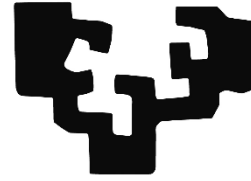Vrije Universiteit Brussel

eman ta zabal zazu

Euskal Herriko Unibertsitatea

Deliberative Democracy

and

Complex Diversity

From Discourse Ethics to the Theory of Argumentation

Oier Imaz Alias

Proefschrift ingediend met het oog op het behalen van de graad
van Doctor in de Politieke Wetenschappen (VUB)

Filosofia, Zientzia eta Balioak doktore titulua eskuratzeko
aurkezturiko tesia (UPV/EHU)

2017-2018

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To Itzi

Acknowledgments

These years as a PhD student at the Vrije Universiteit Brussel and the University of the Basque Country were as grateful as intense and challenging and left me indebted to many people. First and foremost, my two supervisors Andoni Ibarra and Didier Caluwaerts. Their advice has been crucial at every stage. Each of them provided me with a privileged guidance not to get lost in the transdisciplinary vacuum, and if I were able to meet the challenge, it is thanks to their open-mindedness and dedicated support… And endless patience.

The indispensable surprise has been Mikel Iruskieta. After a decade, not having any news from each other, I read that someone just published a PhD on relational pragmatics. Perfect to counter-argument Habermas. But, his contribution has gone much further, and with the assistance of his team IXA, especially the hard and tedious work of Esther Miranda, they gave me the possibility of grounding what until then was not much more than fancy ideas. I only hope my contribution has been of any help for them too.

I would also like to thank the people that helped me collecting the documentation of *The Konpondu Initiative*. Asier, Iñaki, Aitziber, Jokin, Jorge, Igor… And especially Gorka Espiau. I had the idea. I also had the tools. But thanks to them, I had something worth to tell. They have given me full access to all the documentation and helped me to look for what was lost. No matter the result of the empirical analysis this accessibility and disposition are enough proof of the value, effort and care they dispend in their daily work.

I cannot forget, those that were first, and gave me this opportunity when this dissertation barely was an idea. Ekai Txapartegi for helping me writing the first draft of the project and encouraging me to knock Andoni's door. Kris Deschouwer for letting the door open for me to come and join Didier with his deliberative stuff. I cannot forget Pako Letamendia and his insightful comments on the first versions of this dissertation. Philipe Van Parijs, for accepting my solicitude before I even had a project. Or, Peter Krauss, for discovering me that society is complex, and complexity is diverse, but complex diversity is not an oxymoron.

In between, those who came by all the way down from the beginning until the end, here and there. Igor, Iñaki, Rakel, Luis, Bryan, Alan, Maite, Thomas, Jaume, Valentin, Peio, Iraide, Margoth, Gorka, Xabi, Urko … some, you were at home at return others made Brussels home. But a PhD brings about lots of hours in solitary, and definitively cannot be furthered without care and a good team, and, fortunately I had both.

Finally, those that welcome me and suffered my sleepy face during this last year of my PhD. My colleagues at *Bernat Etxepare* and especially Gil Arrocena, a great philosopher and better friend, thanks for bringing me back to real life philosophy. I cannot forget my students of TZ2, TES and MKZT. Maybe the generation of 2017 is not the best, but "Tout les [élèves] ont du genie le tout est de le faire apparaître." (Chaplin) I have learned a lot from you all.

To my family, rather than thanks, promise. Aita eta Ama, Pili eta Pedro, Iker eta Aintzane, Bati eta Juanjo you do not understand me now, but there is no way to express in any language how grateful I am. You are always there. I only hope to have more time now to be a little more there for you. And Jon, Itzi, Telmo… It is done, and I am coming. Maite zaituztet dana.

Donibane Lohitzune, 2017ko Abuztuaren 21a

Introduction

Where are you from? A seemingly simple question asked in a London pub. However, as a Basque citizen born in Spain and living in France, it provoked a certain difficulty. My first reply would be intuitive, non-problematic: Basque. It is how I feel. But the response is lacking something and requires a bit more: from Spain? Or France? Here the difficulty arises. In a normal conversation, this is an ice-breaking question. It is about politeness, a means to open a conversation. In reply, I can simply be polite and say France, or Spain. I can choose between where I see my children grow or where my mother comes from. But whichever I choose, I will deny something of myself because I feel I belong to neither of them. If I decide not to elaborate, I will feel compelled to explain why, account for how I feel about my country, what my political convictions are… all of which is too fast, and too deep for small talk. We are no longer simply talking about where I come from, but who I am. Yet suddenly, I become only Basque. Neither philosophy teacher, nor a fan of Sonic Youth, or someone struggling to end his PhD… just Basque, only Basque.

Indeed, something similar may well be occurring the other way around. Either they are sympathetic to the 'Basque cause' and intend to express, usually too emphatically, their support for 'us.' Or, equally over-zealously, reject my way to define myself and intend to convince me I am wrong about what I think I am, or how I feel about it. In short, the other is either with 'us' or against 'me.' All the while I wonder what 'us' actually means, and how this person knows nothing at all about me. So instead of a polite introduction, what happens from the very beginning is a rigid mutual categorization that leaves little room for a 'cross-fertilization' of meaning. I guess something similar occurs to a liberal that meets a conservative, or a socialist that meets a capitalist. But you simply never begin a conversation with a stranger asking, are you in favour of global capitalism? While it is strikingly common to begin a conversation asking, where are you from?

It may be for this reason that identity is one of the main topics of discussion in the Basque Country. In several fields, the thread that runs through any debate within the Basque speaking community, is how the Basque national identity is defined. For a long time, controversy has bedevilled the different ways of defining its main character: Is it the language? History? Territory? However, during the last decade, it seems that a paradigm shift is occurring.

In the introduction to her recent book, Laura Mintegi, a prominent Basque writer, summarises this change as follows:

> Liburu hau irakurri ostean zerbait argi geratu bazait, zera da, euskal bideak "bide" izan nahi badu, "euskal" izateari utzi beharko diola[1] (Olariaga et al. 2015, 14).

She refers to a collection of essays written by four 'young' Basque philosophers. What they suggest, according to Mintegi, is that debates should withdraw from a focus upon difference and the identity of the Basque people, to ones of political equality, human rights, or justice… in the Basque Country. Put another way, when I respond with, 'I am Basque', what it says about me, speaks only about me and we can have a polite conversation about how I feel it, live it, love it, or hate it. But it is not under discussion. My identity is mine. By contrast, when it comes to 'us', the who should be non-problematic, collectively 'banal' and individually diverse. The question is rather what do we want to become, and how are we going to make it together.

This dissertation follows, and contributes to, that direction of travel. The main topics are identity and democracy, and the main case study is located in the Basque Country. This is not however, a detailed approximation to this debate within the Basque community. The case study case is not intended to resolve the local controversy, on the contrary, the case study serves to illustrate, a more general debate on the controversial relationship between identity and democracy, and more concretely, between political identity and deliberative democracy.

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[1] **English translation**: After reading this book if something is clear to me, it is that the Basque way if it wants to be a "way" it can no longer be "Basque".

In academic terms, the standard departure point for discussion begins with the dichotomy between two types of national identity. On the one hand, national identity is romantic. It references a glorious past commonly grounded in a future vision of their ethnic communities. On the other, it is resolutely cosmopolitan. This type has a broader conception of identity where world citizens are sheltered in their path towards a future held in common. Both appear to share, albeit differently, expressions of a basic human need to embrace others, yet they are categorically opposed in their definition of who is the 'we' that needs to stand together. Besides which, there is a wide consensus regarding the standard in accordance to which one may assess the contribution either of them make to the prosperity of our societies.

In the European context at least, democracy is generally uncontested. It could be inspired by contradictory principles, shaped by a wide variety of procedures, and even contested with regard to its outcomes. But the basic idea that only the people hold power over legitimate political institutions remains intact.

Indeed, the last two decades have witnessed the end of violent conflicts within the territory of the EU and both involved a 'national question'. The path initiated by the *Good Friday Agreement* in Northern Ireland, and followed in the Basque Country with the *Aiete Declaration,* indicated a paradigm shift that underlined the incontestability of democracy as the means though which political disputes are channelled. Neither in the North of Ireland, nor in the Basque Country, has the national issue been settled, but the respective parties acknowledged that claims should be pursued by democratic means only. If independence was the goal, the only legitimate pursuance of that can only from the consent of the people, and the people endorse a political project only by democratic means.

This paradigm shift could be illustrated by a shift of attention from the North of Ireland to Scotland, in the case of the UK, and from the Basque Country to Catalonia, in Spain. In both cases, the absence of a violent conflict in the background, facilitated 'rational' debate and contributed to a more creative search for solutions. But their differences reveal a tricky paradox once the cases are compared. At the same time, as violent conflict over national disputes faded away, nations themselves returned to political arena more forcefully than ever before in the recent past: only now on behalf of established nation states. In the Scottish case, the government held a referendum in September 2014. Citizens were asked to respond 'Yes' or 'No' to a clear question: Should Scotland be an independent state? The 'No' side won with a 55.3% of the vote, after a turnout of 84.6% percent of those eligible to vote - the highest recorded for any electoral process in the country's history. The UK government transferred the powers to the Scottish government to hold a referendum. Scottish citizens expressed their preferences democratically. Alex Salmond "accepted the verdict of the people" and called Scotland "to follow suit in accepting the democratic verdict of the people of Scotland"[2] (*The Guardian*, 2014/09/19).

Salmond himself acknowledged a referendum is a "once in a generation opportunity"[3] and rejected the possibility of a second referendum for at least 18 years (*The Telegraph*, 2014/09/14). However, two years later, in an unexpected sequence of events, it is not Scotland but the UK that voted "Yes", in a referendum in favour of separating, not from Scotland, but the EU.

Brexit, also unprecedented, was won by the *Vote Leave* campaign in a referendum held in the UK in 2016, by advocating the restoration of its own borders controls, and withdrawal from the European Union. The historical relevance of this event was unprecedented, insofar as it was the first time a member state had decided to leave the Union, and one of its side-effects could be a second independence referendum in Scotland. Indeed, on the 28th of March 2017, the Scottish Parliament voted in favour of a formal request to the UK government for the powers to hold a new referendum, and Nicola Sturgeon, the First Minister of Scotland, argued this requirement is grounded in the expressed preference of Scottish voters to remain in the EU. In other words, they want to separate from the UK to remain in the EU.

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[2] Source: https://www.theguardian.com/politics/2014/sep/19/alex-salmond-accepts-scotland-independence-defeat-holyrood-powers (Consulted: 2017-08-12).
[3] Source: http://www.telegraph.co.uk/news/uknews/scottish-independence/11095188/Alex-Salmond-pledges-no-second-Scottish-referendum.html (Consulted: 2017-08-12).

In Catalonia, a much more turbulent political process has taken place over the last decade. Almost all parties arguing for the right to hold a referendum on Catalan independence, recognised the political process. Between 2004 and 2006 the Catalan Parliament discussed and agreed a proposal to reform its *Estatut d'Autonomia*. The proposal gained the support of a 73.9% of voters via a referendum. Although, in comparison to the Scottish case, turnout was lower, with 50% of voters abstaining. The approved text stated in its preamble that: "[t]he Catalan nation has been building itself…" a phrase that Spanish political parties found unacceptable. The proposal followed its procedural course, but inspired fierce opposition. For example, Mariano Rajoy, the current Prime Minister of Spain declared the *Estatut* was a 'disaster' and stated:

> ... what a minimal sense of patriotism and common sense requires us is to stop this operation to liquidate the Spanish nation[4] (*ElPaís*, 2006/06/19).

This fierce opposition manifested itself in 187 amendments to the 223 dispositions of the original text in front of the Constitutional Court. The process ended with a decision (Constitutional Court, 31/2010) underscoring that "the Constitution does not recognise other than the Spanish nation" (*ElPaís,* 2010/07/09). Several articles of the *Estatut* were either rewritten or erased, and large sections of Catalan society took this decision as a betrayal of the promise made by Jose Luis Rodriguez Zapatero, "to support the reform of the Estatuto that the Catalan Parliament approves"[5] *(Elpaís,* 2003/11/14). In the aftermath of this decision, the debate on independence gained support, and the controversy shifted toward the right of Catalan institutions to legitimately call for a referendum – a power denied, and even legally proscribed, by the Spanish authorities.

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[4] Source: http://elpais.com/diario/2006/06/19/espana/1150668010_850215.html (Consulted: 2017-08-12).
[5] Source : https://elpais.com/diario/2003/11/14/espana/1068764421_850215.html (Consulted: 2017-08-12).

In sum, both cases reflected the limitations of a dichotomic opposition between ethnic and civic nations, but especially their corresponding assignation to state or stateless nations. In the Scottish case, the appeal for a second referendum was claimed on the basis that the majority of Scottish citizens voted to remain a member of the EU. Whilst in the Catalan case, the *Estatut* stated the willingness of Catalan institutions to remain in the Spanish state in the exercise of their political sovereignty as a free nation, but the Constitutional Court rejected the implicit claim that they were free to take such a decision. In neither case was the argument for independence presented as an ethnic movement; no more at least than the argument against it.

The diagnostic becomes different if, instead of trying to explain this situation from the contraposition between ethnic and civic nations, we face it from their corresponding understanding of democratic rules. In the Catalan case, the will of Catalan citizens to express their opinion by casting a vote for independence, defined a democratic mandate for political institutions. The government in Madrid however, argued that the law should prevail so far as it is the law, and in particular, that the Spanish Constitution, is the expression of the general will of the Spanish people. On the other hand, the UK government argued that a referendum was held and lost, and that there was no room for another for at least a generation. The UK voted, including Scottish UK citizens, and *Brexit* was the result, and the change will be enacted. Therefore, given that the law applies to UK, it equally compels Scotland, even though a majority of Scottish citizens voted not to leave the EU.

From this perspective, the second call for a referendum in Scotland, and the Catalan call for a consultation, exemplify a special case of an old and venerable paradox of modern constitutional democracies: the 'Liberties Dilemma' (Berlin 1959; Constant 1988). As the first chapter will explain, the 'Liberties Dilemma' defines an essential contradiction between the two basic principles of modern constitutional democracies: what prevails law or democracy? Individual rights or popular sovereignty? If this dilemma is considered through the lens of political theory, all seems to depend on the conception of the person, the people, and the institutions of law. Each theoretical tradition provides a specific account of each of these concepts, and suggests a solution on the basis of the weight given to each accordingly. The aim, in each case, is to guarantee the legitimacy of political institutions in the eyes of citizens. But two centuries of theoretical debate are testament to the difficulties of how agreement is reached to achieve this objective.

The second chapter explains how, according to Jürgen Habermas, no one is to blame because it is nearly impossible to find consensus between different theoretical traditions, especially if they do not share a common ontology. Their definitions of subjectivity and society differ, so if we depart from those definitions, establish principles on that basis, and consequently shape ideal institutions in the light of them, there will be no agreement. The strategy should change, and his proposal is simple: if we are not able to agree, let the focus be on the conditions making agreement possible. Translated as a response to the 'Liberties Dilemma', this change of perspective entails that neither popular sovereignty, nor rights take priority; either we have both on equal footing or none at all (Habermas 1996). The issue is how to make both function in parallel; namely a question of procedures.

Let's take a look at the Catalan case from this point of view. The legitimacy of the law is grounded in the Constitutional act, which gives Catalan institutions the power to rule, and Catalan citizens the capacity to govern themselves. Therefore, both Catalan Institutions and the Spanish Constitution, share a constitution that legitimates their corresponding legal systems, but they receive contradictory democratic mandates from their corresponding constituencies. It is axiomatic that any decision taken in a democratic state will face the challenge of not representing all in society; it is equally true that the opposite is impossible. However, the particularity of this case, is that what is at stake is whether their corresponding constituencies do indeed constitute a unique society.

Will Kymlicka plainly explained this problem by saying that,

> ... democracy is rule by the people but this requires an agreement that citizens of a
> state do indeed form a single 'people' (Kymlicka 2011, 285).

In my view, it is at this point that the Scottish and Catalan cases differ. In the Scottish case, there were differences of opinion regarding the appropriateness of holding a second referendum, and controversy arose regarding the political will of the respective parties in the case of disagreement. But, nobody questioned that both parties existed, and further, have the right to decide whatever they want to be in the future. Therefore, the problem is not ontological but procedural, and the procedural approach then, remains valid in assisting the constructive search for solutions.

In contrast, the Catalan case revealed that the very existence of the parties in dispute is denied. From the Spanish point of view, the Spanish Constitution defines the Spanish nation as the only sovereign political entity. Moreover, the Spanish constitution gave birth to Catalan Institutions as legitimate political entities. Therefore, there is no legitimacy for Catalan institutions outside of Spanish Law. For Catalan institutions however, it was the free will of Catalan people that legitimated, via a referendum, the ruling of the Spanish Constitution in Catalonia. Thus, there is no legitimacy for the law in Catalonia if it is contrary to the democratic mandate of Catalan citizens. In this case, the procedural approach defined by Habermas becomes controversial.

The third chapter explains this in more detail, showing how Habermas departs from a clear distinction between ethnic or conventional, and civic or post-conventional identities. In a modern constitutional democracy, national identity belongs to the constitution of law and outside of that there is only conventional morality. Therefore, we should interpret the Catalan claim for self-determination as a nostalgic glance to a glorious past of a conventional identity. But, the Spanish state is a case of constitutional patriotism, and the identity of the Spanish nation is not conventional, but reflexive and rational. Therefore, according to Habermas, since Spain settled its Constitution, the law is the language of popular sovereignty, and if the law does not speak Catalan in Madrid, it is a problem not for the law but for Catalans.

It is questionable whether or not the Spanish nation fits the definition of constitutional patriotism (Payero 2012). But notwithstanding this, the potential inadequacy of the procedural model in this particular case, shows that the Habermasian solution requires acknowledging a dichotomic distinction of identity that I have already discarded. In my view, when considering the case of multinational societies in constitutional states, the 'Liberties Dilemma' is intertwined with another old and venerable philosophical paradox; in short, what came first the chicken or the egg? (Honig 2007). According to the 'Constitutional Paradox' (Habermas 2001a), when the constitution settles the legitimacy of law, the question is no longer whether the law or democracy is best, but rather, what is first.

If we adopt a philosophical line of enquiry, then several renowned philosophers and scientists have provided responses to this thorny question. The argument I follow in this dissertation however, is inspired by the evolutionary response. This solution, arrived at by an expert panel including philosophers, geneticists, a chicken farmer[6] (*The Guardian*, 2016/05/26), and was defended by Dr David Papineau, Philosopher of Science at *King's College London*. He maintains that based on recent works inspired by evolutionary theory, the egg was first because the species came from genetic changes in other species, and not from their parents (Bhullar et al. 2015). In other words, the first chicken egg had no chicken parents.

What I will argue with this 'philosophical' example, is that we decide first what a chicken is defined by; in other words, the categorization of a species is not a natural process - not from the perspective of the first chicken egg at least. And, second, how changes occur. One thing becomes another, and no one is to blame for it. As Charles Darwin (1859) explained, two main impulses track the evolution of species: adaptation and hazard. Both respond to the most basic need: survival. But, no survival is possible outside a *milieu* (Von Uexküll 1965)*,* and this relational interaction of each organism to its environment is normative (Canguilhem 2006)[7]. Indeed, it is in these terms that I will reply to the dilemma posed by the constitutional paradox in multi-national states.

During this dissertation, I maintain that identities are not pre-given categories in the light of which we could distribute legitimacy, but complex practices that evolve in particular circumstances closely tied to their context; in other words, in their particular institutional, social, and cultural *milieu*. In more philosophical terms, identity is an 'essentially contested concept' (Connolly 1983). Identities are not only vehicles for the best, or the worst of human beings, they become the site of controversy. The challenge is not to avoid controversy, but to guarantee it by democratic means. And the only rule is the assumption that the chicken will never go back into the egg. The focus thus shifts from the critical analysis of identity to a critical analysis of the processes through which collective identities cohabit and shape each other. In my view, it is by focusing on these processes that unnecessary conceptual deadlocks fade away, and political theory reveals its heuristic value. The basic hypothesis is that contesting identity requires more, not less, democratic participation, and the critical question becomes how to make it possible; meaning procedures.

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[6] Source: https://www.theguardian.com/science/2006/may/26/uknews (Consulted: 2017-08-12).

[7] I want to thank Gil Arrocena for these references.

The fourth chapter develops this trajectory by first focusing on *conflict* to understand identity, as opposed to focusing on *identity* to understand conflict. Secondly, I defend that position from a conflict resolution perspective, where identities are regarded as resources of perspectival richness, instead of a burden to overcome. Finally, I argue that deliberative forms of democracy, provide an invaluable toolkit of theoretical and practical resources to make it possible. Moreover, on the basis that diversity enhances the epistemic capacity of deliberative systems, the central hypothesis elaborated here could be considered an extension of the idea explored in Hélène Landemore's Democratic Reason (2013), and defined as simply: the many are smarter than the few, no matter how diverse the many is.

Landemore follows Habermas in understanding democracy to be a problem-solving task and, is further guided by the 'diversity trumps ability theorem' (Hong and Page 2004), in defending the thesis that the collective intelligence of the many is more likely to solve complex problems, than an elite. Therefore, due to the simple reason that the many tend to be smarter than the few, even by chance, she maintains that there is an epistemic benefit associated with greater participation in decision-making. This is not however just a question of numbers, as in the Condorcet Jury Theorem (Condorcet 1976), but because,

> it is often better to have a group of cognitively diverse people than a group of very smart people who think alike (Landemore 2013, 103).

