a given subject matter.

In principle, a method of random sampling may ensure that all relevant discourses are eventually selected (see Dryzek and Niemeyer, 2008: 486). However, supranational contexts present a practical difficulty, as within these settings the number of participants that is necessary for random sampling to ensure the presence of all relevant discourses is so great that the latter cannot constitute a viable alternative. Hence, in all such cases, the selection of participants must rely on a prior identification of what discourses may be relevant to either certain problematic situations or the constitutional remit of the organisation in question, depending on the purposes of the assembly we are in the process of organising.

At this point, though, we face a problem that is similar to the one we encountered at the moment of justifying stratification and quota sampling. In fact, the risk is that of substituting the political process with social science, thus empowering unaccountable social scientific elites (Dryzek and Niemeyer, 2008: 487). Whereas in the case of stratification and quota sampling this problem was raised in

¹²³ See also (Chambers, 2003: 308), quoted in (Dryzek and Niemeyer, 2008: 484).

relation to the identification of the relevant social groups and identities to be included in mini-publics, here it reasserts itself in what may be a contested determination of the discourses that are relevant to given problematic situations. A possible way out would be thus to either empower advocacy groups for the competitive determination of relevant discourses or make social science as democratic as possible (Dryzek and Niemeyer, 2008: 489). The latter case would be an instance of the kind of meta-deliberation I discussed above. However, at the supranational level, mini-publics being deployed for this task would simply not do. On the one hand, were its participants being selected as representatives of the people, we would again face the problem of scale we encountered in the first place. On the other hand, were the intention that of representing discourses, we would face a vicious circle, for participants would have to be selected through the same procedure they are called to assess (Dryzek and Niemeyer, 2008: 490). A tentative solution may be searched in something similar to what Landemore calls an “open” assembly, that is, a deliberative venue comprising both experts and citizens, whose proceedings are open to the wider public for commentary and contestation via crowdsourcing web-platforms (Landemore, 2020: 12).¹²⁴

Admitting that we can find a reliable and non-controversial method to identify all relevant discourses to a given subject matter, the problem would become then that of selecting the right representatives for each discourse. Indeed, a factor to be considered concerns the fact that both the nature of a discourse and its chances to prevail or survive in deliberative settings significantly depend on the representatives voicing and articulating its contents (Dryzek and Niemeyer, 2008: 485). This means that, in drawing from different social backgrounds, we should aim to find a strong candidate for each discourse so as to give each social and theoretical perspective equal chances to determine deliberative outcomes.¹²⁵ Dryzek and Niemeyer identify

¹²⁴ Admittedly, the great divide in digital access to web-based platforms may be particularly worrisome in this case. In the chapters above, I made no mystery of the fact that good democratic practices inevitably rely on the protection of specific basic rights. On this view, I take the right to internet access that was included in the Icelandic constitutional draft as an important step forward (Landemore, 2020: xv).

¹²⁵ I am assuming here some principle of descriptive representation to be still at play, as I take the selection of different candidates representing different discourses to also consider their social and national belonging on the premise that it retains some importance for an accurate articulation of given social perspectives.

some methods through which this can be done (Dryzek and Niemeyer, 2008: 486 ff.). However, they also highlight how it might not always be desirable to select participants who strongly identify with certain discourses, as this may promote extremism and increase the risks of polarisation in deliberative settings (see Sunstein, 2002). They thus advance the hypothesis of a parliament of discourse subdivided into two different chambers: the “Chamber of Extremism” and the “Chamber of Moderation”, where the former includes people who strongly identify with certain positions and the latter people with a less definite stance (Dryzek and Niemeyer, 2008: 488). In such a case, the deliberative ideal would thus be rendered in a fashion that is analogous to Habermas’ two-track model. Whereas the “Chamber of Extremism” would shape the “context of discovery” that Habermas attributed to the broad public sphere, the “Chamber of Moderation” would be more suited for the “context of justification” that initially belonged to parliamentary institutions (Habermas, 1996: 307).