Consequently, she rejects the methodological individualism of contemporary political science, because the depth of reason operating beneath democratic decision making is collective, and it is 'distributed' (Landemore 2013, 27–53). This 'democratic reason' emerges from environments where citizens, institutions, customs and even artefacts, interact and constitute efficient cognitive devices. Thus, when controversy involves contested identities, the focus should be placed less in separated units, and more in the complex relations established between citizens, and within the institutions that those relations are procedurally regulated.

In other words, critical analysis should pay attention to what the systemic approach to deliberative democracy refers to as 'deliberative ecologies' (Parkinson and Mansbridge 2012, 6). It is in the context of complex sets of relations between identities and procedures, that provides the analytical space to assess whether their interactions facilitate the operation of democratic reason or not. So how might that be done?

At the systemic level, the epistemic approach values diversity. As James Bohman wrote,

> [t]he benefits of diversity in improving deliberation only accrue in systems that institutionalise diverse forms of deliberation in different types of forums at various levels of organisation (Bohman 2006, 186).

'Multi-perspectival deliberation' manifests as the political equality of citizens in the expression of their opinions,

> it enables democratic authority to be distributed among collective agents and the publics with which they interact [And the epistemic benefits of this sort of distributed process take advantage] of the diverse circumstances and competencies of variously composed publics and collective agents (Bohman 2006, 186).

In short, the many are smarter than the few, even when speaking about collective bodies at the systemic level.

At each site, across variant levels of the system, the picture gets necessarily a bit more complex. The problem of differentiating the role of each site is that the systemic approach to deliberation may,

> ... result in judging a system as deliberative with little, or even nothing, in the way of actual democratic deliberation between citizens taking place (D. Owen and Smith 2015, 218).

To avoid this problem, Owen and Smith suggest a 'deliberative minimum' ruling deliberation at every site of the system. This minimum requires

> ... a relation to others as equals engaged in the mutual exchange of reasons as if to reaching a shared practical judgment (2015, 228).

From the epistemic point of view, the most problematic part of this minimum is the aspiration to reaching a shared practical judgment based on reason. But, is this aspect central to deliberation if we expect social integration? Maybe not. If we assume for example, that public reason itself is plural, why might we expect anything else?

For example, Hélène Landemore begins her book by explaining her own contradiction when she realised French voters had rejected the European Union Constitution in 2005. According to her, the constitutional project was perhaps imperfect, but could have been considered as a reasonable compromise between different political conceptions of the EU. Thus, either French citizens, or herself, was *wrong*. However, when talking about political decisions, according to which standards do we differentiate what is right and what is wrong? She suggests that being wrong or not was not the point. The decision that French citizens took needs to be considered legitimate because it fulfilled the requirements of procedural justice. Thus, disagreement on the substantive result of the referendum is unjustified in trying to sustain an argument about the inappropriateness of the referendum itself. This raises arguably a more fundamental question. Is any decision legitimate just because it is democratic?

The obvious response is that democratically taken decisions are at least more legitimate than non-democratic decisions. In other words, democracy is the least worst. But, this is too weak for an argument aimed at sustaining the legitimacy of institutions ruling our lives. In this regard, the epistemic argument suggests not only that democratic decisions are fair, but they are smarter than non-democratic ones. Nonetheless, taking an epistemic standpoint, instead of overcoming the dilemma, we transfer it. The question is not now whether decisions are right or wrong but whether their outcomes are true or not. The empirical experience accumulated over recent decades in the field of deliberative democracy, suggests that we are not, in general, especially good in the search for truth. It is because of this that Landemore suggests, if human reasoning is so bad at figuring out the truth it may be that, "figuring out the truth cannot be its main function" (Landemore 2013, 126).

To retain normative standards, she suggests we should rethink deliberation from the perspective of argumentation theory (2013, 118–44). First, Landemore suggests that instead of searching for the truth, and improving its status through ratiocination, the main function of reasoning is,

> ... to find and evaluate reasons, so that individuals can convince other people and evaluate their arguments in dialogic contexts (2013, 126).

In other words, mutual exchange of reasons is the epistemic value, of which the diversity of cognitive perspectives is crucial. Secondly, this exchange does not refer to counterfactual others in Habermas' sense; it is not about ideal role taking. As Landemore put it, "the 'normal' conditions for reasoning are deliberative and social" (2013, 127). Put another way, reasoning is an argumentative device and its function is social, but deliberation requires the mutual exchange of reasons with at least one other human being.

From this perspective, the 'deliberative minimum' requires at each site of the deliberative system, a relation to *real* others as equals engaged in the mutual exchange of reason for the epistemic benefit, of which the diversity of cognitive perspectives that emerges is crucial. The theory of argumentation then, describes how this process of mutual exchange of reasons can provide epistemic benefits, without judging the validity of the input or the output of the deliberative process. As Landemore put it, claims made by the theory of argumentation,

> ... are descriptive - that is true or false - but they have no implications in terms of what is morally wrong... [indeed] the argumentative theory of reasoning is compatible with many normative views of politics and does not carry a normative agenda by itself (Landemore 2013, 129).

In my case, I retain what I take to be foundational for the normative agenda of deliberative democracy: its aspiration towards social integration. The deliberative minimum is the aspiration that participants will establish a relation to real others, engaged with as equals in the mutual exchange of reasons, *as if* to reach a shared practical judgment. This aspiration is not at odds with the epistemic argument for democracy, nor the assumption that public reason is plural. The epistemic argument for democracy rules out the idea that in the effort to realise ideals we should be concessive to the second best while holding them fixed (Bohman 2009, 31). In my case, after months considering Habermas, I especially value his effort to provide a viable route towards social integration. I think it is worth retaining with the caveat Bohman rightfully underlined, that these ideals need to be open to change, and to develop as our practices evolve.

In sum, I defend deliberative democracy because it provides a viable path to enhance the role of citizens in societies with contested identities. The aim of deliberation in these cases is epistemic, it assists in creating a positive environment which enables a collaborative search for solutions. It can be measured by considering the extent to which deliberative exercises contribute to the diversity of cognitive resources involved in the deliberative system. I would argue that the identity of participants is not the necessary condition for deliberation to take place, but rather facing the other is the pre-condition for deliberative reasoning to take place, and is crucial in enhancing its epistemic benefits. Finally, I retain the normative aspiration towards social integration; the idea that citizens should treat each other with mutual respect and as if they could reach a shared practical judgment. But this ideal is aspirational, and deviations from this ideal should account for similar deviations in the light of the same ideal at the level of the deliberative system as a whole.

As James Bohman has elegantly summarised,

> ... realist theories without aspirational ideals are empty, but aspirational ideals without empirical inquiry and testing are blind (Bohman 2009, 28).

Consequently, the fifth and final chapters empirically test the argument on a concrete deliberative exercise, before summarising the main conclusion, generalise the implications, and suggest future research trajectories. These suggestions are predicated upon retaining the most important tenets of its normative core, namely deliberative democracy, and instead of moving forward from discourse ethics to deliberative practice, movement must be backwards from discourse ethics to the underlying theory of argumentation.

Finally, the case study explored by this thesis is *The Konpondu Initiative* (CICR 2007, 2009). This initiative, pursued by the Basque Government between 2007 and 2009, was aimed at responding to the challenge of peace by moving citizens into the equation. The context was less than appropriate for this kind of move. The Basque case harbours almost all of the classical challenges that militate against the success of deliberation. Different national sensibilities are intertwined with different linguistic communities, who in turn are ruled by different administrative bodies, at different institutional levels, and all in a country that barely extends over 200 km with less than three million inhabitants. More painfully, the Basque country was witness to the last armed conflict within the EU. Indeed, just before the initiative began, peace talks ended dramatically and violence resumed. Nonetheless, in the following two years, almost 1500 people took part in 182 fora aimed at making their voices heard as a part of the solution.

The material collected is far from ideal for the analysis of deliberative discourse, but it does however, tell the story from a uniquely different perspective; that of the Basque citizens. In the end, it has been civil society that has made the difference in the Basque case. Several civil society organisations, such as *The Basque Social Forum, Bake Bidean* or *Les Artisans de la Paix,* testify to the stubbornness of Basque citizens to ensure the success of the peace process. Their desire, not only to tells their own particular story, but also changed history. In particular, the images of ETA decommissioning its armaments to civil society volunteers, against the explicit mandate of the Spanish state, and the reluctant and factual acknowledgement of French authorities, is history. A passage of Basque history that tells another story about 'us.' A story I will be happy to share in a pub in London in response to anyone asking me, where are you from?

Chapter I

'Liberties Dilemma': The Liberal Approach

Democracy stands almost uncontested as the appropriate procedure to conduct public life in contemporary societies. But the concept 'democracy' is far from consensually attached to a single clear-cut definition. A core issue is the long-standing controversy over the principles which democratic institutions would better guarantee liberty and equality. In other words, whether democratic regimes should better guarantee what Benjamin Constant named the 'Liberty of the Ancients' or the 'Liberty of the Moderns' (Constant 1988). Broadly speaking, the 'Liberty of the Ancients' refers to popular sovereignty; the right of citizens to master themselves as a people. While the 'Liberty of the Moderns' refers to the system of individual rights; the right that each person holds for freedom of speech, conscience and the like.

Several attempts have been made to reconcile basic elements of both traditions. Among them, two remarkable examples are John Rawls's political conception of 'justice as fairness' in *Political Liberalism* (2005) and Philip Pettit's idea of 'freedom as non-domination' in *Republicanism: A Theory of Freedom and Government* (1997). Nonetheless, according to Jürgen Habermas (1994b), neither liberalism nor republicanism[8] is capable of accommodating both, because negative rights and political liberties are ends by themselves, not the means to each other.

This introductory chapter unpicks the different aspects of the so-called 'Liberties Dilemma' to underline the novelty of Habermas' procedural understanding of democracy. As a default position, I will review the solution proposed by John Rawls's through a political definition of 'justice as fairness' (1971, 2005). Drawing on critiques by Charles Taylor (1992, 1994), Herbert Hart (1973) and Philip Pettit (1997, 2005, 2006, 2012), I will problematize Rawls's proposal with regard to three respects: the ideal of persons and society, the priority rule and the idea of liberty. Finally, I will follow Jürgen Habermas' procedural critique to Rawls (1994b, 1995, 1996) outlining basic ideas that underpin the deliberative response to the 'Liberties Dilemma'

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[8] Pettit defends Habermas rejects a particular conception Franco German republicanism he exemplifies with the conceptions of the state and individual of Kant and Rousseau (Pettit 2013, 196). Indeed Habermas constraint his critique of republicanism to a communitarian reading of contemporary republican scholars (Habermas 1994b, 4).

1   Political Liberalism: John Rawls's Fundamental Ideas

Political Liberalism (2005) (hereafter, PL) grounds Rawls's solution to the 'Liberties Dilemma' on the concept of 'justice as fairness' introduced in his earlier book *A Theory of Justice* (1971). In Rawls terms, "justice as fairness tries to adjudicate between these contending traditions." (2005, 5) Two basic principles are defined to guarantee liberty and equality. The first principle refers to political rights and liberties, while the second to equality of opportunity and the so-called 'difference principle'. Both principles together "with the first given priority over the second" (2005, 6) are considered better than alternatives to realise values of liberty and equality; and, therefore, to solve the liberties dilemma.

The novelty of Rawls's contribution rests in the claim that giving priority to rights over goods, does not mean that "a liberal political conception of justice cannot use any idea of the good at all" (2005, 173). True, the principles of justice chosen in this light set limits to permissible ways of life[9]. However, those limits are not arbitrary constraints, but necessary regulations. They specify certain basic needs required for any conception of the good, without violating equal rights for others to do the same freely.[10]

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[9] He presents his argument after reviewing five uses of the idea of good in justice as fairness, in particular, the limits of the conception of the good, its definition as rationality, the notion of primary goods, political virtues and fairness (2005, 173–211). Rawls' conception of the good appears limited by a political conception of justice as fairness that, different to justice as fairness as a comprehensive doctrine, is defined for a specific subject, meaning the basic structure of a constitutional democratic regime. In other words, accepting the political conception of justice as fairness should not presuppose accepting any comprehensive doctrine, and its associated good, but a reasonable conception of the good for the basic structure of society conformed by ideas latent in the public political culture of any democratic society and, therefore, compatible with the good of reasonable comprehensive doctrines.

[10] Rawls justifies that in this way political liberalism does not contradict classical republicanism that, in his reading, gives special weight to the need of certain degree of 'political virtues', along with the willingness to take part in the public life, in order to ensure that citizens of a democratic society preserve their basic freedoms and liberties (2005, 205). On the contrary, locates political liberalism in sharp opposition to civic humanism because civic humanism does not consider participation necessary *for* the protection of the basic liberties of democratic citizenship, rather participation in democratic politics is the locus of good life. And this represents, according to Rawls, "a return to giving a central place to what Constant called "the liberties of ancients" and has all the defects of that" (2005, 206).

Thus, political liberalism, based on a political conception of 'justice as fairness', provides an appropriate basis to sustain the argument that rights and goods can find accommodation, without violating the priority of the former over the latter. The argument in response to the 'Liberties Dilemma' involves two major questions. First, political liberalism should provide a 'political conception of justice' for free and equal citizens that will override available alternatives. Secondly, it should justify its appropriateness for securing liberty and equality, given that the political culture of contemporary democratic societies is marked by the unavoidable fact of 'reasonable pluralism'.

1.1   *Political Conception of Justice as Fairness*

Political liberalism is grounded in the notion of 'justice as fairness' (Rawls 1971) and specifies two principles[11] according to which a constitutional democracy is to realise liberty and equality. The first principle entails the need for equal basic rights and liberties for everyone. The second refers to equality of opportunity and defines inequalities as acceptable only on the benefit of the less advantaged. In short, 'justice as fairness' represents a moral conception of justice worked out for the basic structure of society in a modern constitutional democracy.

Further, 'justice as fairness' provides a perspective from which these principles must be seen as "more appropriate than other familiar principles of justice" to the idea of citizens as free and equal (Rawls 2005, 5). This point of view seeks a 'reflective equilibrium'. It starts from asserting that the public culture is "the shared fund of implicitly recognised basic ideas and principles" (2005, 8). Next, it proceeds back and forth, narrowing down points of disagreement toward higher levels of generality. By this method, Rawls defines justice as a 'free-standing view'; meaning it is independent from political, religious, or metaphysical doctrines citizens may otherwise affirm.

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[11] The two principles are defined as follows: "a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, this scheme is compatible with the same scheme for all, and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society" (Rawls 2005, 5–6). Rawls asserts that these two principles exemplify the basic content of the liberal political conception of justice that in turn is given by three main features: (i) a specification of basic rights, liberties and opportunities; (ii) a priority of (i) over claims the general good; and (iii) measures ensuring that citizens make adequate use of (i) and (ii). In addition, the two principles express an egalitarian form of liberalism due: (i) they guarantee the fair value of the political liberties; (ii) fair equality of opportunity; and (iii) the difference principle.

Therefore, justice as fairness finds a 'reflective equilibrium' by organising its basic principles into a 'political' conception of justice. Moreover, the 'political conception of justice as fairness', is organised around the idea of society as,

> ... a fair system of social cooperation between free and equal persons viewed as fully cooperating members of society over a complete life (2005, 9).

If 'justice as fairness' is to succeed in defining a 'political' conception of justice, it needs to provide a publicly recognisable perspective, from which all citizens are able to examine, whether or not their institutions are just in realising the values of freedom and equality.

However, the decision over the most appropriate principles of justice must be worked out under appropriate conditions; namely, ones in which citizen's regard society as a 'fair system' of social cooperation. To specify the terms under which social cooperation among free and equal citizens is fair, political liberalism recasts the doctrine of the social contract. Fair terms of social cooperation are agreed by,

> ... free and equal citizens who are born into the society in which they lead their lives (2005, 25).

This sort of agreement requires the appropriate conditions to be valid. To that end, Rawls defines a 'device of representation'. The conditions of which make it possible to decide which principles may be accepted as better alternatives to secure liberty and equality.

1.2 The Original Position

The original position is a mechanism whereby rationally autonomous deliberations among parties enable a reasonable selection of fair terms of cooperation (2005, 304–10). The central idea is that

> ... the original position connects the conceptions of the person[12] and its companion conception of social cooperation[13] with certain specific principles of justice (2005, 304).

Conceptions of both the person and social cooperation, collectively define the idea of 'society as a fair system of cooperation'. Moreover, Rawls contends that under these conditions the two principles of justice proposed by him will override alternatives.

Regarding the conception of the person, he describes the parties in the original position as rationally autonomous representatives of citizens in society. They aim at doing their best for those represented by them. However, "the parties as rationally autonomous representatives of persons in society represent only the rational" (2005, 305). They agree on principles that they believe best for those represented by them, from the perspective of their conception of the good (rationality), without considering the sense of justice (reasonableness). With these limitations, Rawls intends to ensure the autonomy of parties in the original position in two respects. On the one hand, they are not required to apply any prior principles of right and justice. On the other hand, they are guided solely by what they think is good for the represented (2005, 307).

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[12] Rawls makes an important distinction between the two moral powers ascribed to citizens, namely reasonableness or the capacity for a sense of justice and rationality the capacity to pursue one's advantage: "To elaborate: since persons can be full participants in a fair system of cooperation, we ascribe to them the two moral powers connected with the elements in the idea for social cooperation noted above [see next note] (…) A sense of justice [reasonableness] is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation (…) The capacity for a conception of the good [rationality] is the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good." (Rawls 2005, 19)

[13] Rawls specifies the idea of social cooperation stressing three characteristics: (i) It is distinct from mere social coordination in that it is guided by publicly recognized rules and procedures accepted by those cooperating; (ii) It involves the idea that cooperation should be fair, meaning that its terms will be accepted by each considering everyone else will likewise accept them; and (iii) It requires each having an idea of rational advantage or good (Rawls 2005, 16).

Nevertheless, even though parties are exempt from the obligation to behave reasonably, the sense of justice cannot be absent in deliberations among parties. This contradiction is solved by subjecting parties in the original position to restrictions in design that constrain departures from reasonableness. First, parties in the original position, and behind the 'veil of ignorance', are symmetrically located in relation to one another ensuring that they have no access to the particular social position of those they represent (2005, 305). In other words, when parties deliberate on the appropriate principles of justice they are not aware of the social position in which they are to be ruled. Given parties in the original position are behind the 'veil of ignorance' so as to behave reasonably, a further question is how can we expect them to behave rationally; after all, they have no knowledge of the social position, nor the conception of the good, of those they represent.

To solve this paradox, Rawls introduced the notion of primary goods (2005, 178–87). Primary goods provide a workable list of basic conditions that all persons want regardless of position, and it is this that provides the moral basis of rationality. Independent of each conception of the good, and its corresponding comprehensive doctrine, primary goods allow interpersonal comparison and do not compromise the rationality of parties in the original position.

Finally, this 'device of representation' allows, according to Rawls, fair terms for social cooperation among free and equal parties aimed at choosing principles for the basic structure of society. Deliberations take place under fair conditions allowing reasonable and rational decisions, while the division of roles and restrictions in design, guarantee the autonomy of parties. At this point, it only remains unclear how this hypothetical and non-historical decision may have any significance once parties leave the original position and become citizens in a well-ordered society holding their own equally reasonable doctrines. Put another way, it is not clear how the political conception of justice as fairness in the core of political liberalism will reach an overlapping consensus in conditions of reasonable pluralism.

1.3   Reasonable Pluralism and Overlapping Consensus

The fact of 'reasonable pluralism' arises from Rawls's conceptions of 'public reason'[14] and democratic citizenship in a constitutional democracy (Rawls 1997). In short, citizenship defines a political relation of citizens to the basic structure of society,

> ... a structure we enter only by birth and exit only by death [and it is composed of] free and equal citizens who exercise ultimate political power as a collective body (1997, 769).

Nonetheless, when discussion affects constitutional essentials and matters of basic justice, differences between citizens "may be irreconcilable". (1997, 770) Thus, the challenge is to demonstrate how it is that a particular political conception of justice as fairness is, not only independent of any comprehensive doctrine, but able to establish and preserve the unity and stability of a constitutional regime, given the unavoidable plurality of *reasonable* comprehensive doctrines of contemporary democratic societies (Rawls 2005, 133–72).

In the face of 'reasonable pluralism', Rawls defends the capacity of the basic principles of justice as fairness to represent this impartial standpoint, because the political conception of justice as fairness is independent of comprehensive doctrines. The latter belong to what Rawls called 'background culture,' or the culture of daily life (2005, 14). While the former is a rational reconstruction of proven institutions based on intuitions already present in the shared fund of practices and traditions in democratic societies (2005, 8). On this basis, Rawls believes a political conception of justice as fairness "can gain the support of an overlapping consensus" (2005, 15).

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[14] According to Rawls: "The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood." (Rawls 1997, 766) It has a definite structure specified in relation to five aspects: "(1) the fundamental questions to which it applies; (2) the persons to whom it applies (government officials and candidates for public office); (3) its content as given by a family of reasonable political conceptions of justice; (4) the application of these conceptions in discussion of coercive norms to be enacted in the form of legitimate law for a democratic people; and (5) citizens' checking that the principles derived from their conceptions of justice satisfy the criterion of reciprocity" (1997, 767). And it is public in three ways: "as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice, which questions are of two kinds, constitutional essentials and matters of basic justice; and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity" (Ibid.).

For Rawls, overlapping consensus refers to matters that one might reasonably expect to be accepted by all rational, free, and equal persons (Rawls 2005, 133–72). He appeals to this as a justification for the political conception of justice, abandoning the hope of responding to a political community with a complete conception of the good shared by all its members. This task is left to reasonable comprehensive doctrines: different conceptions of the good, but not in contradiction with a general sense of justice. Moreover, this model is not considered a mere association. It provides unity and stability because persons born under just institutions "acquire a normally sufficient sense of justice so that they comply with them" (2005, 141).

Thus, the political conception of justice as fairness is not sceptical or indifferent towards the truth content of comprehensive doctrines, rather, it is tolerant of them: its focus is on how they operate within the burdens of practical reason, the conditions whereby they express their reasonableness. Moreover, if conditions were in place – a well-ordered society – and persons – not parties in the original position, but citizens – hold both moral powers of personality and their comprehensive doctrines – now reasonable – there will be no contradiction with the political conception of justice as fairness. If so, then the political conception of justice as fairness is the basis of an overlapping consensus among reasonable doctrines. If not, either doctrine, or the political conception justice must be unreasonable.

In the end, what is accounted for is a political ideal of justice that gives credence to the capacity of political liberalism to solve the liberties dilemma in conditions of pluralism. Negative liberties and political rights, with the first given priority over the second, cohabit in a well-ordered constitutional democracy, and provide a standpoint form which one may assess whether institutions treat persons as free and equal citizens.

2   Some Limits to Political Liberalism: Priority Rule, Freedom, and Society

The measure of Rawls' influence is the extent of the critique that his ideas have engendered. Overall, it remains questionable whether the political conception of justice as fairness does represent a neutral standpoint for citizens. In other words, it is debateable whether each of us in the original position will choose the same principles. Rawls justifies this with reference to the connection between justice as fairness and the conceptions of the person and society. However, at this level too, these definitions are open to dispute. This is the basic idea that underlines the novelty of the procedural approach presented by Habermas. If we depart from definitions, on their basis, setting valid principles and shaping institutions in the light of agreement is difficult.

In the following section, three critiques are explored that highlight how different definitions of the person and society and the principles of democracy, challenge Rawls' intention to define political liberalism as a 'free standing view.' First, Charles Taylor (1992, 1994) and Herbert Hart (Hart 1973), both question the neutrality of the conception of the person and society in liberal doctrine. Secondly, Philip Pettit (2012), who provides a detailed account of why different principles may also be reasonable to the basic aims of political liberalism, without the necessity to acknowledging the priority of liberty over equality. It is not my aim here, nor is their space, to give a full exposition of their respective theoretical proposals, rather to show, in the three critical dimensions of morality, law, and politics, how each of them illustrate the limits of political liberalism in providing a lasting solution to the 'Liberties Dilemma'.

2.1   The Neutrality of Liberalism and the Ideal of Society

Rawls solution to the 'Liberties Dilemma' holds that the two principles of political liberalism provide an impartial standpoint whereby citizens can judge whether constitutional democracies treat them equally as free persons (Rawls 2005, 19). Citizens are free because they can exercise their two moral powers of personality; meaning, they can pursue their own rational conception of the good in the light of a reasonable sense of justice. Therefore, the two principles of justice provide a valid reference point to assess whether we can freely and equally exercise our two moral powers of personality.

Moreover, both principles are valid no matter what moral doctrine each citizen holds to, because to choose them, persons are now parties in the original position, and are subjected to special conditions. They are symmetrically situated and behind the 'veil of ignorance'. In particular, this second condition departs from the conviction, as Rawls put it,

> ... the fact that we affirm a particular, religious, philosophical or moral comprehensive doctrine with its associated conception of the good is not a reason for us to presuppose, or to expect others to accept, a conception of justice that favours those of that persuasion (Rawls 2005, 24).

As already noted, Rawls is not sceptical about the truth content of comprehensive doctrines. He is tolerant of them.

Charles Taylor by contrast, argues that the moral subjectivism underlying Rawls tolerant disposition assumes that "moral positions are not in any way grounded in reason" (Taylor 1992, 18). It is a *facile* relativism, based on the simple idea that "everyone has his or her own 'values,' and about these, it is impossible to argue" (1992, 13). People are called,

> ... to be true to themselves [seeking] their own fulfilment [and] [n]o one else can or should try to dictate its content (1992, 14).

Thus, in theory, vigorous defence of any moral ideal is off limits and society must be neutral on questions of the good life.

Indeed, liberal doctrines stepping on the idea of an overlapping consensus assume, "a liberal society must be neutral on questions of what constitutes a good life" (1992, 18). However, according to Taylor, the culture of self-fulfilment does, indeed, entail that certain modes of life are 'higher' or 'better' than others,

> ... not in terms of what people happen to desire or need [but, in the light of] a standard of what people ought to desire (1992, 16).

In Rawls's case, a liberal standard of the good life is individual self-fulfilment. However, the fact of pluralism entails freedom of choice cannot be detached from the significance of choice (1992, 13–23).

For example, in my first weeks in Brussels, I attended a seminar on *Presentation Skills in English* at the VuB. As usual, the seminar began with an introduction round. Each participant tells her name and surname, basic info from her bio, and the topic of her PhD. I do not remember her name, but the first one to introduce herself was an Arabic girl. She looked terribly self-confident and not in need of any training for presentations skills at all. Her English was fluent and correct, at least as far as I could realise at that time. The topic of her PhD was something like 'Gender Patterns in Modern Architecture.' She explained that she was studying how the fact that men plan the organisation of cities, affects how women experience public space.

The striking point was that she was wearing a *hijab.* In the light of the topic of her PhD, this woman was concerned about gender equality. However, from a white, male, *petit bourgeois* like me, both acts were apparently contradictory. According to Taylor, the choice is inescapably intertwined with a diversity of horizons of meaning endowing it with significance (1992, 31–42). In this case, the choice made by the woman to wear a *hijab* made no sense from my perspective. However, there are several potential explanations from her perspective. It can be that she thinks the *hijab* signals no contradiction between her simultaneously being Muslim and a feminist. Alternatively, it can be a way of reclaiming her cultural roots as part of her feminist consciousness without having any religious content at all. Or, even simply that she likes it, as others might like a cap or a bonnet.

In any case, what Charles Taylor's critique suggests is that the solution is not forbidding any hat or similar cloth that covers the head in public spaces. Even less for the sake of gender equality. According to Taylor, to reach a meaningful life, citizens and peoples require the recognition, rather than the toleration, of their differences and worth (1992, 43–70). Recognition entails we should accept her choice as worthy, without prejudging what she allegedly really means by choosing it. Even if we disagree with her choice, recognition means engagement. It is possible to argue about her decision. Indeed, this is the only way to understand her choice and acknowledge its worthiness for the sake of gender equality, or not. However, I would have never been able to understand her choice if she had never chosen to wear that *hijab* in the seminar. This vignette illustrates, not simply that my position was not neutral, but the salience of Taylor's critique.

In short, what Taylor criticised is not that a conception of the good should be accepted because it belongs to a comprehensive doctrine, but that the opposite is true, that there is a neutral standpoint towards comprehensive doctrines that could be fair to the diversity of meanings of choice.

2.2   The Priority Rule and the Conception of the Person

Herbert Hart's critique is somewhat different. He is primarily concerned with, "Rawls's account of the relationship between justice and liberty" (Hart 1973, 534) as a consequence of the 'priority rule' whereby

> ... liberty is only to be restricted for the sake of liberty itself and not for any other
> social or economic advantage (1973, 536).

Underlying this view is a challenge to the definition of the person in accounts of liberal neutrality. In particular, the idea that persons in a well-ordered society, if reasonable and rational, will not choose to give up parts of their freedom for other goods.

Hart revises several problems of interpretation and application of Rawls theory of justice (1973, 534–42). His central claim is that Rawls fails to recognize that the implementation of principles of justice demands,

> ... a weighing of advantage and disadvantage must always be required to determine
> whether the general distribution of any specific liberty is in a man's interest (1973,
> 550–51).

Thus, considerations regarding the exercise of liberty by oneself, could differ once others are entitled to exercise the very same liberties. Moreover, in some cases, renunciation may outweigh advantages.

A clear example can be illustrated when controversy arises regarding the application of different basic liberties; so far as resolution of the conflict will correspond to different interests of people "who will diverge over the relative value, they set on the conflicting liberties" (1973, 545). Moreover, considerations over the problematic implementation of basic principles may not be necessary, once principles of justice have been chosen. It also challenges the idea that,

> ... the parties would in the conditions of the original position, as rational self-interested persons, choose the basic liberties which Rawls enumerates (1973, 551).

In particular, Hart found problematic the argument in accordance to which,

> ... the priority of liberty prohibiting exchanges of liberty for economic or other social advantages must be included among the requirements of justice (1973, 552).

Rawls's main argument for this prohibition, is that if conditions are in place and basic rights and wants are guaranteed, then there would be no rational appeal to sacrifice liberties for the sake of other goods. According to Hart's lecture on Rawls' proposal, until the point is reached that a general conception of justice governs society "men may give up liberties for social gains if they wish" (1973, 552). Indeed, at any stage, there may be people willing to surrender rights for goods because, on the contrary, the rule may be misplaced; so far as "there would be nothing for it to rule out" (Ibid.). In this case, if the very existence of the rule entails the sacrifice of liberties for other material goods, it is justified by the fact that they will not have done so in the original position?

To Hart, according to Rawls, as general conditions improve, civilisations may reach a point when it is irrational "from the standpoint of the original position" (1973, 553) to give up liberties for the sake of material or other goods. In other words, it seems it is rational for parties in the original position to impose this restriction on themselves because, "in the development of society the desire for liberty will actually come to have a greater attraction for them" (73, 553). However, to Hart, this 'apparently dogmatic course' regarding the prohibition to exchange liberties for material goods entails a very concrete idea of the person. While "Rawls's argument for the priority of liberty purports to rest on interests, not on ideals" (1973, 555).

In his reply, Rawls (1982) argued that Hart was right noticing, "the priority of liberty cannot be argued for by imputing this ideal of person to the parties in the original position" (1982, 87). His conception is sustained from a liberal point of view. The argument remains valid because "citizens are regarded as having certain natural political virtue without which the hopes for a regime of liberty may be unrealistic" (1982, 87). Thus, Hart is right in considering that the ideal of the person cannot be imposed on the parties in the original position. Moreover, he is also right in asserting that this liberal ideal underlies the argument for the priority rule. However, this ideal of a person demands fundamental conditions for social cooperation to be possible; namely persons must be free and equal.

Contra Rawls, this transition from basic ideals of freedom and equality to principles of justice and their priority may be debatable if, for example, we take a non-liberal point of view. Indeed, this is the case for Philip Pettit in his recent book *On the People's Terms* (2012). He critically reviews Rawls understanding of the relation between freedom and justice from a republican point of view. Moreover, at this point, it remains unclear on which grounds Pettit's Republican view on freedom and equality may be less free-standing than Rawls's liberal account for any citizen holding a 'reasonably' republican point of view.

2.3   *Political Liberalism and Republican Freedom*

Pettit criticised the two principles of Rawls's theory of justice in two respects. First, he argued that Rawls' principles do not require "full resourcing of basic liberties" (Pettit 2012, 107). In Rawls's view, people are free because they have a legally protected right to choose 'without interference' from authorities. However, the liberty to choose is consistent with the inability to act on behalf of the right to choose. Indeed, "having that ability is not required for the liberty as such only for its worth or value" (2012, 108). Therefore, liberalism fails substantively when 'resourcing'[15] legally expressed basic rights to choose.

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[15] In his words: "First, we would have to resource or facilitate the choice in the sense of ensuring that any of the required resources you happen to lack – these may be personal, natural, or social – are made available to you; we would have to compensate, in other words, for any vitiation of the choice." (2012, 69)

Secondly, Rawls' first principle falls short of the Republican requirement for an equal level of protection for basic liberties (2012, 109). Pettit underlined Rawls inclusion of penalties for those violating the legal duty not to interfere with others' basic liberties. While his 'ideal theory' assumes sanctions may never need to be imposed due to the general compliance of citizens with their 'political obligations'. So, Pettit does not suggest citizens will not be willing to comply, but that the powerful will not be obliged to it, and weak protection "may leave them able to interfere at a relatively low cost" (2012, 109).

In short, the ideal comes to depend on the goodwill of those with the actual capacity to decide not to comply. Together, according to Pettit, "this makes clear that for Rawls domination is not a problem as such" (2012, 108). Because:

> Not guaranteeing resources required for exercising the relevant basic liberties, it may leave some people in a position where they are unable to exercise those choices (2012, 109).

In other words, the two principles of political liberalism leave 'intuitively unjust inequalities' untouched.

Moreover, according to Pettit, the second principle of political liberalism is called upon seeking to fit "the reflective equilibrium with the judgements of justice that his methodology requires" (2012, 109). However, on the Republican side, the enemy of freedom is not interference but power. While "on the liberal understanding asymmetries in interpersonal power are not in themselves objectionable" (2012, 11). Thus, according to Pettit, the problem with Rawls solution to the 'Liberties Dilemma' is not that the two principles of liberalism will override alternatives that advance the values of freedom and equality, but that they do not share the same conception of those very basic values, for example, the same conception of liberty.

Pettit distinguished three theories of freedom: freedom as non-frustration, freedom as non-interference, and freedom as non-domination (2012, 64). Freedom as non-frustration would say that

> ... freedom of choice consists in the absence of invasive obstruction to your actually preferred option (2012, 64).

Freedom as non-interference, on the other hand, consists in "the absence of invasive obstruction to any option, preferred or un-preferred" (2012, 64). He rejects both arguing that both entail "adaptation is a possible means of liberation" (2012, 65). Freedom as non-frustration entails "that adapting your preferences can give you freedom of choice" (2012, 64). While, non-interference entails understanding 'ingratiation' – seeking the favour of the powerful by adapting your preference to those not interfered with – as means for liberation. Both represent rational responses to frustration, or another's power of interference. However, both are at odds with a Republican sense of freedom as non-domination.

Pettit draws on Isaiah Berlin's 'open doors metaphor' to explain his position. Against the freedom as non-frustration ideal, the metaphor suggests that, if one is choosing between two options, to be considered as free, both 'doors' need to be open – not the only open one, that is simply chosen to avoid frustration. Moreover, "[w]hat freedom ideally requires is not just that the doors be open but that there be no door-keeper who has the power of closing a door" (2012, 66). This is the strongest argument against the non-interference ideal. For choice to be free, in the republican sense of non-domination, the problem is not actual interference – a closed door – but, the power to interfere – a doorkeeper that makes a choice dependent on the goodwill of those with the capacity to close the door.

Freedom as non-domination, therefore, overcomes the non-frustration and non-interference paradigms, because 'resourcing' facilitates the actual exercise of choice, without being subjected to the will of another. Of course, the republican ideal of freedom as non-domination also implies egalitarian constraints. Resourcing, not only protection, becomes central to the republican ideal of freedom. The appropriateness of protection is measured by the so-called 'eyeball test'[16]. Moreover, protected choices should fulfil the criteria of co-exercisability and co-satisfaction[17]. However, according to Pettit, a simple principle stating the right to equal respect for freedom, as non-domination for citizens living under the ruling of a democratic republic, "will come close to providing for what must of us will be happy to think of as justice" (2012, 110).

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[16] In Pettit's words: "The lesson suggests that people should securely enjoy resources and protections to the point where they satisfy what we might call the eye-ball test. They can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best." (2012, 84)

[17] In Pettit's words: "First, the choices to be entrenched ought to be capable of being exercised by each, consistently with being exercised by all. And second, they ought to be capable of satisfying or fulfilling each, consistently with satisfying all (see Anderson 1999). I call the first criterion of co-exercisability and the second the criterion of co-satisfaction." (2012, 93)

To sum up, regarding either the basic definitions of citizens, and society, or the basic values of freedom and equality, the neutrality of the basic principles of political liberalism defined by Rawls has not gone unchallenged. The problem is not that the principles follow from definitions, and the proposed institutions fit with requirements in the light of basic principles, it is the lack of clarity on the grounds which we should accept his definitions as a neutral standpoint to begin the discussion. In this sense, Rawls replies seem vague, and the validity of the methodological device whereby principles are chosen, is questionable. It is in this sense that Habermas challenged Rawls' proposal. In the light of the above critiques, it seems that in the end citizens should acknowledge not what they would have chosen if conditions were in place, but what Rawls expects them to choose if conditions are in place for a liberal society to be at least possible.

3 Procedural' Critique and 'Deliberative' Solution: Jürgen Habermas

Jürgen Habermas rejected Charles Taylor's appeal for authenticity and recognition on the basis that democratic integration requires 'loyalty to the common political culture', a common political culture that he identified with a kind of 'constitutional patriotism.' (Habermas 1994a, 134). Regarding, Philip Pettit's republican approach, It is likely that he would have been sympathetic, in so far as both reject a 'communitarian' (Habermas 1994b, 4) or 'continental' (Habermas 1994b, 18) interpretation of republicanism. Nevertheless, the debate between Jürgen Habermas and John Rawls has been the most fruitful (Habermas 1995; Rawls 1995); despite the fact that their controversies have only recently became the focus of academic debate (Fynlayson and Freyenhagen 2011).

Habermas' critique is more methodological than substantive. He focuses on the 'device of representation' that Rawls chooses to justify the selection of the basic principles of justice. However, his conclusion is substantive. He concludes that Rawls fails to align rights and goods in the ideal of political liberalism. Indeed, his approach to Rawls work reveals the sympathetic standpoint from where Habermas initially receives Rawls intention. Therefore, his reply provides a more viable route to reach the same objective. This route focuses less on the substantive content of principles than on the appropriate procedures to make an agreement on them possible.

3.1 Contra Rawls

Habermas highlights several problems in Rawls' proposal. For example, he found that the design choices for the original position would be unlikely to secure impartial judgement. Equally, he criticised Rawls flattened questions of acceptability to justification based on the neutrality of his political conception of justice. Finally, he is reluctant to accept the result of these two theoretical decisions; the construction of,

> ... a constitutional state that accords liberal basic rights primacy over the democratic principle of legitimation [therefore failing] to achieve his goal of bringing the liberties of the moderns into harmony with the liberties of the ancients (Habermas 1995, 111).

First, he is unconvinced about the capacity of the original position to secure an independent standpoint for judgement regarding principles of justice (Habermas 1995, 111–19). As already noted, Rawls defence is that the principles of justice of political liberalism involve no reference to more comprehensive or metaphysical doctrines. Moreover, he suggests that under fair conditions, in the original position, these principles will be chosen over available alternatives.

Contra Rawls, Habermas suggests that, "the potential gains of this turn are dissipated by the systematic deprivation of information" (Habermas 1995, 116). In particular, the division of labour effected in the original position disqualifies the capacity of parties to understand the interest of their 'clients'. For Habermas, to understand the meaning of the principles they are seeking, and take account of their clients' interest in justice,

> they must be equipped with cognitive competencies that extend further than the capacities sufficient to rationally choosing actors who are blind to issues of justice (1995, 113).[18]

Thus, the constraints of information that led Rawls to a final characterization of the parties in the original position as ones that share nothing more than, precisely, what they have been given in advance, is systematically rejected by Habermas.

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[18] Moreover, a workable list of primary goods entails an assimilation of basic rights to a list of goods unacceptable, according to Habermas, due "rights in the first instance regulate relations between actors: they cannot be "possessed" like things." (1995, 114)

Second, stressing the ambivalence in the justificatory mechanism chosen by Rawls, Habermas challenged the notion that a political conception of justice as fairness can be the basis of an overlapping consensus. For Habermas, referring to either a list of primary goods, the definition of which requires a previous knowledge of basic needs of persons, or by setting the moral psychology of the person, means that Rawls has introduced normative assumptions whose validity, "stand in need of *prior* justification" (Habermas 1995, 119).

For example, Rawls justifies normative assumptions via reflective equilibrium, so that the validity of the theory requires the capacity of the philosopher alone to conduct a rational reconstruction of intuitions that operate in the *practices and traditions* of a democratic society. However, if practices and traditions belong to the extant political culture of a democratic society, it seems reasonable to conclude that they belong to the particular political culture that is derived from this particular democratic society (1995, 120). Therefore, they will be ill-suited to operate at the level of generality needed to be neutral in the face of pluralism.

Indeed, Rawls himself noted that we should not misunderstand that the assertion of the institutional framework, does not favour one doctrine over the other with the affirmation of its neutrality. Justice as fairness is not neutral by reference to a procedure that is justified without appealing to any moral value at all (Rawls 2005, 190–200). Principles of justice are substantive, as well as the political conception of the person and society represented in the original position. However, they are *neutral in aim*[19], meaning that basic institutions are not designed to favour a particular doctrine.

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[19] Neutrality in aim (…) In addition, although the political understanding of justice as fairness seeks common ground and neutrality in aim it also endorses a division of responsibility: citizens are regarded as having the capacity to assume the responsibility for their own ends and to moderate their claims in accordance to what reasonably could be expected by others. Accordingly, it "still affirms the superiority of certain forms of moral character and moral virtues." (Rawls 2005, 195) These values relate to those doctrines that facilitate fair social cooperation via civility, tolerance, reasonableness, and fairness. The basic structure of society encourages and discourages comprehensive doctrines in accordance to these values and it does so fairly discouraging only those that either go against principles of justice or fail to gain adherents under conditions of a fair constitutional regime.

On the contrary, according to Habermas, by setting the content of the principles in advance, in the light of which the discrimination between reasonable and non-reasonable doctrines is enacted,

> ... the overlapping consensus merely expresses the functional contribution that the theory of justice can make to the peaceful institutionalization of social co-operation [while] the intrinsic value of a *justified* theory must already be presupposed (Habermas 1995, 121).

In other words, due to the two-stage design of justification principles, defined in advance of citizens' participation, left them no other choice than making their doctrines on the good life fit with the pre-given political conception of justice; or to be rejected as non-reasonable.