Despite all the difficulties, these possible institutional designs offer a valuable insight into what transnational mini-publics may look like. However, the option of discursive representation is still subject to a serious objection concerning its democratic credentials. Deliberative settings evenly representing all relevant discourses may well pave the way to producing good policy outcomes, but their deliberative activity remains unsuited to track the justifiability of policy outcomes to those who must comply with them. It thus remains unclear whether it would be justified to give weight to discourses independently to the extent to which they are endorsed by actual citizens. Discourses have no “moral standing that is not reducible to that of individuals who subscribe to them” (Dryzek and Niemeyer, 2008: 483).

Dryzek and Niemeyer seek to counter this objection by arguing that the representation of multiple discourses is a better way to represent each individual. Rather than “unproblematic wholes”, individuals are “multiple-sel[ves]”, for they never subscribe to one single perspective but are rather always split between two or more. By requiring individuals to eventually subscribe to one single viewpoint, electoral and aggregative forms of representation do not do justice to this basic fact. However, it can still be argued that letting individuals independently adjudicate between their multiple selves is precisely what a principle of respect for autonomy primarily requires (Dryzek and Niemeyer, 2008: 483). The problem, though, is that the idea that

citizens should autonomously adjudicate between multiple perspectives *in foro interno* to then channel their preferences via the electoral system reflects the standard account of political representation I rejected above. As I argued, political representation is not a matter of making “present again” in political decision-making something that is previously and independently constituted (Pitkin, 1972: 78), but rather a matter of partially constituting what it seeks to represent (Saward, 2006). It is in response to the discursive framework that political representatives offer that citizens shape their own interests and preferences in the first place, thus developing their own “internal autonomy” in dialogue with others (Rostbøll, 2008: 4).

It thus becomes easy to see how the representation of discourses fits well with the constructive account of political representation I advocated. Although representation of discourses seems *prima facie* justifiable mainly as a strategy to improve the substantive quality of policy outcomes, its democratic credentials can be disclosed once we conceive of it as a practice helping citizens shape their opinions about given problem situations. This is particularly true once we shift to supranational settings, where the lack of a unified political public sphere often implies that not all-affected people have received a chance to shape their own opinions on given subject matters through a dialogue with all the parties involved. Transnational mini-publics representing all relevant discourses would thus have democratic potential in helping citizens to forge their opinions and gather into a political public sphere. For instance, in the case of the EU, the institution of transnational mini-publics could help overcome the tendency to deal with European issues and policy-making only from the perspective of national discourses. Were transnational mini-public used as resources for democratic deliberation, they could work as catalysts for the formation of a European public sphere, which according to many is what the democratization of EU institutions firstly requires (Smith, 2013b).

Another context in which mini-publics cannot be defended as tools strengthening the linkage between the broad public sphere and its political decision-making sites is that of circumstances characterised by what Mackenzie and Warren call temporal complexity (Mackenzie and Warren, 2012: 104). These are situations driven by governance imperatives where political actors must make decisions of a scientific and technological kind that have not yet gained public attention. As such, they cannot yet

be qualified as properly political, for they have not yet been subject to political contestation and disagreement. For this reason, Mackenzie and Warren argue that they are also not well-suited to be dealt with by standard political institutions, for no alignment between policy goals and the judgement of the people is at this stage possible, the latter not having been expressed yet. This grounds a possible role for administrative agencies, whose technical expertise constitutes an advantage for treating such issues. However, we have seen above that the decision-making activity of non-majoritarian bodies can never be described as purely technical and that they are also subject to infiltration by organised groups that may shape technical questions to the advantage of their particular interest. Moreover, the fact that such issues have not yet gained public attention does not imply that they will not become genuinely political in the immediate future. Their political implications and value trade-offs will inevitably become evident in the time being so that political debate and contestation are likely to follow. Therefore, when dealing with such questions, administrative agencies may make use of mini-publics as a way to anticipate public concerns that are likely to be raised in the broad public sphere once the implications of such issues start to be perceived. As seen above, by soliciting the *ex-ante* consultation of affected interests via *anticipatory mini-publics*, executive agencies are likely to increase the chances of new policies being aligned with the public interest, thus reducing the occurrence of *ex-post* contestation (Pettit, 2004: 63; 2005: 25).¹²⁶