Finally, with reference to the problem of the two liberties, Habermas concluded that the priority of liberal rights over the democratic process, defended by Rawls (Rawls 2005, 289–371), was not consistently justified (Habermas 1995, 110). Furthermore, it contradicted "the Republican intuition that popular sovereignty and human rights are nourished by the same root" (1995, 128–29). Rawls intends to provide a procedure to ground the recognition of the normative authority of democratic institutions from within the different conceptions of the good life held by citizens cohabiting in a well-ordered society. Indeed, Habermas recognised Rawls' intent to bring the concept of political autonomy into the original position by asserting a common root for rights and goods.

However, with regard to the priority of the former over the latter, he contends that Rawls ought to have made a clearer distinction between acceptability on the one hand, and acceptance on the other. The acceptability of the priority of rights, regarding different conceptions of the good life, does not, in theory, justify their actual acceptance. Quite the opposite, the more real citizens become,

> ... the more deeply they find themselves subject to principles and norms that have been anticipated in theory and have already become institutionalised beyond their control (Habermas 1995, 128).

Therefore, Habermas maintains that substantive content introduced in the definition of primary goods, or the moral powers of personality, is unnecessary, and challenges the impartiality of the political conception of justice as fairness.

3.2   Procedural Response: Preliminary Notes

Habermas rejects Rawls' justification of the priority of rights over goods (Habermas 1995, 113–14). He further argues, that the constitution of a legal community, does not require the demonstration that persons as bearers of subjective rights are preceded by acceptable principles. This, according to him, either happen both together, or do not happen at all. Thus, the challenge is redefined around the necessity to figure out conditions whereby both rights and goods, can be justified when consensus is absent, and controversy affects the coordination of action over moral or legal norms. Moreover, from a normative point of view, the challenge equally affects moral and legal norms insofar as both intend to respond to the same problem: the possibility of ordering legitimately interpersonal relations and actions through justified norms.

The following chapter, shows that the 'Discourse Principle' (hereafter D) (Habermas 1990, 1996, 104–31) expresses these conditions formally. D does not provide a departure point acceptable by all, but standard conditions for the acceptability of norms by citizens themselves. D formalises presuppositions,

> ... already implicit in the socio-ontological constitution of the public practices of argumentation, comprising the complex relations of mutual recognition that participants in rational discourse 'must accept' (Habermas 1995, 127).

On the basis of action coordination meets 'the moral point of view' sought for by Rawls and, according to Habermas, due rights and goods, individual liberties and self-governance, morality and law stand on equal footing towards the same principle; the problem of the liberties is solved.

First, if democracy retains its normative binding force, law ought to derive its authority from more than mere *de facto* acceptance. Therefore, the rule of law begins from private rights of individuals to withdraw, on behalf of their interest, from obligations and toward processes of social integration. The system of rights in the core of modern constitutional democracies meets this first requirement by guaranteeing private rights to the exercise of negative liberties.

Secondly, from the vantage point of the D, private rights are not justified simply because their holders are moral individuals endowed with the capacity to behave rationally. However, as Habermas put it,

> ... as participants in rational discourses, consociates under the law must be able to examine whether a contested norm meets with, or could meet with the agreement of all those possibly affected (Habermas 1996, 104).

Thus, starting from liberal rights, the fact that the system of rights is justified on the basis of conditions that allow agreement among all those possibly affected, means that the system of rights represents a justified expression of a common will.

Thirdly, it is indeed by the application of the D to the legal form as such that impartial justification of private rights overburdens the moral individual. Moreover,

> ... [o]nce law has been clarified in this way it becomes clear that the normative substance of basic liberal rights is already contained in the indispensable medium for the legal institutionalisation of the public use of reason of sovereign citizens (Habermas 1995, 130).

Alternatively, it can be considered the other way around, in this sense, citizens practice of self-determination, meaning their capacity to govern themselves, represents the exercise of a common will that cannot come about without citizens being able to freely accept or reject the validity of a norm of action. For, as Habermas put it,

> ... [n]othing is prior to the citizen's practice of self-determination other than the discourse principle, which is built into the conditions of communicative association in general, and the legal medium as such (1996, 128).

In sum, neither good nor rights can come first, because both necessarily presuppose each other. Therefore, the dilemma of the liberties, reflects a misunderstanding either of the status of private rights and their justification, or of the community of those who speak to one another and agree to govern themselves freely. Thus, grounding the justification of norms requires, in either case, a cooperative effort: conflicts over norms can only be settled by consensual means, namely guaranteeing that the interest of all those potentially affected will be taken into consideration. Moreover, that conditions are necessary allowing an argumentative exchange among participants, in which case, the D entails nothing more and nothing less, than conditions necessary *for the more or less enlightened engagement of participants*.

4   Conclusions

According to Rawls, Political Liberalism accommodates both liberties because of the political character of justice as fairness, meaning that it is neutral in the process of discovering principles in the face of competing conceptions of the good. Basic rights hold priority over goods, but the latter is not constrained by the former, because rights endow citizens with equal liberty to pursue their conception of the good life. Furthermore, it is in the light of those principles that citizens can judge whether or not their institutions are just. Democratic institutions recover the normative binding force of legitimate law because citizens recognise both basic principles in them.

The justification of principles with regard to available alternatives is nevertheless explored and clarified as a free-standing view and settled in the original position. This representational device allows for the shared basis already present in contemporary democratic societies to be captured, and once principles are chosen, to regulate life in society. However, as seen in this short review, neither the conception of the person, the definition of society, and correspondingly, nor the desirability of the principles of political liberalism, is free from controversy from the perspective of several equally reasonable doctrines.

Among the critiques reviewed in this chapter, the most compelling is that provided by Habermas. He is sceptical that the justification built from the context of theory formation, could rule democratic institutions, and justify the normative binding force of democratic institutions once the burdens of the theory are over and real citizens are the theorised parties. However, he does not suggest an alternative definition of principles. Rather, he considers an alternative procedure whereby, in principle, we as citizens of a democratic society, could come to agree which proposals we consider most appropriate to regulate our life together.

Chapter II

Deliberative Democracy: A Procedural Response to the 'Liberties Dilemma'

In response to the 'Liberties Dilemma', Habermas makes the central claim that the moral point of view which Rawls designed the original position to discover,

> ... is already implicit in the socio-ontological constitution of the public practices of argumentation, comprising the complex relations of mutual recognition that participants in rational discourse "must" accept (Habermas 1995, 127).

Thus, the task of democratic theory is only to clarify the presuppositions and procedures under which public debate among real citizens takes place. Because "we could say that precisely those principles are valid which meet with the un-coerced inter-subjective recognition under conditions of rational discourse" (Habermas 1995, 127).

This very basic idea traverses the entire range of Habermasian concept building, beginning with his understanding of social theory (Habermas 1990d, 1990c), and up to, and including, his ideas about rationality (Habermas 1989c, 1989d), morality (Habermas 1990a, 1990b, 1993), and law (Habermas 1996). Habermas' theoretical innovation, is that he does not define an alternative set of substantive principles, rather, he outlines a procedure whereby agreement over principles is at least possible when opting for them is better than the alternatives. It is in this sense that he places citizens in the driving seat of democratic theory. The acceptability of Rawls' definitions of persons as citizens, primary goods, and corresponding principles of justice, finds justification in the context of theory formation. Moreover, the substantive content of his theory is not the contribution of a participant in the process of collective will formation but, as Habermas put it, "the outcome of a 'theory of justice' which he as an expert is qualified to construct" (Habermas 1990a, 66).

Nonetheless, the legitimacy of institutions and their normative binding force cannot find secure grounds in a theory of justice defined by a qualified expert. It is in this sense that the procedural approach to democracy is interesting, and far more relevant, to societies with deep identity divides. Arguably then, a set of common moral principles as a departure point is not what is necessary, in its place attention ought to be focussed on certain procedural rules that regulate communication among citizens from different communities. Moreover, according to Habermas, these rules are not a theoretical artifice, such that political scientists or philosophers could clarify, but rules that citizens acknowledge in their daily life and communicative interactions. Therefore, in principle, there is an explicit departure from what different communities have in common, but this basic assumption provides space to justify procedures for reaching agreement over more substantive matters.

In other words, the procedural approach solves the 'Liberties Dilemma' because it subordinates neither law nor democracy to each other, or both to a moral principle. Both are co-original, and their source of justification is the presuppositions already ruling citizen's interactions in their daily life.

To explain this idea, this chapter is structured in two stages. First, in societies regulated by modern constitutional regimes, citizens experience law from the outside; that is to say, the law needs to be enacted to be effective. The challenge is to justify the law in ways that are valid for all, because only in these conditions can any justification retain its normative binding force. Thus, free choice and common good need to find commonality if the legitimate law is to retain its normative binding force. On the other hand, Habermas' reply to the internal tension between the facticity of law and its validity reflects a reconstructive effort aimed at building up the normative justification of the legitimacy of a discursive approach to democracy. What is at stake is whether this model responds appropriately, not in the supposition of an ideal communication community, but in the face of the complexity characterising contemporary societies.

1   The Internal Tension: Moral Validity and the Facticity of Law

As already noted, the main idea underlying Habermas' solution to the 'Liberties Dilemma' is that both liberties are co-original, and controversies between them are handled through rational discourse. Habermas leaves aside the idea that "there exist individuals with innate rights prior to all socialisation" and, also its counterpart, giving "priority to the claims of a community over the legal claims of individuals" (Habermas 2003c, 292). In his words:

> ... we incorporate the *unity* of processes of individualization and socialisation into the core concepts of an intersubjective approach to legal theory: legal persons, in general, become individuals only through socialisation (Habermas 2003c, 292).

Moreover, the legitimacy law, as a fact imposed to citizens from the outside, retains its normative binding force because the system of rights in modern constitutional democracies embody the conditions for discursively redeeming universal claims to validity over norms of action.

To unpack the different steps involved in this claim, demands consideration of the notion that first, moral disputes could be solved rationally, and in the light of a moral principle, understood as a rule of argumentation. Secondly, that success or agreement, acquires political significance as the driving force of legislation, because Habermas asserts that the basic system of rights that are consistent with modern law, fits adequately with requirements that procedural rules are drawn from within the socio-ontological constitution of public practices of argumentation. Thirdly, that the internal tension between the facticity and the validity of law, is solved by bringing together processes of individuation and socialisation: a procedural exercise of popular sovereignty that evolves from within the margins of a self-constituting legal community.

1.1   The Discourse Principle: Moral Validity, Normative Rightness and Impartiality

Habermas' proposal requires justification if social integration is expected to be sustained on a rational basis. However, justification cannot be *forced*. On the contrary, it should be *grounded* on participants *more or less enlightened participation*. Participants will dissent and, especially in the context of a complex society, a plurality of views are likely to cohabit; while common ground, regarding basic values, remain absent. Thus, in the absence of common grounds, agreement is only possible over appropriate conditions to construct a common will. Democratic procedures should thus ensure that conditions respect the concerns of all, and all participants will be equally considered. Their interactions will exclude force as an argument, and all will orient their position, taking into consideration the concerns of others.

In short, theories of justice that illuminate correct decisions are out of place. Moreover, Habermas' trajectory comes from the perspective of participants in the democratic game. He asserts that,

> ... as soon as they seek to privilege a universal binding system of rules without the backing of a worldview, the only way to open them is that of a discursively produced agreement (Habermas 2003b, 274).

When dissent affects not claims in the light of norms, but norms themselves, we enter into the realm of discourse and solve our disputes by argumentation.

However, disputes over the rightness of a norm cannot be settled as a controversy over facts in the objective world. True, society proceeds whilst aiming for a cooperative search for truth. Though, "[i]t is not up to us to choose to code moral judgments binarily and conceive of rightness as a validity claim analogous to truth" (2003b, 275). Thus, demarcating whether decisions are just or unjust, mirroring true or false assertions about a state of affairs, is not possible. In other words, a controversy affecting action coordination on moral norms is not resolved by judging the goodness or badness of the norm, but the rationality of the argumentation underneath.

Therefore, the moral dispute should rest on the assumption that controversy can be solved rationally in the light of a moral principle understood as a rule of argumentation. The central concept of Habermas' translation of justification for moral and legal norms regarding rational argumentation is encapsulated in the (D). In *Between Facts and Norms* (1996) (D) is defined as follows: "[j]ust those action norms are valid to which all possibly affected persons could agree as participants in rational discourses" (1996, 107). This principle only expresses the meaning of a post-conventional, or rational, justification and it applies in the context of a self-constituting legal community.

However, post-conventional justifications of legal norms assume that the rational justification of moral norms is already possible. Indeed, from Habermas' Discourse Ethics, (D) finds further justification in a universalization maxim that, as a rule of argumentation, plays a function "equivalent to the principle of induction in the discourse of empirical sciences" (1990a, 63). In other words, it is the bridging principle, allowing the gap between general hypothesis and particular observations regarding judgment on the rationality of action coordination over moral norms, to be overcome.

Before I continue, some basic concepts in Habermas' way of thinking need to be clarified.

First, Habermas calls interactions communicative, "when the participants coordinate their plans of action consensually" (1990a, 58). To coordinate action plans consensually, participants in communicative interactions reach an intersubjective recognition of validity claims. Validity claims are claims to truth, rightness and truthfulness raised in every speech act aimed at communication. A claim to truth entails that the speaker refers to something in the objective world. Yet equally, a claim to rightness also refers to a legitimately regulated interpersonal relationship. Finally, a claim to truthfulness refers to something in the subjective world of the speaker. So, let me illustrate this with an everyday scenario. If I invite you for coffee tomorrow morning at 10:00, in the bar on the corner, we both need to accept as valid that the bar exists, that we both like coffee, that our relationship allows me to invite you for a coffee, and I sincerely intend to meet you tomorrow and have this coffee with you.

Secondly, when Habermas asserts that participants reach an intersubjective recognition of validity claims, he means that the speaker could motivate a hearer to accept his offer on the basis of his guarantee that "he will if necessary make efforts to redeem the claim that the speaker has accepted" (1990a, 58). Namely, by adducing reasons in the case of claims to truth or rightness, or demonstrating a consistent behaviour in the case of claims to truthfulness. Moreover, in using the disposition of the speaker to guarantee he will redeem a criticisable validity claim so that "he creates a binding/bonding effect between speaker and hearer that makes the continuation of their interaction possible" (1990a, 59).

Following the above example, the binding bonding/effect of speech acts cannot depend on hypothesis testing. Meaning, it is not simply dependent on previous experiences; there has to be some mechanism that allows you to accept my invitation and comply with it, without you waiting until tomorrow to test the validity of my claims. According to Habermas, this mechanism is your disposition to adduce reasons in favour of my claims. For example, explaining to you where the bar is if you do not know. Indeed, it is not the very fact of giving reasons that grounds the binding/bonding effect of speech acts, it is the disposition to accept them.

Finally, there are several asymmetries between redeeming claims to truth and claims to normative rightness. In particular, unlike claims to truth, the conditions for the validity of claims to rightness not only reside in speech acts. The locus of normative claims to validity is equally in norms, because "the orders of society, which either conform to or deviate from, are not constituted *independent of validity*, as are the orders of nature" (1990a, 60). The social reality then, is linked to normative validity claims in so far as "norms are dependent upon the continual re-establishment of legitimately ordered interpersonal relationships" (1990a, 61).

In other words, there are asymmetries between my claim about the bar on the corner, and my embedded claim, that my invitation to you to take a coffee is an appropriate one based on my understanding of our relationship. The bar will always be there, but depending on whether we both consider it appropriate or not, my invitation can change. Therefore, the question of the validity of this claim resides in our relationship, a relationship whose norms we establish and re-establish each time we meet to have a coffee.

It is in this sense then, that Habermas claims the moral principle as a rule of argumentation as equivalent to the principle of induction in the discourse of empirical sciences. In the case of claims that truth determines the conditions of validity, he directs us to "analysis in terms of epistemology and the philosophy of science" (1990a, 62). To know what makes valid moral judgments possible, we are by contrast, "compelled to proceed directly to a logic of practical discourse" (1990a, 62), in particular, when defining a moral principle as a rule of argumentation. Moreover, according to Habermas, almost every attempt to define a moral principle as a rule of argumentation, ends referring in one way or another, to the Kantian 'Categorical Imperative[20]' (Kant 1999b).

First, the moral principle is conceived to "exclude as invalid any norm that could not meet with the qualified assent of all who are or might be affected by it" (Habermas 1990a, 62). Therefore, the only valid norms are those that express a general will and deserve recognition by all concerned. In other words, norms should express a universal assent. In Habermas view, a universal assent requires participants to overcome their particular position in society and taking an 'ideal role' (Mead 2015). Thus,

> the impartiality of judgment is expressed in a principle that constrains *all* affected
> to adopt the perspectives of *all others* in the balancing of interests (Habermas
> 1990a, 65).

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[20] Kant specified the CI in the preface to the *Groundwork of the Metaphysics of Morals* (1785). In this prolegomena to the *Doctrine of Right* (1797) and the *Doctrine of Virtue* (1797) that together conform *The Metaphysics of Morals* (1798), Kant was aimed at studying the rational part of ethics, called *morals,* from the perspective of pure philosophy, namely concerned only with a priori principles of the understanding. In particular, it was aimed at identifying the ground for a moral law according to which 'obligation' could be sought *a priori* in concepts of pure reason. The final formula, a central concept that will later be rescued by Habermas, is the Principle of the Autonomy of the will. According to Kant, for a morally worth action, every rational human being acts in accordance to maxims as if they were going to become a universal law of nature and, each person being a source of universal laws, represents an end for itself and for others. Therefore, the systematic union of various rational beings through common laws represents a kingdom ends. In a kingdom of ends, all rational beings under the law treats oneself and all other as ends, namely, each person gives universal laws in this kingdom. But, as far as each person is also subjected to the same laws, this person belongs to the kingdom as a sovereign, meaning that "is not subjected to the will of any other" (Kant 1999a, 83).

Second, the maxim precludes a monological interpretation. Indeed, the justification of (D) could itself be understood as a dialogic reinterpretation of the generalisation maxim introduced by Immanuel Kant (1990a, 63). In the Kantian version, the generalisation maxim involves ideal roles to be taken, allowing each morally autonomous individual to consider contested norms as if they were going to become a general law. As Kant put it, moral individuals make use of public reason, not as a priest speaking to a congregation, but as "a scholar before the entire public of the world of readers" (Kant 1999a, 18).

However, as in the case of Rawls, Habermas found that this maxim could be no longer be supported, if embodied in the rational capacities of individual subjects alone. Though different to Rawls, the impartiality of judgment cannot be ensured by putting the moral judge into a fictitious position. Problems that are to be solved, when action coordination on moral norms is concerned, not only requires a cooperative effort, but also needs "a 'real' process of argumentation in which the individuals concerned cooperate" (Habermas 1990a, 67).

With regard to the Categorical Imperative (hereafter CI), Habermas shifts the focus from what is acceptable without contradiction to be a general law, to "what all can will in agreement to be a universal norm" (1990a, 67). It is not that Habermas assumes the entire communication community accepts a norm to become universal valid, without actually being there, it is that the dialogic translation of the CI changes the conceptual grounds of its justification. If Kant assumed the coherence between what I think and what you think was derived from the fact we both share a rationality that transcends our individuality, Habermas that relationship is possible because we are part of the same communication community. In this way, Habermas avoids the problematic assumption of the metaphysical status of a transcendental subjectivity.

According to Habermas, the dialogic translation of the Principle of Universalization (hereafter (U) is defined as follows:

> [A] contested norm cannot meet with the consent of the participants in a practical discourse unless (U) holds, that is, unless all affected can freely accept the consequences and side effects that the general observance of a controversial norm can be expected to have for the satisfaction of the interest of each individual (1990a, 93).

Significantly, (U) should not be mistaken with (D)[21], because the principle of discourse ethics (D) "already *presupposes* that we *can* justify our choices of a norm" (Ibid.). It states that norms to claim validity could meet the *approval* of all affected while (U) only requires their consequences to be freely accepted. Moreover, (U) is defined as a rule of argumentation meaning that "the principle of universalization (…) is implied by the presuppositions of argumentation in general" (1990a, 86). These general presuppositions of argumentative speech are elicited by reconstructing the universal pragmatic conditions of possible communicative understanding (Habermas 1979d).

In short[22], every argumentative speech responds to a set of presuppositions defined at three levels: the logical level of products, the dialectical level of procedures, and the rhetorical level of processes (Habermas 1990a, 87–90, 1989c, 1:25). In the first level, argumentation is designed to produce cogent arguments, and rules are requirements of minimal logic or consistency. In the second level, argumentation is conceived to enable the testing of validity claims that became problematic, and also includes rules of jurisdiction and relevance, the later regulating themes for discussion. Finally, at the rhetorical level, communication is organised so that no other external or internal coercion other than "the force of the better argument" is allowed to influence communication (Habermas 1990a, 89).

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[21] (D) is defined in Discourse Ethics as follows: "Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*." (Habermas 1990a, 66)

[22] I will come back in deep to this point in the final section of this dissertation.

	Rule
1. Logical	1.1 No speaker may contradict itself. 1.2 Every speaker who applies predicate F to object A must be prepared to apply F to all other objects resembling A in all relevant aspects. 1.3 Different speakers may not use the same expression with different meanings.
1. Dialectical	2.1 Every speaker may assert only what he really believes. 2.2 A person who disputes a proposition or norm not under discussion must provide a reason for wanting to do so.
2. Rhetorical	3.1 Every subject with the competence to speak and act is allowed to take part in a discourse. 3.2 (a.) Everyone is allowed to question any assertion whatever. (b.) Everyone is allowed to introduce any assertion whatever into discourse (c.) Everyone is allowed to express his attitudes, desires and needs. 3.3 No speaker may be prevented, by internal or external coercion from exercising his rights as laid down in (3.1) and (3.2)

Table 1: Ethical Principles of Discourse (Habermas 1990a)

These conditions are not conventions but inescapable presuppositions for argumentative speech. Of course, discourses "take place in particular social contexts and are subjected to limitations of time and space" (1990a, 92). However, according to Habermas,

> ... everyone who seriously tries to *discursively* redeem normative claims to validity intuitively accepts procedural conditions that amount to implicitly acknowledging (U) (1990a, 93).

Thus, if the rules outlined above are accepted - in particular rules 3.1 and 3.3 - and what it means to discuss whether a norm of action ought to be adopted is understood, then claims to validity can be recognised.

In sum, in *Discourse Ethics* (1990a) (D) is presented as a principle for moral discourses, one that borrows its justificatory force from a dialogic reinterpretation of the generalisation Maxim grounded in (U) (Rehg 1991). Reached through the reconstruction of the universal pragmatic conditions of communicative action, (U) provides (D) with an independent source of justification, so that (D) stands as the rule of argumentation for moral discourses. In this way, Habermas provides a principle of morality deployed from any substantive content that every participant in rational discourses would be able to find acceptable for the regulation of conflict over moral action norms.

However, in *Between Facts and Norms* (1996), Habermas detached (D) from moral discourses and positioned it at a higher level of generality. In this reading, (D) is no longer limited to the justification of moral norms: it does not demarcate a difference between the moral and democratic principles. In contrast, it represents the specification of their common root, on the one hand, in the principle of morality "for those norms that can be justified if and *only* if equal consideration is given to the interests of all those who are possibly involved" (Habermas 1996, 108), and on the other, the principle of democracy that represents the corresponding specification of (D) "for those action norms that appear in the legal form" (Habermas 1996, 108).

This is the central step of this argumentative sequence. To solve the 'Liberties dilemma' Habermas defends both public and private autonomy, individual's rights and popular sovereignty are co-original. In other words, either we have both on equal footing or not at all. (D) provides an impartial ground for the justification of moral norms without making any assumption about the priority of the moral individual over the democratic process. However, (D) is articulated differently in both elements, because the democratic principle affects a wider scope of reasons than the moral. Therefore, Habermas should clarify how (D) provides justification to the democratic principle and both the democratic and moral principles which meet in the self-constitution of a legal community.

Unlike a moral controversy, the challenge here is that democracy involves argumentation sustained by ethical and pragmatic reasons, along with moral reasons. Therefore, "we might say that these various rules of argumentation are so many ways of operationalizing the discourse principle" (1996, 109). However, the assertion that (D) represents the common ground for moral and democratic principles, while the latter also involves moral reasons along with ethical and pragmatic ones, seems a bit confusing. In other words, the difference between norm regulation in the light of the moral principle, or regarding moral reasons in the light of the principle of democracy, it is not clear.

Habermas, solved this ambivalence by no longer distinguishing both principles by their roots, what will violate his intention of eliciting their co-originality, but "by their different levels of reference" and "the difference between legal norms and other action norms" (1996, 111).

First, he suggests that the moral principle operates "at the level at which a specific form of argumentation is *internally* constituted" (1996, 110), while the democratic principle simultaneously appeals "to the level at which interpenetrating forms of argumentation are *externally* institutionalised" (1996, 110). The moral principle then, functions as a rule of argumentation in the light of which it is possible to decide rationally over particular moral questions, whilst the principle of democracy establishes the procedure of legitimate law-making - presupposing the possibility of all types of valid practical judgments supplying legitimacy to law, including moral ones.

Second, he argues that legal norms of action are different to other action norms. Unlike moral norms "for whose justification moral arguments are both necessary and sufficient" (1996, 111), legal norms call rules for whose justification a particular type of discourse will be necessary but, certainly not sufficient. Furthermore, legal norms "constitute an intentionally produced layer of action norms that are reflexive" (1996, 110). Indeed, according to Habermas, one of the consequences of the modernization of law is that the norms of interaction are increasingly the issue under discussion. Thus, legal norms acquire an artificial character absent in conventional moral practices.

In other words, (D) provides, according to Habermas, impartial grounds whereby the co-originality of the principles of morality and democracy could be sustained, without one subordinating the other. (D) then, specifies the requirements that individual rights need to satisfy if they are to be part of the constitution of a legal community. In its foundation, the principle of morality allows rational judgment on moral action norms. In short, controversy is solved referring to basic rights. The same logic holds for the democratic principle on legal action norms. However, the latter should be able to also provide the medium for its self-organization; namely "the language in which a community can understand itself as a voluntary association of free and equal consociates *under the law"* (1996, 110).

The first task is fulfilled, according to Habermas, through the institutionalisation of the system of rights. It represents the materialisation of "the communicative framework for a rational will-formation" (1996, 110). The second task is fulfilled as a consequence of the capacity to provide the medium for the self-organization of the communication community, whereby it "can express itself as the common will of freely associated legal persons" (1996, 110). In other words, the principle of morality, or private autonomy, and democracy, or public autonomy, find accommodation on the impartial grounds of the discourse principle and evolve in the language of the law of a self-constituting legal community.

1.2   *'Legal Validity' and the Principles of the Constitutional State*

The key idea for Habermas here, is that the principle of democracy emerges from the interpenetration of the discourse principle and the legal form so that "the rule of law, or the constitutional state, is internally related to deliberative democracy" (Rehg 1996, xxiv). The argument for the validity of law began with (D) whereby the internal connection between moral and democratic principles, are justified in such a way that one cannot subordinate the other. The system of rights enacts the impartiality of (D) defining a departure point within which the co-originality of public and private autonomy grounds equal weight for human rights and popular sovereignty. However, as explained before, this internal relation sustaining legitimate grounds for the genesis of law, also entails that "the idea of self-legislation must be realised in the medium of law" (Habermas 1996, 129).

This formulation has two initial virtues. First, it provides a medium for the institutionalisation of law-making procedures grounded on an impartial basis. Secondly, it provides the means whereby framers of laws can author their rights. However, the fact that the language of law, is the medium through which deliberation and decision making on the legal regulation of action norms necessarily take place, it follows that participants in the law-making process can no longer choose the medium through which they express their autonomy. In other words, the legal code is already there when they begin to deliberate.

This constraint for participants seems paradoxical, especially with regard to the particular aim of Habermas to ground the normative binding force of law within the participation of those subjected to it. Because the legal system could be seen as a circular process that recursively feeds back into and legitimates itself (1996, 130), Habermas, asserts that this paradox fades away as soon as the exercise of communicative action meets halfway with the process of legal regulation. Indeed,

> ... citizens become those who deliberate and acting as a constitutional assembly
> decide how they must fashion the rights that give the discourse principle legal shape
> as a principle of democracy (1996, 127).

The reflective character of the language of modern law offers an impartial medium whereby this specification of (D) for legal norms takes place, not only in the light of the legitimacy provided by the system of rights, but by *legitimately enacted* law. This is taken to mean here, as a process of self-legislation that, due to its procedural structure, allows the operation of practical reason. In other words, the structure of the process lends itself to procedures of self-legislation as the presumption of rationality. James Bohman explained this shift as the difference between the validity of the law, that affects the legitimate basis of law, and 'legal validity' whereby legitimacy is not only generated, but regenerates itself over the institutionalisation of law-making processes (Bohman 1994, 910).

First, the metaphorical shape of the self-referential act, the institutionalising of civic autonomy within the system of rights, gains the stability needed to sustain a constitutional democracy, once the enforcement of the law by the state makes its binding character socially effective (Habermas 1996, 132–33). Habermas describes the functional relationship between law and power as reciprocal because, as well as the state making effective the normative binding force of legitimate law, it also profits from its capacity to stabilise behavioural expectations: the latter "increasingly serv[ing] to organise and regulate state power" (1996, 144). It serves as a system of rules guaranteeing private and public autonomy, but also one that generates, for example, governmental institutions.

Second, in the democratic rule of law, political power is not limited to the already constituted power of the state's administration, according to Habermas, "political power is differentiated into communicative power and administrative power" (1996, 136). Thus, the law does not only steer political power through state administration, it also, "represents at the same time the medium for transforming communicative power into administrative power" (1996, 169). Communicative power refers broadly to opinion upon which many people publicly agree, and it has the motivating force of discursively produced, and inter-subjectively shared, beliefs (1996, 147). Those beliefs emerge from the mobilisation of citizens' communicative freedom and carry on the capacity to influence the production of legitimate law.

Third, political participation, or the legal institutionalisation of public opinion and will formation ending in decisions about policy and law, takes place in the form of communication (1996, 151). (D) regulates this communication process in two respects. First, in a *cognitive sense* by filtering reasons and information, it endows outcomes of the discursive process with the presumption of acceptability. Secondly, in a *practical sense,* it provides the capacity to establish relations of mutual understanding, or acceptance, by unleashing the generative force of communicative freedom.

In sum, a reciprocal relation between power and law makes the normative binding force of law socially effective, while law endows the use of power with the legitimacy required for its operation in a constitutional democracy. This reciprocity is nevertheless dependent on its communicative form whereby communicative power, regenerating the validity of the genesis of law through legitimately enacted laws, empowers citizens with the capacity to effect influence on the production of law. This dependency of law and administrative power from communicative power is what ensures that law is not instrumental to administrative power (1996, 137).

Nonetheless, the operation of communicative power should be based upon the exercise of practical reason. In other words, we should be able to differentiate communicative power emerging from the legitimate exercise of communicative freedom by citizens, from the social power of another sub-system, for example, the market, attempting to exert illegitimate influence over the legislation process (1996, 150). For Habermas, this is achieved in two stages.

First, practical reason, that aims to offer a rational justification for the coordination of legal action norms, differs from the justification of moral norms described above, in that it is no longer effected within an infinitely expanded audience of an ideal communication community. Legal norms ought to allow action coordination with regard to political questions affecting particular communities in their social environment, as well as their concrete historical conditions (1996, 151–52). In other words, the exercise of political autonomy is not merely the application of (D) in place of morality, to law, but a process of discursive self-legislation that issues from a self-determining political will. Moreover, political will responds to each particular community with its own pre-given identity.

Secondly, the interpenetration between communicative power and discursive law-making is possible, because reasons and not just identities, have a motivational force. Practical reason then, when regulating action coordination for legal norms, provides the rational conditions and procedures for the exercise of moral autonomy at the individual level, and political autonomy, manifest as the expression of political will formation, at the collective level (1996, 157). However, as noted before, unlike morality, the legal regulation of action norms in the light of the principle of democracy involves a wide scope of reasons operating around the same problems.

Along with moral reasons, discourses aimed at action coordination of legal norms, mobilise pragmatic and ethical-political reasons that differ in the content and meaning of their validity claim, as well as in their mode of legislation (1996, 153–57). The specification of the different logics underlying discourses and aimed at responding to pragmatic, ethical-political, and moral questions, correspondingly gives rise to the operation of purposive rationality and critical hermeneutics in pragmatic and ethical-political discourses. In the end "[a]n adequate justification of policies and laws must, however, consider yet a further aspect, that of justice" (1996, 161).

In other words, what is good for us (ethical-political) and the means to achieve this good (pragmatic), should pass the filter of (D) so that what is equally good for all, acquires the normative binding force of discursive self-legislation.

In the context of a discursively structured process of opinion and will formation, "law-making is interwoven with the formation of communicative power" (1996, 162). Communicative power evolves in parallel to the sequence whereby, changes in the illocutionary meaning of the moral 'ought', advance through the process of justification of legal norms. Therefore, the 'moral ought', the central question to which action coordination of legal norms should respond, and the will of the collective body of citizens involved in the law-making process, are transformed due to the very process of self-legislation.

The pragmatic 'ought', departing from given ends and values, is directed to the free choice of actors. The ethical-political 'ought', relative to our conception of the good life, brings about a hermeneutic self-clarification, affirmed in the light of a critical appropriation of traditions. Finally, the categorical 'ought' of moral norms is directed to the autonomous will of the rationally bound actors (1996, 162).

The resulting procedural understanding of rational political will formation,[23] permits Habermas to justify the principles of government by the law that regulates the exercise of popular sovereignty, the legal protection of individuals, the subjection to the law of administration, and the separation of powers between state and society (1996, 162–69). These principles are the result of a law-making process in which the legitimacy of the genesis of law, justified in the common ground that morality and democracy both find in (D), also justifies an internal connection between democracy and law.

Finally, this common ground, for the different logics and discourses through which practical reason operates within the political process of rational will formation, gives coherence to the process of action coordination through legal norms, without violating the moral autonomy of individuals and their democratic mandate.

The rationality entailed by (D) is procedural, and "reason is embodied solely in the formal-pragmatic conditions that facilitate deliberative politics" (1996, 285). Deliberative politics is the process whereby, the local motivations of real actors, and their capacity to rationally figure out their claims in the face of a universal audience, speak to each other in the language of the law. (D) grounds this double requirement by liberating the normative binding force of democratic decision making from previously settled conventions and, at the same time, rationally sustaining its capacity to act in the name of the equality of all, without embodying practical reason in the isolation of the moral individual.

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[23] Recall that in Habermas model of the deliberative practice of self-legislation will formation operates at the level of formal communication taking place in institutional bodies and institutionalized in legal procedures aimed at decisions while, political opinion formation refers to communication taking place through informal channels (Habermas 1996, 275).

In sum, self-legislation brings the normative binding force of a discursive understanding of democracy, through the operation of communicative action that bridges the gap left between a positivist understanding of the legitimacy of law, and its reclusion in the normative self-understanding of a pre-established ethical-political community. The motivation generated by the communicative action, results not only from citizens shared beliefs, but also from reasons steering the exercise of communicative freedom towards legitimately enacted laws. Therefore, practical reason circulates around a flexible path, involving a complex network of discourses, deliberations and, even bargaining, as part of the law-making process; but, necessarily guaranteeing that in the end, directly or indirectly, "the discourse principle has been thoroughly applied" (1996, 167).

1.3   Procedural Response: Neither Moral nor Political

Habermas differs from previous attempts to bring normativity back into democratic politics, in that it requires no previous commitment other than those exemplified in equal conditions for each, free agreement by all, and the medium to make it possible. The substantive vacuum in which he defines the discourse principle marks a breakthrough in antecedent strategies to justify the legitimacy of democratic institutions. Among them the doctrine of private rights and social contract theories represent two major examples. Therefore, to close this section I will review the basic differences between those previous schemes, and the procedural proposal embedded in Habermas view, to show more clearly why his procedural approach is capable of accommodating basic tenets of both traditions without establishing a hierarchy among them.

Private law theory, or the doctrine of subjective rights, for example, explicitly asserts the notion that in universal and abstract laws, all subjects have the same rights, and individual freedom can have no other limit than the same freedom exercised by others (Habermas 1996, 83–89). In accordance with this basic premise, subjective rights naturally belonging to human beings, are given moral authority over democratic law-making, or popular sovereignty, with no need for further justification. In other words, the legitimate law was the institutionalisation of equal treatment, and consequent upon the recognition of natural rights for each citizen.

Conversely, Social Contract theories do not justify the normative force of private rights as dependent on the moral individual, but the other way around. Following Habermas lecture on this theoretical perspective:

> ... the sovereign will of the people can express itself only in the language of general and abstract laws, [so that] the exercise of political autonomy no longer stands under the proviso of human rights (1996, 101).

For Habermas, the normative content of human rights, "enters into the very mode of carrying out popular sovereignty" (1996, 101).

It ought to be clear, why both proposals have severe limitations. Regarding the doctrine of private rights, Habermas agrees that the legitimacy of positive law, hanging on the private and equal rights of citizens, fulfilled the necessities of decentralised economic societies. However, "law must do more than simply meet functional requirements of complex societies" (1996, 83). To counter direct fragmentation in democratic constitutional regimes, the legitimacy of law should account for patterns of social integration of active subjects who accept the duty to obey the law by its normative binding force.

Similarly, social contract theories endow citizens with certain civic virtues whereby the common good represents a motivation to think and act publicly, and not only on behalf of private interest. However, according to Habermas, these political virtues are rooted in the assumption of the existence of an almost homogeneous ethical community, integrated through shared cultural traditions settled before their legal constitution. Moreover, on these bases, social contract theories "cannot explain how the normatively construed common will can, without repression, be mediated with the free choice of individuals" (1996, 102).

Habermas found a potential solution to this dilemma in Kant's definition of popular sovereignty. Addresses of law are to be understood simultaneously as the authors of their rights (1996, 92–94). Here, Kant begins with the right of equal individual liberties belonging by its very nature to each human being. Accordingly, the social contract serves primarily to institutionalise the innate right that all persons have, to equal liberties. This human right, following the rationale of the CI, is grounded in the autonomous will of the individual. However, it is not in contradiction with the exercise of political autonomy, as far as the individual moral person, as a rational human being, "is subject only to laws given by himself but still *universal*[24]" (Kant 1999a, 82).

The universality of laws given by each to himself is rooted in Kant's understanding of practical reason, and this argument is one of the most elegant chapters written is the history of philosophy. However, what interests us here are not the specificities of the operation of the CI, but that Kant grounded the co-originality of private and public autonomy on the rational capacities of the moral individual. On these bases, private rights are legitimated on moral grounds, and its companion conception of the social contract is unique as it has no specific content. It is different to other contracts in that it is not agreed to a specific end, but it is an end in itself: "it provides instead the model for a kind of sociation ruled by the principle of law" (Habermas 1996, 93).

However, the basic innate right embodied in the social contract should differentiate itself into a system of rights that, in turn, is enacted by public laws that "claim legitimacy only as acts of the public will of autonomous and united citizens" (Habermas 1996, 93). In other words, unlike subjective rights grounded in natural-law, public laws are established "through no other will than that belonging to the people collectively (because all decide for all, hence each for himself)" (Habermas 1996, 93). Thus, the legitimacy of the system of rights finds an answer in binding political will formation through a democratic procedure.

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[24] Emphasis added.

The consequence is that "the morally grounded primordial human right to equal liberties is intertwined in the social contract with the principle of popular sovereignty" (1996, 94). Habermas suggests that in following this path, Kant constrained the sovereignty of the collective will by morally grounded human rights, that subordinates law to morality. He argues that Kant underlines the central position of private rights to the social contract, "in following a path that *progresses* from morality to law" (1996, 101). The consequence of this sequence is that the principles of private law enjoy the validity of moral rights "already in the state of nature" preceding "the will of the sovereign lawgiver" (1996, 101).

To summarise, after rejecting the idea that private rights alone could underpin the legitimacy of law, Habermas turns to a philosophical tradition that, going back to Kant and Rousseau, sought to ground the compatibility of human rights and popular sovereignty in a defence of the notion that private and public autonomy are co-original.

In Habermas view, Rousseau (1762) maintains that the very idea of the social contract, and the exercise of popular sovereignty, demand requirements that are embedded in the doctrine of human rights. In this case, it is political autonomy that involves the equality of private rights in its mode of proceeding. However, according to Habermas, this understanding of popular sovereignty recalls its normative basis from a pre-established ethical community, and as such cannot account for the legitimacy of law, if the free choice of autonomous individuals is to be taken into consideration (Habermas 1996, 102).

By contrast, Kant grounded his co-originality in the rational capacities of individual autonomous subjects as moral persons. However, progressing from morality to law, Kant subordinates law to morality, and in so doing, establishes a hierarchy between human rights and popular sovereignty.

In such a construction, it is impossible to assert equal weight for both liberties. Both, Kant and Rousseau, intended to show that popular sovereignty and human rights reflect each other by "the notion of autonomy as unifying practical reason and sovereign will" (1996, 100).

Habermas' thesis, is that both Rousseau and Kant failed, because neither of them could account for the legitimating force of the discursive processes of opinion - and will - formation. The difference that Habermas' approximation makes, is that neither the system of rights, nor popular sovereignty, or private and public autonomy, depend for their justification on the private rights of moral persons, nor do they rely upon on normative conventions of a pre-settled ethical community. Habermas convincingly sets it out in the following way:

> ... the legitimacy of law ultimately depends on a communicative arrangement: as participants in rational discourses, consociates under law must be able to examine whether a contested norm meets with, or could meet with, the agreement of all those possibly affected. Consequently, the sought-for internal relation between popular sovereignty and human rights consists in the fact that the system of rights states precisely the conditions under which the forms of communication necessary for the genesis of legitimate law can be legally institutionalised (Habermas 1996, 104).

The main argument explored in this section was that the only thing prior to citizens' engagement, are the conditions to make this communicative arrangement possible and the language to proceed. The former is provided by (D), which formalises pragmatic requirements already intuitively accepted by citizens in their daily life communications. The latter, rests upon the idea that (D) is embodied in the basic formulation of the system of rights, that in turn are the consequence of the constitutional development of modern law. Together, they define a set of procedural rules whereby practical reason, in the form of deliberative politics, could steer society towards social integration.

2   The External Tension: From Pluralism to Social Complexity

The argument in the previous section, makes claims for the legitimacy of a discursive approach to democracy focused on its normative justification. What is still arguable, is whether this model responds appropriately, not in an ideal communication community, but in the face of the complexity that characterises contemporary societies in the western world. Indeed, it is several aspects of this dimension to his theory that is subjected to critique in the next chapter. In short, my argument is that Habermas provides an interesting alternative to deal with social complexity, but he does not take into consideration the diversity of complexities that are faced by contemporary societies.