An anticipatory use of mini-publics is also available to supranational institutions, as they may make use of such devices to gain a preview of what citizens' perspectives would be like were they adopting a viewpoint that transcends their respective national standpoints (Lafont, 2019: 157). However, above I argued that supranational institutions might think of mini-publics mainly as tools facilitating the formation of a political public sphere. Is this use of mini-publics also suitable for conditions of temporal complexity? In dealing with such a problem, Mackenzie and Warren

¹²⁶ To be sure, despite the analogies, anticipatory mini-public are distinct from those used to "market-test" policy proposal (Goodin and Dryzek, 2006: 229). Indeed, whereas the purpose of the latter is to anticipate the reaction of already shaped affected interests, the former refer instead to affected publics that are not yet in place (Mackenzie and Warren, 2012: 120).

conceive of the linkage between mini-publics and the broad public sphere as essentially trust-based (Mackenzie and Warren, 2012), thus somehow rescinding the connection between micro- and macro-deliberations. The point is that in complex policy environments citizens are inevitably doomed to rely on a series of trust-based judgments, not having the time to actively engage with each decision-making process. One crucial goal of contemporary deliberative systems is thus to provide the conditions for such trust to be warranted rather than misplaced. According to Mackenzie and Warren, anticipatory mini-publics may help executive agencies achieve such conditions of warranted trust. This is for two main reasons: *first*, because their involvement in the decision-making process may increase the substantive quality of decisions so that, in the long run, citizens would be reassured of executive agencies' aptness for policy-making tasks. *Second*, because mini-publics' lack of conflicts of interest may provide a guarantee of procedural integrity (Mackenzie and Warren, 2012: 118). Moreover, citizens would be able to allocate their trust in different degrees depending on the level of agreement mini-publics reached in supporting a given policy, for this can be taken as a good signal of the contentiousness of the issue under their consideration. In other words, according to Mackenzie and Warren, there is no need for citizens to directly engage with the content of mini-publics' deliberations, for their organisational set-up is sufficient to warrant citizens' trust.

Therefore, the link between social complexity and the progressive move towards depoliticisation that is peculiar to network governance seems to reassert itself in all its strength when it comes to circumstances of temporal complexity. Given the highly technical nature of such issues and the tight timing in which a solution must be found, citizens are asked to defer to the joint policy judgement of mini-publics and public managers, the only plausible goal being that of providing the conditions for their trust not to be misplaced. To be sure, circumstances marked by temporal complexity are better described as situations in which executive agencies must deal with issues that have not yet gained public attention and, therefore, are *unpoliticised* rather than *depoliticised*. Hence, notwithstanding Mackenzie's and Warren's conclusion, the question I intend to ask is whether we have reasons to undertake an effort to politicise such issues too, and whether mini-publics are suitable for this task. Can we once again defend an account of mini-publics as instruments of politicisation?

In the chapters above, I traced a nexus between depoliticisation and anti-politics, arguing that the progressive displacement of citizens from political decision-making is one main causes of current increases in political disaffection and scepticism towards representative democracy (see Fawcett et al., 2017: 4). These feelings in turn constitute a fertile ground for populist movements, whose disregard for pluralism and the procedural requirements of democracy risks undermining the continued existence of democratic systems in favour of authoritarianism. It is given this background that I consider using anticipatory mini-publics as also vehicles of politicization as a strategy worthy of being pursued (see also Lafont, 2019: 156). Given that issues to be decided in conditions of temporal complexity will gain political attention and raise contestation in the time being, it is sensible to try to orient and shape collective processes of opinion-formation in advance, as this may prevent the antagonism that would follow from political exclusion. In this regard, with the help of other political actors and advocacy groups, anticipatory mini-publics should thus in this case too become an instrument for the formation of a political public sphere that is not yet in place. Given then their deliberative nature, when used as instruments for public engagement, anticipatory mini-publics would help disclose the advantages of politicisation, while at the same time taming its negative effects. Citizens would start addressing new problem situations when they are still cool, so to speak. In other words, they would gain access to the different rationales underlying policy alternatives before public debate becomes crystallised in antagonistic and polarised public perspectives.¹²⁷

Having defended a role for mini-publics as tools for the formation of a political public sphere, it remains to be established what sort of prerogatives and linkages they are to enjoy with formal decision-making sites if we want their policy recommendations not to be neglected. In the above section, I considered a few cases where

¹²⁷ At the time I am writing, governments are starting to plan their *iter* towards the progressive easing of lockdown measures imposed to prevent the further spreading of Covid-19 pandemic. Initially, such restrictions had been enforced in conditions of temporal complexity, as a prompt and highly technical response had to be decided to slow down the spread of the virus. However, with time, such decision started disclosing its value trade-offs and became a highly contested and polarised issue. Given that the easing of lockdown involves similar challenges and choices, some have advocated for the use of mini-publics as a way to promote public engagement. This may be crucial for public institutions to both not lose further public trust and to keep ensuring sufficient degrees of compliance (Burall, 2020).

granting mini-publics with suspensive veto powers would be suitable. However, this option is inappropriate for anticipatory mini-publics. The risk of gridlocks, for instance, is enough to conclude that anticipatory mini-publics of the kind executive agencies may use to deal with issues of temporal complexity should not be granted with such a prerogative. The same holds for transnational and international mini-publics, which I conceived of as structured around a principle of discursive representation. By its very nature, the representation of discourses is more intended for consultative purposes rather than for any formal decision-making power (Dryzek and Niemeyer, 2008: 489). Moreover, in transnational and international contexts, where reaching an agreement has already proved difficult given the number of parties involved and their distinctive interests, adding another veto-player would significantly reduce the opportunities for policy innovation. Hence, another kind of linkage must be found if we want mini-publics to have an uptake in political decision-making without at the same time becoming a source of gridlock. The solution we are looking for is thus one of *loose coupling*, as defined by Mansbridge (Mansbridge et al., 2012). This counts as a middle way between the above situations in which mini-publics are *tightly coupled* to legislative institutions, which may serve to hold public officials to account, and situations in which they are *decoupled* from other decision-making sites so that no influence is exercised (Hendriks, 2016: 57).

One reason why mini-publics often fail to produce a political uptake has to do with the fact that they do not encourage deliberation amongst those with decision-making power (Parkinson, 2004; see Setälä, 2017: 854). A suggested solution to let mini-publics have an impact on policies without granting them any formal power of influence has thus been that of allowing decision-makers to take part in their internal deliberations. Apart from helping public managers to develop a sense of “ownership” of the process, this would also provide them with an incentive to be more responsive to the recommendations’ of randomly selected citizens with whom they entertained a direct dialogue (Setälä, 2017: 854). However, the flipside of the coin is that this may undermine the independence of mini-publics’ deliberations, as decision-makers could dominate internal discussions and use them to legitimate their political agenda (Setälä, 2017: 855). We may also face the risk of public managers using their participation and involvement in mini-publics only to foster their career and public image

as innovative leaders with an indisputable democratic commitment (Hendriks, 2016: 54).