This section considers Habermas' argument, of how to deal with the challenge that social complexity entails for democracy, in particular when the external tension between the validity of the law and the facticity of the political process running in parallel. The purpose here, is not the justification of the normative binding force of deliberative politics all the way through to the institutionalisation process of modern law. Instead, the focus shifts to the empirical relationship between democratic institutions, and the capacity to sustain their normative force in the context of a wider society in which they are embedded, but not regulated by them (Habermas 1996, 287).

Moreover, as described *contra* Rawls, this tension can no longer be elucidated in the realm of theoretical thinking. The normative binding force of democratically enacted constitutional laws requires considering the place of law, and its authors in their particular habitat. This habitat is complex, and complexity entails a significant challenge to justify the potential of deliberative democracy to steer society towards social integration.

According to Habermas, the *locus* of this debate is the unfinished controversy over the project of modernity, and the desirability to resume it or not. In his view, the rationalisation resulting from the project of modernity demonstrates the capacity, and virtue, of moving society away from conventional patterns of justification, with science being the paradigmatic example. However, it finds difficulties in replacing the coherence and unity provided previously by comprehensive doctrines. Therefore, the challenge is how citizens will tend towards social integration in the absence of an authoritative source which establishes a common direction and provide the appropriate route through complex questions.

Habermas advocates resuming the project of modernity and taking citizens capacity for mutual understanding as its driving force. Deliberative politics represents an appropriate vehicle for this because it can be called on to resolve problems that resemble the ones menacing social integrations in the wider context of the lifeworld. Finally, it is on these bases that the sociological translation of Habermas' discursive and procedural definition of democracy is defined.

2.1   *The Emancipatory Potential of Modern Rationalisation*

Habermas intended to provide reliable grounds, upon which the normative force of deliberative democracy can steer society towards integration in conditions of social complexity, that results from the differentiation of value spheres in the modern world. The paradigmatic example of its success is the development of modern science during this period. However, the side effect has been the progressive differentiation of value spheres, each with a specific type of rationality. The process results in the weakening capacity to define common objectives. In short, the challenge is about finding reasons that are equally compelling for the market, institutions, and society, without denying each of them answers to different values, needs and objectives. For that, he needs standards that, although weak, will be able to provide normative guidance based on the proper conduct of practical reason.

In the context of his extensive analysis of modern rationalisation, he found that "[i]n structurally differentiated lifeworlds a potential for reason is marked out that cannot be conceptualized as a heightening of system complexity" (Habermas 1989c, 1:xli). By this potential for reason, Habermas seeks to provide a renewed account of the virtues of modern rationalisation and its corresponding differentiation of value spheres. However, he intends to advance this defence without renouncing the universal justification of normative principles that sustains the kind of authority deliberative democracy needs to steer society towards social integration. This attempt to overcome the challenges of social complexity is presented by Habermas as a reinterpretation of Max Weber's diagnostic of western modernization (Habermas 1989d, 2:318–31).

According to Weber (1993), modernity provokes the differentiation of the value spheres of science, morality and art, and that following their inner logics are free from any subordination. This project, inspired by the success of modern science, intended to release the cognitive potentials of each of these domains, and utilise the accumulated knowledge for the enrichment of everyday life. In other words, the rational organisation of everyday social life. However, the differentiation of value spheres, simply resulted in the division of traditional problems in accordance to their internal logics. Each corresponding sphere of action evolved in a growing professionalization. Therefore, each specialised in dealing with problems from the rational viewpoint of their corresponding value sphere. Accordingly, the distance between expert cultures and the broader public only tended to grow.

To offer an alternative account of the same process, without renouncing what he considered useful,[25] Habermas introduced a distinction between the system and the lifeworld (Habermas 1989d, 2:306–12). The problem of modernization was not, according to Habermas, the rationalisation it entails. Indeed, the rationalisation of the lifeworld, challenging conventional as well as transcendental sources of justification, permitted a further step to a level whereby "[t]he procedures and presuppositions of justification are themselves now the legitimating grounds on which the validity of legitimacy is based" (Habermas 1979a, 185). On the contrary, the problem was the particular type of rationalisation taking place in advanced capitalist societies[26]: the subordination of the life-world under systemic imperatives resulting in a distortion of the communicative infrastructure of everyday life (Habermas 1989d, 2:330).

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[25] In his words: "I believe that we should learn from the aberrations which have accompanied the project of modernity and from the mistakes of those extravagant proposals of sublation, rather than abandoning modernity and its project." (Habermas 1997, 55)

[26] In his own words: "Neither the secularization of worldviews nor the structural differentiation of society has unavoidable pathological side effects per se. It is not the differentiation and independent development of cultural value spheres that lead to the cultural impoverishments of everyday communicative practice, but an elitist splitting-off of expert cultures from contexts of communicative action in daily life." (Habermas 1989d, 2:330)

In advanced capitalist economies,[27] this distortion was considered a side-effect of the expansion of a technocratic rationality which, although beginning as the rational logic of a specific value sphere, the market, expanded its 'scope of influence' to the lifeworld. Furthermore, the rationalisation of value spheres, steered by purposive-instrumental rationality, evolved in a progressive bureaucratization of a money and power oriented subsystem, namely administration and the market. Finally, this process accompanied a progressive impoverishment of the lifeworld that had no grounds to fulfil its social integrative function, after splitting-off from a tradition whose credibility fade away.

In sum, a double-edged process runs in parallel to the modernization of society leading to a 'system induced reification' of bureaucratic administration and a progressive 'cultural impoverishment' of the lifeworld (Habermas 1989d, 2:327). To turn this process around Habermas argues that,

> ... the life-world has to become able to develop institutions out of itself which set limits to the internal dynamics and imperatives of an almost autonomous economic system and its administrative complements (Habermas 1981, 131).

In other words, the sort of social integration he advocates for is aimed at reconnecting modernity with 'every-day' praxis, but steering societal rationalisation in a different direction: in the direction of communicative action aimed at mutual understanding.

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[27] a. the legitimation problems of the state consists in "representing the accomplishments of the capitalist economy as, comparatively speaking, the best possible satisfaction of generalizable interests – or at least insinuating that this is so

b. In this context "the state can prove itself as an aid to legitimation only if it successfully manages the tasks it has programmatically taken on; and to a considerable extent this can be checked. The legitimation theme that is today in the foreground can this be located on the line between technocracy theories and participation models.

c. If under these restrictive conditions the state does not succeed in keeping the dysfunctional side effects of the capitalist economic process within bounds acceptable to the voting public, it is also unsuccessful in lowering the threshold of acceptability itself, the manifestations of de-legitimation are unavoidable (Habermas 1979a, 195–96).

Indeed, following Bernard Peters' (1993) understanding of social integration, Habermas classified the standards to assess problems of social integration, along the lines of the different aspects of validity (Habermas 1996, 318–20). What is required from the political process is to provide means for: (i) *functional coordination*: cognitive orientation to the objective world; (ii) *moral regulation* of conflicts: a balance over conflicting claims through a normative orientation to legitimate orders in the social world; and (iii) *ethical safeguarding of identities and forms of life:* orientation to shared conceptions of the good and interpretations of needs. Therefore,

> ... if we adopt this conception (which goes back to Karl Deutsch and others), then we see that democratic procedure and the discursive mode of sociation found in the legal community are simply reflexive refinements and specializations of a *general* mode of operation of social systems (1996, 319).

The logic underlying deliberative politics does not represent an action system among others, because its bases are universal presuppositions that every participant in communicative action, intuitively accepts.

A first virtue of building up justification on the basis of this, is that it fits with the specific type of legitimacy required for law in modern states[28] (Habermas 1979c). Moreover, by the universality of its presuppositions, the problems for social integration taking place in the lifeworld reflect the very same structure of those identified for the conduct of communicative action in the formal public sphere. Societies are considered problem-solving systems "in which success or failure is measured against criteria of rationality." (Habermas 1996, 318) Therefore, in Habermas words, "in filling in for social processes whose problem-solving capacities are overtaxed, the political process solves the *same kind* of problems as the processes it replaces" (Habermas 1996, 318).

Therefore, the 'centrepiece of deliberative politics', consists of a network of discourses, that facilitates a rational solution for problems of action coordination when other mechanisms fail.

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[28] Reviewing the legitimacy problems of modern state Habermas asserts that "[a]t the new level of justification only an order of state and society organized along universalistic lines could be defended." (Habermas 1979a, 192)

In the context of legal institutions, deliberative politics, shaped by the ideal procedure of deliberation, provide the conditions for communication aimed at mutual understanding. In particular, this ideal provides a mirror whereby it is possible to identify how far the ideal is implemented in a particular context, as well as the means to identify whether it deviates from the rule. Thus, in theory, the ideal does not constrain the normal conduct of deliberative politics, it offers a reference point to specify its conditions of possibility. In other words, a 'methodological fiction' (1996, 323) in the light of which we could measure whether legal institutions fit or not.

In turn, in the wider context of the lifeworld, the 'methodological fiction', explains the counterfactual presuppositions through which participants engaged in dialogical interactions can "go beyond their local practices of justification and to transcend the provinciality of the spatiotemporal contexts that are inescapable in action and experience" (1996, 323). Thus, it is through communicatively mediated social relations that the discursive translation of democracy no longer deals with a "disembodied, omniscient being who exists beyond the empirical realm and capable of context-free actions" (1996, 324). By losing its fictive character in the self-organization of the legal community, the discursive translation of democracy demonstrates its capacity to respond to problems of action coordination in complex societies.

To summarise, Habermas defined social complexity as a matter of differentiation of value spheres resulting from western modernization. In response, he sought to provide an account of rationalisation whereby the lifeworld could develop its institutions so as to bridge the gap between systemic value spheres. To that end, the desired unity of the project of modernity, finds a set of standards in his critical reconstruction of pragmatic rules of argumentation, that gives citizens the capacity to agree at the forefront of democratic politics. On this basis, the ideal procedure of deliberation provides a methodological fiction enabling an impartial judgment. Moreover, procedural rules can claim to be universal and rational, because they are not the expression of the operation of the rational logic of a particular value sphere. What the procedural rules reflect then, are conditions of possibility for rational agreement, that are already accepted by citizens in their daily lives. The ideal provides a standard for measuring how far the discourse principle is implemented in the system of rights in concrete constitutional regimes. It also provides a mechanism whereby citizens can transcend local practices of justification. The ideal, thus secures a common rationale whereby deliberative politics can move society towards integration, not only affecting the institutions of law and the process of legal institutionalisation, but also citizens in the lifeworld; the wider context in which the institutions of law are embedded, but which they do not directly regulate.

2.2   *From the Ideal Procedure to the Two-Track Model*

Habermas introduced the two-track model of deliberative democracy to account for the common patterns, but differing contexts, through which deliberative politics operates in the interactions between legally institutionalised will formation and culturally mobilised publics. The way institutionalised will formation operates, and the means by which political will formation depends on the supply of information arising from communication in informal arenas, has already been reviewed. The role of the latter was argued to be crucial in avoiding state administration being governed by illegitimate uses of social power, as well guarding against its isolation from its societal basis. Therefore, the proper operation of the informal public sphere arguably requires a considerable normative responsibility to be carried on its back.

The informal public sphere involves informal channels of communication, mass media, informal associations and the like (1996, 359–87). Deliberative standards do not regulate these channels themselves. However, the conditions to be accomplished by the informal public sphere, that is to be heard by formally institutionalised deliberation and decision making, seem to depend on the operation of deliberative politics in the formal public sphere. Therefore, it is through the compound operation of formal and informal public spheres that Habermas specifies the role and structure of deliberative politics in modern constitutional regimes.

To explain this particularity of his definition of deliberative democracy, Habermas contrasts his two-track model of deliberative democracy with the ideal deliberative procedure presented by Joshua Cohen (Habermas 1996, 305). Cohen defends Rawls' understanding of democracy, as that which seeks to accommodate three conditions of democratic politics; namely, a focus on the common good, to manifest equality, and the capacity of its procedures to shape participants' preferences towards the common good. However, "[w]hat I find less plausible is that the three conditions are natural sequences of the ideal of fairness" (Joshua Cohen 2003, 345). On the contrary, what actual social and political institutions should mirror, is not the ideal of fairness, but the system of ideal deliberation itself.

According to him, following the regulative ideal embodied in the original position, deliberative democracy endows citizens with the capacity to act as a political body; in other words, constitute a political community[29] (Joshua Cohen 1997). Moreover, their decisions will provide greater epistemic quality to democratic outcomes in comparison with the aggregative model of democratic politics, based on the deliberative process conducted before voting[30] (Joshua Cohen 1986). Indeed, Habermas grounds his exemplification of the proper conduct of deliberative politics in Cohen's ideal procedure of deliberation. However, while Cohen maintains that in following the ideal we will find the procedure whereby a political community constitutes itself, Habermas rejects the notion that this relationship between state and society, as a whole and the sum of its parts, is sustainable in conditions of social complexity (Habermas 1996, 301).

What Habermas finds plausible from Cohen's ideal procedure of deliberation, is his characterization of the procedure itself (1996, 305). The formal ideal of deliberative democracy presented by Cohen assumes that the democracy is: (i) an independent and on-going association whose (ii) members share a commitment to free deliberation among equals as the basis for legitimacy, while (iii) holding diverse preferences, convictions, and ideals about their own lives. The (iv) basic terms of their association not only underpin deliberation, but are manifest to them. Moreover, (v) they recognise one another as having deliberative capacities (Joshua Cohen 2003, 346).

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[29] Cohen challenges the idea that in the absence of an initial comprehensive consensus on values, reasonable pluralism leads one to think on a purely procedural account of democracy. First, if citizens are free no comprehensive doctrine should be allowed to provide the defining conditions of membership in a democratic society. Second, fundamental to the idea of democratic legitimacy is that authorization of state´s power depends on collective decisions taken by citizens subjected to that power. To take collective decisions means that citizens can behave as a body. Altogether, the lack of a comprehensive initial consensus refers to a situation where the conditions of freedom and equality of citizens, given the reasonable pluralism in their initial positions, challenges the very idea of acting as body. Contrarily, the deliberative conception of democracy presented by Cohen connects the deliberative view to the value of the community. Locating the acceptability by reasonable others at the core of his notion of political justification, Cohen argues that deliberative democracy provides a form of political autonomy enhancing the sense of membership to a political community. In other words, justifies its account on the stability of the decision making process: "This is so not because collective decisions crystallize a shared ethical outlook that informs all social life, nor because the collective good takes precedence over the liberties of members, but because the requirement of providing acceptable reasons for the exercise of political power to those who are governed by it—a requirement absent from the aggregative view—expresses the equal membership of all in the sovereign body responsible for authorizing the exercise of that power." (Joshua Cohen 1997, 416)

[30] His epistemic interpretation of the decision-making process involves several components: (i) an independent standard of correctness, (ii) a cognitive account of voting and (iii) an account of the decision-making process as a process of adjustments of beliefs. The general will play the role of the independent standard of correctness without violating the procedural logic if members of the deliberating group: (i) share a conception of the common good, (ii) consider that institutions advance towards the general will as a reason to support them, (iii) have full knowledge that this commitment is shared and (iv) this commitment is consistent with members of the society regarding themselves as free and equal. When these conditions are fulfilled, Cohen suggests that the general provides a standard of correct decisions independent from both, current consensus and the outcome of votes. This shared conception of the common good is embodied in the ideal procedure of deliberation, which, if followed, shapes parties' positions via acceptability requirement towards consensus. So, the standard depends on the ideal, but its epistemic claims survive cause the standard is independent to the deliberative procedure. When these conditions are fulfilled: "[t]he decisions of majorities about which policies to pursue can provide good evidence about which policies are in fact best." (Joshua Cohen 1986, 34)

This formal ideal provides a basic schema where from the start, substantively characterising the conditions for a social order is regulated by deliberative forms of democratic decision making. However, further specifications are needed to define both the procedure, and the basic set of guidelines, that ought to be mirrored by social and political institutions. In other words, the ideal deliberative procedure is the formal skeleton from which the substantive content of a democratic society should be built upon. Alternatively, in the case of Habermas, the ideal procedure is one that legal institutions conducted by deliberative politics should mirror.

Its basic components[31] are interpreted by Habermas as follows: (a) it takes place in argumentative form; (b) it is inclusive and public; (c) free from any external coercion; (d) free from any internal coercion menacing equality of participants; (e) aimed at rationally motivated agreement; (f) extended to any matter that can be regulated in the equal interest of all; and (g) including interpretations (needs / wants) and change in pre-political attitudes and preferences (Habermas 1996, 305–6).

As already noted, the ideal offers a mirror for democratic procedures that take place in the context of a legally constituted communication community, and affect the procedures whereby formal debate takes place. Indeed, the normative self-understanding of deliberative politics requires this discursive mode of sociation for the legal community. However, this model, first, harbours the assumption that deliberative procedures could constitute the political community as a whole. Secondly, it does not consider important internal differentiations within legally institutionalised will formation; and, third, it overlooks the necessity that deliberative politics proceeds through legally constituted institutions embedded in contexts "it cannot itself regulate" (1996, 305). In other words, the ideal model by itself is not useful to feature the role of deliberative democracy in complex societies.

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[31] The ideal procedure of deliberation are defined by Cohen as follows (2003, 347–48):

1. Ideal deliberation should be *free*: participants are bound by results and preconditions of their deliberation and they can act from results with the outcome of deliberation as a sufficient reason to comply.
2. Deliberation is *reasoned*: argumentation follows the maxim that 'no force except that of the better argument is exercised'. Therefore, proposals should be backed by reasons expecting others acceptance.
3. Parties are formally and substantively *equal*: Formally equal because the rules regulating the procedure do not consider single individuals and substantively equal because existing distribution of power and resources does not shape the opportunities to contribute nor plays any authoritative role.
4. Aim to arrive at rationally motivated *consensus*: To find reasons that are persuasive to all committed but without discarding that in the case of disagreement deliberation could end in voting.

The differentiation between informal and formal public spheres suggested above seeks to respond to this problem. On the one hand, there are decision-oriented deliberations, regulated by democratic procedures, and involving the institutions of a legally constituted communication community. This formal dimension of the public sphere plays the role of a 'context of justification', and it is where decisions are made, and democratically institutionalised processes of will formation take place. On the other hand, informal processes of opinion formation occur in an "open and inclusive network of overlapping, sub cultural publics having fluid temporal, social and substantive boundaries" (1996, 307). This weak public sphere plays the role of a 'context of discovery' and is the vehicle of public opinion.

Nevertheless, the success of deliberative politics depends on the institutionalisation of the corresponding procedures and conditions of communication, but also on the interplay of institutionalised deliberative processes with informally developed publics. Albeit only the political system can act, the communicative structure of the public sphere can only influence the direction of the use of power (1996, 300). This communicative power exercises this influence through properly conducted interactions between legally institutionalised will formation and culturally mobilised publics, because

> ... [d]iscourse theory reckons with the higher-level intersubjectivity of processes of reaching an understanding that takes place through democratic procedures or in the communicative network of public spheres (1996, 299).

Therefore, success, according to Habermas, depends also on a proper conduct of a vibrant civil society to which deliberative politics provides a channel to proceed.

2.3   Sociological Translation: Neither Liberal nor Republican

In his critique of Rawls, Habermas highlighted that his proposal leaves substantial questions in the hands of more or less enlightened participants in rational discourses. The idea behind this assertion was that Rawls said too much about citizens and their rights before citizens were even allowed to enter the game. On the contrary, Habermas' discursive and procedural translation of democracy leaves substantial issues to the end. Accordingly, it is only at the end of *Between Facts and Norms* (1996) that, illustrating the requirements established in his discursive and procedural definition of democracy, he provides a sociological translation of basic concepts of his theory of democracy. In short, procedures come the first and definition at the end.

With regard to definitions, discursive democracy is different from both liberal and republican traditions; it presents a novel understanding of basic concepts as legitimacy, sovereignty, state or society (Habermas 1996, 295–302, 1994b). In one sense, Habermas rejects the liberal conception of the state "as guardian of an economic society" (Habermas 1996, 296). In the liberal view, citizens hold negative rights vis-à-vis the state, and the legal order is defined to make possible this determination of citizens and their subjective rights (Habermas 1994b, 2). From this point of view, sovereignty is understood as the capacity of individual citizens to act without being affected by potential disruptions of an administrative power interfering the self-regulation of society (1994b, 7). Moreover, the democratic will formation "has the exclusive function of legitimating the exercise of political power" (Habermas 1996, 299).

But equally, he also rejects the republican idea of democratic will formation as the expression of the needs of "an ethical community institutionalised in the state" (1996, 296). In the Republican view, citizens' political opinion, and will formation, is the medium whereby society constitutes itself, and its legitimating force rests on conditions for the exercise of popular sovereignty (Habermas 1994b, 6). The status of 'citizen' is not determined by negative liberties of citizens like private persons, but by positive liberties: rights to political participation and communication (1994b, 2). Thus, in the Republican view, "subjective rights owe their existence to an 'objective' legal order that both enables and guarantees the integrity of an autonomous life in common based on mutual respect" (1994b, 3).

Despite their differences, Habermas found a crucial link in both theories through their corresponding understandings of society and the state; in particular that of a society centred in the state (Habermas 1996, 298). In the Republican view, society constitutes itself as a political whole through citizens' opinion and will formation that, becoming conscious of itself, acts to re-appropriate a "bureaucratically alienated state power" (1996, 297). Liberalism, on the other hand, assumes that the gap between state and society can only be bridged. However, focusing on the output side of the democratic process, asserts a central role for the state, ensuring that private rights are not savaged by potential disruptions of an administrative power hampering "the spontaneous social commerce of private persons" (1996, 298).

For Habermas', either the "offensive understanding of politics directed against the state apparatus" (1996, 297) of republicanism. Or due to the thin normative grounds on which liberalism rests (1996, 295), lead him to reject the notion that a relation between state and society, as the whole and its parts, exhaust available options (1996, 301). The discourse theory of democracy grounds the role of the democratic process, either in the practice of self-determination ascribed to a macro social subject, or in the anonymous rule of law regulating interactions among competing individuals. The discourse theory of democracy thus "corresponds to the image of a decentered society" (1996, 301).

In fleshing out this claim, Habermas first argues that practical reason resides neither in universal human rights, nor the ethics of a particular community, but "in the rules of discourse and forms of argumentation" whose normative content emerges "from the structure of linguistic communication and the communicative mode of sociation" (1996, 296–97). Secondly, he asserts that discourse theory, in agreement with republicanism, gives central importance to political will and opinion formation, without devaluing the role of the Constitution. However, the success of social integration, depends on "the institutionalisation of the corresponding procedures and conditions of communication", as well as the interplay of institutions with "informally developed public opinion" (1996, 298). Third, discourse theory rejects all remnants of the philosophy of consciousness and its understanding of subjectivity. On the contrary, it grounds its understanding of subjective action, in a subjectless communication, that forms arenas, inside and outside institutions, whereby processes of reaching an understanding take place (1996, 299).

As a consequence of this procedural understanding of practical reason, a decentred image of society and anonymous dissemination of subjectivity and the definition of legitimacy and popular sovereignty, also depart from their roots in either the republican or liberal traditions. Habermas proceeds to explain this in two ways.

First, democratic will formation responds neither to the exclusive function of legitimating political power, nor does it constitute society as a political community. The procedures of democratic opinion and will formation represent the main conduit whereby administrative decisions are rationalized (1996, 299–300). Second, this understanding of legitimacy as the rationalisation of administrative power, demands a redefinition of the concept of sovereignty that fits with a definition of subjectivity in which "the self of the self-organizing legal community disappears in the subject less forms of communication" (1996, 299–300), regulating the flow of discursive opinion and will formation. In short, popular sovereignty "retreats into democratic procedures and the legal implementation of their corresponding presuppositions" to make itself felt as the communicative power that comes into being through "interactions among legally institutionalised will formation and culturally mobilised publics" (1996, 301).

In sum, the discourse principle is an acquisition of a rational reconstruction of practical reason beneath communicative interactions among citizens in their daily life. This follows from the reconstructive path that Habermas presents in *Between Facts and Norms,* where the system of rights evolves through the interpenetration of the discourse principle and the legal medium. Thus, it brings private and public autonomy into a relation of mutual presupposition (Habermas 1996, 128). Furthermore, although different interpretations of the system of rights take shape in historical constitutions "we can understand the catalogue of human and civil rights found in our historical constitutions as context-dependent readings of the *same*[32] system of rights" (1996, 129).

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[32] Emphasis added.

The development of institutions of government by law to become socially effective is as an implication *already* contained in the system of rights. Law receives its full normative sense "neither through its legal *form* per se, nor through an a priori moral *content,* but through a *procedure* of law-making" (1996, 135). Moreover, according to the discourse theoretic understanding of government by law, the latter finds an entry point in the "material concept of the legal statute found in the early *liberal constitutionalism*"[33] (1996, 135). This departure point is, nonetheless, insufficient to ground the legitimate basis of law, it needs to account for *legitimately enacted* law; that which shifts the emphasis to the civic exercise of political autonomy and popular sovereignty.

In this context, the exercise of popular sovereignty should fit with the procedural understanding of practical reason defended by Habermas, so that "popular sovereignty is no longer embodied in a visible, identifiable gathering of autonomous citizens", but in "subjectless forms of communication circulating through forums and legislative bodies" (1996, 136). The virtue of this procedural translation of popular sovereignty relies on the fact that it "frees itself of overly concrete notions of 'the people'" on behalf of "a structuralist approach to the manner in which institutionalized opinion - and will - formation is linked with informal opinion building in culturally mobilized public spheres" (1996, 185–86).

Moreover, this move is crucial as far as, indeed, "[d]eliberative politics lives off the interplay between institutionalised will-formation and informal opinion-formation." (1996, 308) However, to be heard as communicative power by formally institutionalised will-formation, informal opinion-formation can only develop first, "in the context of a *liberal political culture*[34] and its corresponding patterns of socialisation", second where "actors can acquire only influence, not political power", and third, where "civil society can directly transform only itself, and it can only indirectly effect on the self-transformation of the political system" (1996, 371–72).

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[33] Emphasis added.
[34] Emphasis added

If my interpretation is correct, and I suggest that it is, Habermas' model of democracy deploys its full normative potential in conditions of social complexity *only* through the interplay between formal and informal public spheres, operating within the legal framework of liberal constitutional regimes, and against the background of a liberal political culture. According to Habermas, this justification of liberal constitutionalism does not represent a theoretical premise. Rather, it is an acquisition of a critical and reconstructive social theory that

> provides a critical standard against which actual practices – the opaque and perplexing reality of the constitutional state – could be evaluated (1996, 6).

However, the remaining question is whether the justification that universal and rational bases of justification provides, is no more, and no less, than a rational and universal justification of liberal constitutionalism.

3   Conclusions

Habermas' response to the problem of the liberties brings the justification of substantive principles regulating life in society to the hands of real citizens, but not completely. Nothing is prior to peoples' exercise of popular sovereignty than discourse and law, whose own justification is rational and universal. The discourse principle provides nothing more and nothing less than the expression of the necessary conditions for citizens, holding different conceptions of the good, to be able to understand each other. Furthermore, the interpenetration of the discourse principle and law, as reflected in modern constitutional regimes, defines law as the language whereby, not only the impartial basis, but the neutrality of the procedure, is sustained. Thus, when procedural conditions are in place, deliberative democracy provides the means, not only for mutual understanding but to a rational agreement.

In this way, Habermas provides an alternative path for the justification of the co-originality of public and private autonomy, and with an equal weight afforded to basic rights and popular sovereignty. Moreover, this justification is conceptually sustained, and procedurally deployed with no need for further substantive specification. Its basic tenets can only reflect what is already contained in the socio-ontological constitution of public practices of argumentation. So, what is elevated through rational reconstruction to perform the role of a universal standard, are the basic grounds on which the discursive and procedural translation of democracy rests, and nothing more than what is intuitively accepted by citizens in their daily life communicative interactions. Furthermore, it is by their universal and rational character that procedural rules sustain the normative binding force of democracy in the face of social complexity.

Finally, from this perspective, it is not the moral philosopher in a 'free standing view', one who decides what citizens could accept as reasonable and rational grounds for their living together. Standards reflect what is already accepted beneath citizens practices themselves. However, as will become clear, critiques have suggested that standards, however rational and universal, cannot be freed from the critical scrutiny of those participating in *actual* practices of argumentation. In other words, to remain true to Habermas who claimed philosophical modesty, the critical scrutiny of those participating should be brought to the very end of the justificatory chain; the procedural rules are regulating life in society in liberal constitutional democracies. In the absence of this possibility, what deliberative democracy provides is a rational and universal justification of liberal constitutionalism.

Chapter III

The Limits of Deliberative Democracy: From Social Complexity to Complex Diversity

The influence of Habermas has been deep and diverse. His works are reference in sociology, communication studies, political theory… thus, unsurprisingly he also widely criticised. Among them, the higher degree of emphasis has fallen on the universal and rational dimension of justification. As the previous chapter showed, the universality and rationality of pragmatic rules of argumentation, are what defines the common basis on which almost all the conceptual building rests. In other words, nothing is prior to discourse and law, and all else is defined to fit those conditions. The discourse principle justifies the basic definition of the system of rights, that intertwined with law, provides the language for the exercise of popular sovereignty. In turn, it requires a subject-less definition of civil society and everything that follows from that.

Habermas claims that this sequence is not a theoretical construct, but a careful reconstruction of the operation of practical reason in observable political processes, conducted by a critical social theory concerned to validate its standards (Habermas 1990d). Its results are rational and universally valid in so far as standards are pluralistic and hypothetical, and their substantive content is not defined by the philosopher in isolation, but by citizens themselves. However, although turning the attention of political theory to citizens casts fresh light onto a debate so far confined to intellectual and political elites, critiques suggest it falls short in both respects. Either the recognition of citizens' capacity to become the main driving force of democratic integration or the recognition that the contribution their diversity represents under conditions of social complexity.

In particular, the universal and rational justification of Habermas' critical standards is controversial, because it precludes alternative sources of justification. Alternative sources of justification may not fit within normative requirements shaped by patterns of legal validity. However, they give expression to a diversity of subjectivities that elude generalisations, are limited in their capacity to influence decision making, and subsist when subjected to patterns of exclusion. Indeed, as I will explain in this chapter, contemporary identities can neither be generalised under the heading of conventional identities, nor as actual liberal constitutional democracies that are discursively settled self-constituting legal communities. The main hypothesis in what follows is that although Habermas' conceptual architecture is well suited to deal with social complexity, it is limited to respond the challenge of complex diversity.

As a working definition, I follow Peter Kraus (2012) and take complex diversity to mean the "constellation in which cultural identities and social cleavages overlap and intertwine in manifold ways" (2012, 13). This definition stresses the importance of recognition in struggles, not only over equality, but also "over what equality means" and challenges "the historical role of the nation state in amalgamating a political community, democratic legitimacy, and the rule of law in its one institutional frame" (2012, 13). From this point of view,

> no identity should be regarded as pre-given and be politically taken for granted... [On the contrary] ... [t]o tackle the issue in a productive way, we will have to move from the realm of discussing general concepts to the realm of analysing concrete politics (2012, 13).

This chapter will ground the general hypothesis by showing first, how according to critiques, deliberative democracy is ill suited to gather the allegiance of citizens who co-habit in societies characterised by their complex diversity. Secondly, how the latter relates to his conception of social identity, and the implications it has for his model of integration in the context of a modern liberal constitutional democracy. Finally, I will elaborate why overcoming the challenge posed by complex diversity to the paradigm of deliberative democracy, requires opening up to critical scrutiny the very core of Habermas' concept building; namely, the discourse principle and its impartiality towards the principles of morality, law and democracy.

1   Complex Diversity (I): Universal Validity and Communication

Habermas' conception of identity is characterised by the kind of dichotomic distinctions he makes between rational, or post-conventional, and non-rational, or conventional, identities. The most immediate issue that presents itself is that he is not very clear what is precisely required to be identified as "a rational identity" (Habermas 1974). The contraposition is sustained on the supposition that modern societies feature an identity, that is neither fixed to a territory, nor articulated around coherent world images, or retrospectively oriented to traditional values. What in mundane terms we will call a 'citizen of the world'. Indeed, with regard to their foundations, universalistic moral systems, like ones embodied in modern liberal constitutions, should conform to the core of citizens' allegiances, and is opposed to conventional sources of loyalty.

The problem is not the definition *per se*, but their dichotomic opposition. With regard to post-conventional or rational identities, James Tully for example, speculates whether the proclaimed neutrality of constitutional liberalism between different conceptions of identity, does not neutralise contemporary expressions of diversity and difference (Tully 2002). Equally, Ernesto Laclau suggests that this idea of rational identities is inappropriate to deal with the "proliferation of particularistic political identities, none of which tries to ground its legitimacy and its action in a mission predetermined by universal history" (Laclau 1994, 1).

In short, both are sceptical about the materialisation of post-conventional identities in the context of liberal constitutional democracies. Accordingly, they wonder about the impact it will have on the model of deliberative politics. Especially, given the crucial role communicative interactions play in deliberation between the institutions of law and the civil society; or as Habermas call the formal and informal public spheres.

These concerns can be easily explained by considering two filters, conceived by Habermas, to guarantee the rationality of communicative practices both inside, and outside, the institutions of law. First, the universality of the rule of argumentation guarantees the rationality of communicative interactions, but it precludes the operation of alternative practices of validity; at least regarding their capacity to be heard as legitimate expressions of the civil society. Moreover, applied in real contexts, these requirements may well end up perpetuating patterns of exclusion, instead of leading towards social integration. While in the face of 'legitimate' expression from civil society, the openness of institutions appears to be presumed rather than guaranteed. Both meet in the agonistic critique of consensual models of democracy. In short, it is not just the feasibility of Habermas model that is at stake, but even its desirability.

1.1 Universal Validity as a Rule of Argumentation

Habermas' description of the universality of practices of validity has been substantially criticised. For example, in her afterword to the compilation on The Communicative Ethics Controversy (Benhabib 1990, 330–69), Seyla Benhabib focused on the role of Habermas' principles as "universal and necessary communicative presuppositions of argumentative speech" (1990, 337). Her position is that the principle of universalization (U) makes no real contribution once the principle of discourse (D) is in place[35]. The main difference between her and Habermas' proposals appeared to be that Habermas thinks (U) guarantees consensus (1990, 345). On the contrary, Benhabib suggests that it is a considerably deeper problem, that brings us back to the classical problem of consent theories based upon the capacity of normatively grounded legitimacy to justify either actual consent, or the duty to obey[36].

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[35] Recall, that the Discourse Principle (D) in *Discourse Ethics* (Habermas 1990a) states that only those norms that can meet with the approval of all concerned in their capacity as participants in a practical discourse can claim to be valid. On the other hand, the Universalization principle (U) further generalizes this requirement by linking the justification of norms to rational presuppositions of communication of a counterfactual sort instead of individual subjects and their dialogic interaction.

[36] For a recent review of problems regarding consent theory see (Estlund 2009, 117–35).

Intriguingly, in the post-script to *Between Facts and Norms* (1996), Habermas left open the question of whether "the discourse principle does not already exhaust the content of the discourse-ethical principle of universalization (U)" (Habermas 1996, 459). However, as noted before, it could be argued that instead of abandoning (U), what Habermas did in *Between Facts and Norms*, was to upgrade (D) to play the role previously assigned to (U) (Bohman and Rehg 2014). In fact, this is one of the critiques pointed out by Tully regarding Habermas' definition of validity and justification (Tully 2008, 1:47–70). According to him, (D) provides a rational and universal justification for the priority of rightness over goodness, that frees the principle of discourse ethics from the critical scrutiny of those subjected to it. Tully agrees that turning to communication, on the basis that it takes place in the daily life of citizens, justification based on redeeming validity claims (truthfulness, rightness, and sincerity) is a valid mechanism for justification. However, he rejects the claim that it is the only one.

Tully suggests that, according to Habermas, practical discourses of validation proceed by argumentation where the latter plays the role of a 'court of appeal', thus allowing the justification or rejection of the rationality of arguments (2008, 1:45). Participants engaged in argumentation therefore suspend their conventional assent over validity claims, and exchange reasons in favour or against the normative rightness, propositional truth, or sincerity of other speakers in the light of how far they facilitate agreement or consensus. In other words, against the background of a communicative telos of reaching agreement aimed at mutual understanding.

Habermas' definition of this telos involves sets of universal rules of two kinds: three conventional rules of logical-semantic consistency, mutual recognition, and reciprocity; and three post-conventional rules based, first, on the principle of universal moral respect, second, the principle of egalitarian reciprocity and, finally, the principle of non-coercion. Bringing in conventional and post-conventional rules of argumentation, Habermas ensures that any taken for granted consensus in conventional practices is not allowed to proceed without critical assessment. However, post-conventional rules of argumentation also refer to practices of argumentation that emerge from conventional forms of communication, and not from "rationalised forms of activity colonised from the lifeworld by processes of modernisation" (2008, 1:47).

In other words, calling into question validity claims to truth and rightness,

> ... enables the ensuing, reflective agreement to transcend taken-for-granted horizons
> of the lifeworld to be unconditional and universal (2008, 1:46).

Moreover, as a consequence, the practice of argumentation serves to validate or invalidate taken for granted certainties, due to the operation of self-regulating action subsystems such as the market.

Nonetheless, Tully is not convinced that Habermas' account of practices of validation still work when this communicative telos, linking understanding and agreement, is not in place, and further, that mutual understanding for example, results from disagreement. In particular, Tully is reticent about whether Habermas' justification, based on redeeming validity claims, can account successfully for "every-day speech-acts in reflectively validating reasons unconditionally[37] (rather than conditionally)" (2008, 1:48). He exemplifies his critical position departing from the expression "I am Jürgen Habermas and I think that the workplace ought to be organized democratically" raised, metaphorically, by Habermas in a public conference.

Regarding the first half of the sentence, Tully stresses that to validate this assertion, against for example the criterion of sincerity, it requires reasons whose justification falls out of the scope of argumentative practices (asking for his ID, asking others if he is indeed Habermas or using a lie-detector, for example). Thus, they require further validation (the ID is authentic, this other's testimony is authoritative, is the lie-detector working properly?) and so on. On the contrary, if the speaker in question is indeed Habermas, it seems that acknowledging without critical reflection that he is sincere about it, seems more reasonable than questioning it (2008, 1:48–49).

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[37] Emphasis added

Departing from this simple example Tully suggests first, that in practices of argumentation, something is always taken for granted (there are reasons to hesitate on Habermas identity or not). Secondly, as a matter of course, practices of argumentation tend to refer to conventional common ground (e.g. a lie detector detects lies). Thirdly, the acceptance of the common ground moreover, depends not necessarily on good arguments, but also for example, on trustworthiness (the reliability of the lie detector) (2008, 1:49–54). On these bases, Tully queries whether the distinction Habermas made between conventional and post-conventional, is "fixed beyond question" and further, whether reasonableness represents an appropriate demarcation criteria for this distinction (2008, 1:54).

With regard to the claim that we ought to organise the workplace democratically, Tully notes that initially, this kind of assertion takes for granted mutually accepted conventional meanings of terms like 'democracy' or 'workplace'. Because in the absence of common meanings, argumentation will bring back once and again to conventional forms of justification. In other words, before entering in argumentation, the meaning of these words is fixed conventionally. However, and more importantly, Tully questions the appropriateness of the criteria of normative rightness: the fact that in the end (D) rules the entire process, to justify norms affecting participants in their living together (2008, 1:55–59).

Habermas, as noted above, locates the discursive filter at the very end of the justificatory chain, so that any argument that is considered valid about other criteria, is finally subjected to it. However, (D) itself falls out of the scope of critical scrutiny by those participating in rational discourses. It is given in advance, according to Habermas, because it represents the basic conditions for communication aimed at mutual understanding to be possible. Further, whose justification is independent to actual discourses; it is universal and rational. Tully, by contrast, suggests that justification in which the priority of (D) over any other validity claim is asserted, demands a priority of rightness over goodness that is not justified (2008, 1:57–59)[38].

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[38] Recall that as noted previously and bit later on in this chapter this lack of clarity regarding the exact role the discourse principle plays in Habermas conceptual architecture was already highlighted by James Bohman and William Rehg (Bohman and Rehg 2014) or Seyla Benhabib (Benhabib 1990).

Thus, in Tully's view, Habermas makes a significant error by leaving (D) free from critical scrutiny by participants in rational discourses. Because, no matter how we name it, what (U) demands in discourse ethics, or (D) in *Between Facts and Norms*, is the assessment of claims by passing the universalization test; in the case of (D) a dialogic assessment of universal rightness based on counterfactual idealisations. However, given the operation of legal validity, that is to say one internally tied to normative rightness according to Habermas, cannot be considered the only source of justification. The assumption that law enjoys the same priority of discourse, because both are intertwined in the genesis of modern constitutional law, requires an "acceptance of juridical ways of thought and action as hegemonic" (2008, 1:59).

Indeed, Habermas defends that the underlying logic of deliberative politics does not represent an action system, because among other things its bases are universal presuppositions that every participant in communicative action aimed at mutual understanding intuitively accepts. Tully, by contrast, suggests that by accepting juridical ways of thought as hegemonic, Habermas may have succeeded in freeing law from morality, but ended up by subordinating democracy to both law and morality. In response, Tully advocates for more openness to the "plurality of perspectives provided by congeries of types available to us as participants in our complex modern political practices" (2008, 1:59). Moreover, he stresses the need "to temper its comprehensive aspirations, point out its limits and restore it to its proper place in our diverse polity, as one conditional form of critical reflection among the many"[39] (2008, 1:62).

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[39] Emphasis added

1.2   Subject-less Communication, Diversity, and Citizenship

According to Habermas, the normative criteria whereby citizens' participation gains empirical relevance, also draws attention to limitations of his understanding of subjectivity as an anonymous network of communicative interactions. For Iris Marion Young, this definition means that the collective dimension of social groups is diluted in an anonymous network of communicative practices. She argues that,

> ... to deny reality to social groupings both devalues processes of cultural and social affinities and makes political actors unable to analyse patterns of oppression, inequality, and exclusion that are nevertheless sources of conflict and claims for redress (Young 1996, 389).

The argument for the difference principle raised by Young points in two directions. On the one hand, collective forms of identification play a role in the capacity of individuals to socialise with others, and therefore are worthy to be taken into consideration as far as social integration is concerned. On the other, it notes the epistemic gap left by failing to account for the collective dimension of groups once, social theory for example, describes, and takes into account, patterns of exclusion that affect members of particular social or cultural groups. For example, the consensus is considered in deliberative politics as the outcome of deliberative interactions ruled by the 'unforced force of the better argument' (Habermas 1996, 306). However, as Lynn M. Sanders has underlined, to be considered equally, reasons given by persons belonging to groups of different social strata, should be regarded as holding an equal epistemic authority (Sanders 1997). This assertion contradicts the most basic insights of the manner of functioning of testimony (Coady 1992; Fricker 2007; Adler 2015).

In the context of the public exchange of arguments among citizens, the exercise of taking yes/no positions on validity claims raised by others, does not only proceed on a rational basis; it relies on trustworthiness in oneself and others. Furthermore, the perception of unequal epistemic authority, for example by the lesser educated towards the better educated, could motivate those lesser educated to withdraw the social practice in question and delegate to those perceived more capable of expressing their concerns through rational argumentation.