A more compelling option available for both consultative mini-publics involved in policy-making and anticipatory mini-publics at all levels is instead that of requiring decision-makers to be contractually bound to issue a statement within a certain time-frame where they explain and account for their positive or negative responses to mini-publics' recommendations (Smith, 2009: 93; Elstub, 2014: 181; Setälä, 2017: 855). Although this may not rule out cherry-picking, as significant leeway is left to regulatory authorities to reject citizens' recommendations (Setälä, 2017: 856), it would have the positive effect of increasing decision makers' "discursive accountability" by forcing them to both give reasons for their decisions and engage with a variety of opposing discourses (Goodin, 2008: 155 ff.). Private and public regulators at the domestic, transnational, and global levels are already embedded in "pluralistic accountability systems", as they are usually accountable to a variety of social and political actors. We find for instance mechanisms of *supervisory accountability*, which may be more or less political depending on whether the supervisory authority to which delegate powers are accountable is the state or some larger-scale multilateral organisation; mechanisms of *legal accountability*, where regulators are accountable to either national or international law and courts; mechanisms of *fiscal* and *financial accountability*, where regulators are accountable to private investors and markets; and various forms of *peer* and *reputational accountability*, where they are accountable to other organisation with similar remits and to all the above social and political actors for the reputation they gain while exerting their specific functions (Keohane, 2006: 82 ff.). However, what they are usually weak in is their *democratic accountability* (Grant and Keohane, 2005: 37), and this is not only because not all affected people have the opportunity to have their voice heard or because smaller polities are often subject to the domination of larger ones, but also because it is difficult for citizens to control the parliamentary oversight of regulatory authorities via electoral processes (Slaughter, 2013: 77; Bohman, 2007: 157).

To increase the discursive accountability of regulatory authorities by requiring them to account for their response to mini-publics' recommendations would have advantages in terms of democratic accountability. *First*, it would increase the chances

for meaningful democratic contestation, as affected citizens would have the opportunity to organise their protests by relying on both the evidence and reasoning provided by mini-publics and the arguments provided for the acceptance or refusal of their recommendations. *Second*, it would force regulatory authorities that have traditionally sponsored neo-liberal principles to engage with a variety of opposing discourses. Especially in the case of mini-publics shaped around a principle of discursive representation, this would also help highlight the point of intersection between various policy regimes, thus attracting the attention of a greater number of contestatory publics. *Third*, it would itself contribute to shaping the discursive framework surrounding given problem situations, which we saw is fundamental for citizens to develop their judgement and together become a public in the first place.

Conclusions

In this chapter, I investigated three different functions that mini-publics are suitable to exert within deliberative systems. *First*, I defended their role both as devices apt to increase the accountability of public officials involved in decisions of institutional design and meta-governance and as deliberative resources for an inclusive public debate about the same questions. I argued that it is by increasing the visibility of such decisions that mini-publics may help to fully realise the reflexive capacity of democratic systems. *Second*, I considered their role in ordinary policy-making practices and argued that they are suitable to enhance the input- and output-legitimacy of deliberative systems when devised as consultative bodies and a more fundamental power of agenda-setting is granted to the public at large. *Third*, I considered mini-publics in conditions where a political public sphere is absent and defended their role as catalysts for the formation of new publics. About all such cases, I also considered the kind of institutional linkages that are needed for mini-publics to perform successfully. Concerning the connections with the broad public sphere, I argued that mini-publics should be made mandatory for referendum campaigns over questions concerning the structural and procedural organisation of government systems. Concerning their use as resources for ordinary policy-making activity, I argued that citizens must be granted the opportunity to call for the enactment of mini-publics every time they

think specific problems deserve public attention. Concerning anticipatory mini-publics used by either executive agencies to deal with problems of temporal complexity or by supranational organisations, I argued that the role of other social and political actors is fundamental for mini-publics to become a resource for the formation of new publics. Concerning the connection with formal decision-making sites, I argued that mini-publics should be granted suspensive veto powers in decisions of institutional design, as this might allow them to correct for the conflict of interests that public officials display when involved in such decisions. Concerning the ordinary legislative activity of government systems, I considered the advantages of enacting a second chamber of randomly selected citizens, whose prerogative as a side-institution would be to help traditional mini-publics achieve the visibility they need to become resources for public contestation. I finally considered the possibility of requiring politicians to justify their responses to mini-publics' recommendations. As I argued, this would both ensure that their recommendations are not systematically neglected and increase the discursive accountability of public authorities that often suffer from a democratic deficit.

Conclusions

Trapped in between technocratic and populist forces, contemporary democratic systems are undergoing a period of crisis that risks progressively eroding the correct functioning of liberal democratic institutions. When democracy is at risk, so is freedom. Unfortunately, contemporary approaches to normative political theory have not always come to the rescue of what once was the collectively cherished ideal of living together as free and equals. Certainly, disciples of Plato blaming their fellows as the cause of all evils keep making their voice heard, with their valuable contributions ironically reinvigorating democratic debate. However, what is the source of unease is rather the tendency of democracy's advocates to easily adapt their views so as to accommodate the concerns of their critics. In most cases, this is an attitude deserving praise, for belief in democracy comes with the wisdom that truth is either a collective achievement or something we should not be too worried about. However, shifts in opinion irremediably taste like betrayal when they are too swiftly undertaken. This is the case with too many philosophical theories today accepting the conclusion that freedom and democracy are not internally related concepts. Once committed to the idea that the value of democratic institutions had to be found in the ambition to collectively shape our common destiny by entertaining relationships of mutual respect and solidarity, such theories today retreat into an ideology of individualism that frames basic rights as cutting the chains of social obligation (see Urbinati, 2015).

Deliberative democracy is not without fault. Initially born as a participatory ideal furthering emancipation from established economic interests and social powers, it ended up inadvertently providing normative support to an elitist reconfiguration of political systems. The results are dire. Excluded from public decisions that profoundly affect their lives, citizens have started turning their attention to the deceitful rhetoric of demagogues who lure them with the promise of restoring people's lost sovereignty. Contemporary depoliticised polities have thus become the breeding

ground for populist leaders threatening the very existence of liberal democratic institutions. The same logic also applies to deliberative mini-publics. Initially, they attracted democratic enthusiasm for offering a chance to realise the too often unfulfilled promise of an equality of opportunity to influence public affairs. However, the emphasis on their deliberative potential as a substitute for the distortions of mass public debate has eventually overshadowed their democratic ambitions, thus transforming them into just another instrument of depoliticisation. In fact, deliberative mini-publics have predominantly found support in theories of democracy that either praise the epistemic virtues of the many or value political equality as the grounding principle of democratic legitimacy. Whereas the former advance a justification of democracy that prepares the ground for a technocratic reshaping of political decision-making, the latter promote a kind of democratic equality that is incompatible with freedom as the most fundamental principle of political legitimacy. Democratic citizens are thus once again asked to suspend their judgement to blindly defer to a new class of experts, that is, their few educated fellows who have received the invitation to participate in mini-publics' proceedings.

This research has taken the opposite route. Having endorsed a liberty-based, systemic understanding of deliberative democracy that is normatively grounded in the co-originality of citizens' private and public autonomy, I conceived of the legitimacy of democratic institutions as the result of formal decision-making sites remaining open to the democratic input of informal public spheres. I thus brought back the focus on deliberative mini-publics as democratic innovations apt to strengthen the linkage between civil society and institutional decision-making. It is in their role as integrative institutions falling in between the "weak" publics spontaneously forming in the broad public sphere and the "strong" ones at the core of representative institutions that mini-publics can fulfil their democratic potential. I thus set forth a theory of *democratic* mini-publics by stressing three interrelated functions they are suitable to exert. *First*, I argued that well-designed mini-publics can be valuable tools apt to increase citizens' oversight of formal decision-making. *Second*, I stressed their role as deliberative resources for democratic processes of opinion-formation to be shaped in a more deliberative fashion. *Third*, I envisioned their role as catalysts for the formation of new publics. As instruments of (re)politicisation, deliberative democratic

mini-publics raise the opportunities for the creation and further development of a more informed public spheres able to exercise non-trivial forms of democratic control over distributed systems of network governance.

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