Indeed, according to Miranda Fricker, withdrawing not necessarily entails a voluntary self-exclusion but could reflect deeper structural identity prejudices (Fricker 2007, 147–75). In this case, the lesson for deliberative politics is that consensus achieved without taking into consideration inequalities of epistemic authority among participants, could strengthen unjust situations of exclusion. Rather than solve inequalities through greater social integration, that becomes diluted in an anonymous network of communicative practices, groups with special claims could neither be demarcated as ontologically differentiated entities, nor their particular claim adequately tackled by institutional means.

Therefore, normative requirements for citizens to become empirically relevant in the context of a subjectless civil society can produce limitations, with regard to the diversity of perspectives involved, with the risk of perpetuating patterns of exclusion.

Habermas maintains, the normative content entailed by his definition of deliberative politics is appropriate, because it "arises from the structure of linguistic communication and the communicative mode of sociation" (Habermas 1996, 297). Therefore, as a common ground, normative requirements entail no more than what citizens intuitively accept in their daily lives. Indeed, Habermas proceeds to the sociological translation of civil society, or the public sphere, by these normative requirements. Only within these margins can civil society,

> ...acquire influence in the public sphere, have an effect on the parliamentary complex (and the courts) through its own public opinions, and compel the political system to switch over to the official circulation of power (1996, 373).

However, according to critiques, it is not clear how such an anonymous network of communicative interactions will make itself heard against institutions. Craig Calhoun, for example, underlined this difficulty when commenting on the evolution of Habermas' thought. In the *The Structural Transformations of the Public Sphere* (1992b), Calhoun argues that Habermas,

> ... located the basis for the application of practical reason to politics in the historically specific social institutions of the public sphere, the theory of communicative action located them in transhistorical, evolving communicative capacities or capacities of reason conceived intersubjectively as in its essence a matter of communication (Calhoun 1992, 31–32).

In previous works, Habermas identified the emergence of a vibrant, dynamic, and autonomous public sphere as the main conduit of both the exercise and the expression of popular sovereignty. In *Between Facts and Norms* (1996) situating the public sphere in a unitary, counterfactual, and trans-historical territory, he underestimated the emancipatory potential of contemporary expressions of civil society. In Calhoun words, while Habermas judged the eighteenth century through the lens of Locke and Kant, and the nineteenth century through a Marxian and Millian one, he focuses on the twentieth century through the lens of a "typical suburban television viewer" (Calhoun 1992, 33). In short, he overestimates the openness and porosity of the institutions of the law in contemporary liberal constitutionalism.

In response, Habermas acknowledged that his narrative on the transformation of the public sphere from a "culture-debating to a 'culture-consuming public', is too simplistic" (Habermas 1992a, 438), and also recognised the relevance of transformations that, on behalf of the contemporary expression of civil society, the public sphere was experimenting. For example, he recognised that *The Structural Transformations* (1992b) reflected his lack of awareness at the time of the implications of gender discrimination for his universalistic conception of civil society. As noted by Seyla Benhabib, feminist theories that challenged the private/public dichotomy, endowed certain activities hitherto confined to the "domestic/reproductive" and "private" spheres, with presence and legitimacy in the public life (Benhabib 1997, 33). In short, they challenged the definition of public issues, as those in the interest of all, by bringing to public debate concerns that were not generalizable, therefore in the interest of some, but not necessarily all.

Habermas responded that his deliberative model indeed recommended that all issues should be able to be publicly discussed. Thus, they should be allowed to raise claims to validity that, if accepted by others, provide justification, and become capable of being translated into communicative power and having an influence over decision making (Habermas 1996, 312–14). However, given liberals' concern that blurring the line between private/public risks illegitimate intrusions of public institutions in the private sphere, Habermas specified that every matter in need of political regulation should be publicly discussed, though not politically regulated.

In short, it is through channels of communication not regulated by democratic procedures that the struggle for recognition takes place, before the issue is taken up by political authorities. However, as James Bohman noted, in practice the constitutional state, and its institutions, are not necessarily "as open or 'porous' as the two-track model seems to suggest" (Bohman 1994, 927). Rather, it was the historical experience accumulated by civil rights movements that revealed "the process of inclusion and reform has been much more difficult than mere legislative success" (Bohman 1994, 928). Thus, both, Calhoun and Bohman are sceptical about the capacity of a civil society defined along universal lines and acting in a public sphere located in a trans-historical territory, to make effective the political influence of citizens' exercise of popular sovereignty in the face of the institutions of law.

The above incapacity to influence political power, is also underscored in criticisms of Habermas' model of civil society and citizenship, and its problematic integration of diversity. According to Habermas identity is a matter of private concern, worthy of respect by public institutions, but different to citizenship. Both identity and citizenship are relevant for individuals, and indeed, each person handles her contradictions, but has the duty of proceeding rationally. Therefore, a clear path is established: the transition whereby a person becomes a citizen is a process of rationalisation. However, as Susan Bickford claims, we cannot simply overlook "how the language of commonality can actively exclude" (Bickford 1997, 117).

For Bickford, simply reasserting 'citizenship' as "a public identity that transcends or integrates other commitments is to evade the question" (1997, 117). James Clifford, on the other hand, underlined the negative consequences of uncritically asserting the universal value of citizenship. This position reflects that "we risk being left with a narrowly foreshortened view of contemporary social movements around culture and identity, missing their complex volatility, ambivalent potential and historical necessity" (Clifford 2000, 95). Therefore, the question should be more like: "in a context of inequality and oppression, how are multiple 'we's' to be democratically part of the same public thing?" (Bickford 1997, 117).

Regarding diversity, the departure point is a clear non-essentialist agenda that frames identity as multiple allegiances, the priorities of which are neither given, nor perpetually established, but dynamic (Tully 1995; Benhabib 1997; Connolly 2002; Parekh 2008). For example, Seyla Benhabib, suggests that Tully's model of identity as 'Strange Multiplicities' is an appropriate response to the limitations of Habermas' definition of citizenship. Moreover, it profits from the virtues of contemporary claims by identity politics (Benhabib 1997, 31; Tully 1995, 2008, 1:1–25). In short, the definition intends to highlight that identity could find accommodation in contemporary constitutional democracies by its 'aspectival' character, reflecting the fact that citizens hold diverse identities that overlap, interact, and are negotiated over time.

Therefore, the question is not about rationalising identities, but how these contradictory assertions are handled in a democratic society. We are no longer talking over mutually competing claims for authenticity that arise with regard to their legitimacy in the light of a set of universal values. Rather, as Scott Lash and Michael Featherston summarised, the starting point is "how difference and multiculturalism take on the arguments of universalistic humanism than the inverse" (Lash and Featherstone 2001, 2). This alternative problem agenda on citizenship takes the form of a weak cosmopolitanism, that problematizes the possibility of citizenship in the context of a democratic society (Hall 2002; Archibugi 2004; Benhabib et al. 2006).

In other words, critical problematization targets the definition of citizenship and its materialisation in the constitutional state, not citizens' identity in a multicultural or multinational society. Stuart Hall for example, suggests that this shift establishes two requirements. First, citizens have to decide "what is the framework in which society is going to negotiate the compromises between difference and equality" (Hall 2002, 30). Secondly, citizens must have "access to this process of democratic negotiation" (2002, 31). These requirements thus reflect the need for an 'existential political position', modelled on individual experiences that resembles how "for most of us cosmopolitanism has involved and has a continued relationship to our family cultures" (2002, 30).

However, to ensure that this becomes politically meaningful, it is essential to retain not only identities open to critical reflection, but institutional processes open to contestation. Political significance requires

> ... not only the freedom to participate in accord with one's cultural and national identities when they are publicly recognised (as I stressed in Strange Multiplicity) but also to participate in the ongoing contests over how these are to be acknowledged, recognised and accommodated (Tully 2008, 1:160).

Recognition may not only affect how identities are constituted for those holding multiple allegiances, but also the framework through which their interactions are regulated. Because in its absence, democratic integration risks becoming assimilation, and diversity becomes valuable only to the extent that minorities "remain politically toothless and do not matter much anyway" (Kraus 2012, 21).

Therefore, the underlying idea is that the politicisation of identity in contemporary democratic societies requires participation, not rationalisation. In comparison to Habermas, the framework is not given, but has to be negotiated. It is not an issue of recognising authenticity, but rather a question of negotiation and compromise among differences, and their capacity to organise living together democratically. Neither identity is essentially worthy and fixed, nor does it elude its sense of unity and need for stability in the face of others: the challenge is about how to conduct those mutually contradictory affirmations of the self democratically (Calhoun 1994, 17; Benhabib 1997, 19–22; Kraus 2012, 24).

1.3   The Agonistic Critique

Among the several lines of criticism opposing Habermas' model, the most articulated and sound is the agonistic critique (Connolly 1983, 1995, 2002, Honig 2007, 2009, Mouffe 2000b, 2005, 2013). Besides its interest, Habermas versus Mouffe refers to a debate that never took place echoing, in its basic contents, another debate that also did not 'took place'; in this case, between Habermas and Foucault (Schmidt 1996; Habermas 1989a; Foucault 2007). Therefore, the controversy refers more directly to commentators on both traditions, rather than to the concrete protagonists. To date [as far as I know] there is no direct reference from Habermas to Mouffe, although Mouffe has extensively explicated her position on Habermas (Mouffe 2000a, 2000b, 80–107). Notwithstanding how the argument is constructed, the terms of debate that have been outlined by Mouffe, pose a significant challenge to Habermas' central theoretical claims about the relationship between liberalism and democracy, and demands critical attention here.

The agonistic perspective regards the evolutionary understanding of democracy as a collective learning process, that involves the transition of participants from conventional to post-conventional forms of self-identification, reflecting a profound misunderstanding on the conjoint operation of identity, democracy, and the institutions of law in contemporary democracies. It considers that conventional identities cannot be defined as irrational, nor does it agree that by passing the discursive filter, identities are validated to take part in the democratic game. On the contrary, it suggests that contestation, disagreement, and conflict are the game that democracy should be able to conduct to avoid conflict by non-democratic means.

In general, according to Mouffe, deliberative democracy, by reconciling the logics of liberalism and democracy, overlooks the essential antagonism of 'the political' (Mouffe 2005). Moreover, this assimilation comes at the cost of deactivating the creative potential, the tension of value pluralism enacted at the very core of democratic politics (Mouffe 2000b). In short, deliberative democracy accommodates liberal institutions, provides them with a rational, and therefore a universal source of justification that erases all traces of conflict, antagonism, and disagreement. For Mouffe, it is from its conflictive nature that democracy acquires its transformative potential. Therefore, instead of providing a neutral channel to conduct public life towards social integration, deliberative democracy neutralises the transformative potential of democratic politics.

She blames deliberative democracy for intending to reconcile, at all costs, liberalism with the moral credentials absent in aggregative accounts of democratic politics; exemplified, for example, by Schumpeter's rejection of the common good[40], or empiricist accounts of pluralist democracies[41] (2000b, 80–82). The normative need responds to the conviction that the "future of liberal democracy, in their view, depends on recovering its moral dimension" (2000b, 83). Indeed, notwithstanding their divergences, Mouffe considers both Rawls and Habermas to constitute the two main schools of deliberative democracy. For her, they both share the common aim of reconciling both liberties, by grounding the authority and legitimacy of democratic institutions on the normative force of rationality. They also share their ideal, embodied in liberal institutions, with the intention of to steering society toward generalizable concerns without overlooking the plurality of values and interest (2000b, 82–90).

Mouffe identifies the main shortcomings of deliberative democracy in either version, as the alleged capacity of deliberative democracy to provide a reliable path to reconcile private and public autonomy, or the capacity to advance towards consensus on what is good for all, without renouncing what is good for each (2000b, 90–94). Mouffe finds that this aim constitutes,

> ... another attempt at insulating politics from the effects of the pluralism of value, this time by trying to fix once and for all the meaning and hierarchy of the central liberal democratic values (Mouffe 2000a, 754).

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[40] According to Schumpeter "[t]here is, first, no such thing as a uniquely determined common good that all people could agree on." (Schumpeter 1942) Furthermore, in the absence of an idea on the common good there cannot be a common will because the will of the citizens needs to be more than "an indeterminate bundle of vague impulses loosely playing about given slogans and mistaken impressions" (Schumpeter 1942). In particular, Schumpeter argued that in the absence of an idea of the common good on which citizens could rationally agree on, the common will, understood as the outcome of aggregating individual wills, lacks rational unity and rational sanction. It lacks rational unity because a general will that is the outcome of democratically gathering the will of each citizen cannot be meaningful by itself. On the other hand, it lacks rational sanction because being the outcome of such a process the general will no longer represents a particular 'good'. Furthermore, Schumpeter argued that he was unconfident on participatory conceptions of the democratic process because not even the assumption of independence and rationality of the will of each individual could be taken for granted. The consequence is that the attribution of ethical value to the outcome of aggregating individual wills should rely on an unqualified confidence in the democratic process.

[41] Robert Dahl (Dahl 1991) pointed to a procedural definition of democracy where competition among multiple centres of political power interacts shaping what he later named 'polyarchies'. In order to achieve this decentred ideal, contemporary democracies should ensure effective participation, voting equality, enlightened understanding, control on the agenda and inclusiveness. But, these procedural mechanisms of democratic politics ask for a particular set of social conditions to be possible. In particular, Dahl's longitudinal sample, looking for indicators of modern, pluralist, and dynamic democracies, listed societies with high per capita income, long-run growth, or market-based mode of production. He interpreted the statistical correlation among these different indicators as a sign of favourable social conditions for the domestication of social power and institutional channelling of state power. Habermas rejected this account of democracy because Dahl falls short integrating the normative arguments that justify democratic procedures with the empirical analysis of their implementation: by resorting to a background political culture that is already there, Dahl renders his sociology blind regarding normativity at work (Habermas 1996, 318).

Although accepting that pluralism should acknowledge certain limits, those limits are to be defined as what they are, namely political and therefore contestable, rather than moral or rational and, therefore, universal.

Thus, democratic citizenship is not a question of consent based on rational acceptance of validity claims, on the contrary, it is the continuous acknowledgement of available institutions, discourses, and forms of life that enhance identification. As James Connolly noted, "[t]he recurrent need for critical responsiveness exceeds the reach of any fixed code, an austere set of procedures, or settled interpretation of moral universals." (Connolly 2002, xxx) In short, from Mouffe's perspective, the problem with deliberative democracy regarding pluralism, is that it takes subjectivity as given, when subjectivity is not previous to society, or abstracted from social relations, power, language, or culture; it evolves embedded in those practices.

Indeed, "procedures only exist as a complex ensemble of practices" (Mouffe 2000b, 68) in the context of which allegiances evolve, drawing limitations to consensus, or not. Allegiances to rules reflect different forms of life towards which rules are not independent and in the context of which rational consensus entails "the fantasy that we could escape from our human form of life" (2000b, 98). Furthermore, the problem with Rawls' 'original position' or Habermas' 'methodological fiction' is not only, as Tully noted, that they are conditional to a specific telos for which alternatives are available, but that this telos is ontologically a conceptual impossibility "since the particular forms of life, which are presented as its 'impediments' are its very condition of possibility" (2000b, 98).

Her proposal for agonistic democracy relies on the concepts of hegemony, developed in *Hegemony and The Socialist Strategy* (1985), written with Ernesto Laclau. The notion of the political is explained in full in the later work *On the Political* (2005). Both combined in the form of a theory of democracy in the *Democratic Paradox* (2000b). On the one hand, the concept of hegemony serves to elicit the idea that power and objectivity are intertwined, so that there is no such thing as social objectivity, or identity, that is free from power relations. Hegemony represents the point of convergence where objectivity and power meet and constitute the social and its identities. Therefore, the equation is not the more democratic society is, the less power determines social relations, but "to constitute forms of power more compatible with democratic values" (2000b, 100). On the other hand, the notion of the political helps to differentiate politics as the set of practices, institutions and discourses that "seek to establish a certain order and organise human coexistence" and the political whereby the inherent antagonist nature of human relations is underlined (2000b, 101).

On these bases, agonistic democracy allows the pursuance of a type of antagonism that can reframe, in the face of pluralism, the enemy into an adversary. Antagonists share the "adhesion to the ethical-political principles of liberal democracy (…) disagree on the meaning and implementation of those principles, and such disagreement is not one that could be resolved through deliberation and rational discussion" (2000b, 102).

In short, the task of democratic politics is to "transform antagonism into agonism", enemies into legitimate adversaries, but refusing to dilute them into any rational identity (2000b, 117). Indeed, according to Mouffe, this is the major difference between agonistic and consensual models. While the former intends to foreclose debate by rational consensus, "we have to accept that consensus exists as a temporary result of a provisional hegemony, as a provisional stabilisation of power, and that it always entails some form of exclusion" (2000b, 104–5). Therefore, agonistic pluralism "forces us to keep the democratic contestation alive" (2000b, 104–5).

2   Complex Diversity (II): Rationalization

Critiques suggest that Habermas' definition is inadequate in three key respects. First, the failure to deal with the internal tension between facts and norms, without stating the hegemonic position of legal forms of argumentation over other forms of validity, for example, those regarding democratic authority. Secondly, it is limited in dealing with the external tension between the validity of the law and the political process running in parallel. Because, while citizens can only act within the margins established by normative requirements to be empirically relevant, institutions hold their sources of legitimacy to be guaranteed as universal and rational, so that even though they could not be as open and porous as expected in theory, there are no means to make them accountable. Finally, as a corollary to the previous point, the agonistic critique rejects the desirability of the alleged potential of deliberative democracy for social integration. The driving force of democracy is not rationality or consensus, but diversity, disagreement, and contest.

Among the agonistic critique's, Mouffe provides an alternative account of democracy that has been very influential in the field of contemporary deliberative theory. Her proposal however, is not free from adversaries. For example, one of the commonly underlined weaknesses of the agonistic model is that due to its ambiguous conceptualization of the institutionalisation of legitimating procedures, it is unable to provide the means for a critical account of the role of the state (Kapoor 2002). Mouffe asserts that liberal institutions should not be taken for granted (2002, 469), however, while rejecting any reference to standards of rationality, she cannot defend democratic practices against non-democratic ones (2002, 475). Nevertheless, in my view, the agonistic critique raises one point that, as I will sustain in this section, potentially undermines Habermas proposal for the case of complex diversity. The idea that pluralism in conditions of complex diversity is not only necessarily the expression of a contradiction between moral doctrines, but equally between political identities.

In *Between Facts and Norms* Habermas frames the problem with diversity and difference around the communitarian critique (Habermas 1996, 308–15). On this basis, the argument suggests that the communitarian critique is misplaced because, on the one hand, deliberative democracy provides enough room for different interpretations of the moral norm in particular circumstances (Habermas 1993), and on the other, members of different cultural communities are not required to bracket off their identities, but to further them as a legal person (Habermas 1994a). However, this solution becomes problematic when identities do not reveal difficulties only for action coordination of moral norms, but also for legal norms. In this case, diversity brings about a constitutional paradox whereby the political identity of those who are subjected to the rule of law, is different to those who make and apply it, thus challenging the idea that they constitute a legal community. In short, I suggest that Habermas is able to sustain the first two critiques, but fails to allay the third.

2.1 Conventional Identity: Action Coordination and Moral Norms

In *Between Facts and Norms* Habermas frames the problem with diversity and difference around the dispute with the communitarians (Habermas 1996, 308–15). Charles Taylor for example, suggested that diversity reflects the cohabitation of different cultural traditions in the same democratic society, which liberalism cannot claim as a reflection of its cultural neutrality because it is not "difference-blind"[42], but "it is also a fighting creed" (Taylor 1994, 62). According to Habermas, the argument is relevant for deliberative democratic theory. In its most stringent version, it suggests that even tracing back justification to procedural rules of argumentation, as he did, their reconstruction is always from the perspective of the participant, whose intuitive knowledge on the ideal conditions under which a validity claim is justified could differ. For example, Taylor is sceptical that publicity could be considered universally valid as a rule of argumentation, because different cultural traditions hold different conceptions on the distinction private/public (Taylor 1994, 62).

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[42] John Rawls, for example, revisiting the idea of public reason noted that in public reason "ideas of truth or right based on comprehensive doctrines are replaced by an idea of the politically reasonable addressed to citizens as citizens. This assigns to each person the same basic political position." (Rawls 2005, 481) Namely, at least when talking about the exercise of public reason persons neither are socially situated nor rooted in particular doctrines but reasonable and rational as free and equal citizens.

According to Charles Taylor, identities express "cultures that have provided the horizon of meaning for large numbers of human being, of diverse characters and temperaments, over a long period of time –that have, in other words, articulated their sense of good, the holy, the admirable" and, therefore, they deserve admiration and respect (Taylor 1994, 72). He articulates his understanding of identity, by contrasting the Kantian idea of equal dignity with 'authenticity'; the conviction that each person, as well as people, has its own "measure" (1994, 30–31). In agreement with Habermas, Taylor stresses that identity evolves dialogically, therefore in close relation to recognition by significant others, so that linguistically mediated relations are "the key loci of self-discovery and self-affirmation" (1994, 36). However, in contrast to Habermas, recognition is not meant for all to be considered universally the same, but "to recognise the unique identity of this individual or group, their distinctiveness from everyone else" (1994, 38).

Habermas takes a sceptical stance in the face of this critique on the basis that considering identities as different sets of moral norms, and their integration as a matter of action coordination, universal rules of argumentation provide common grounds for different interpretations without challenging the rational justification of the system of norms as a whole. Habermas differentiates between discourses of justification and application, associated correspondingly with the principles of universality and appropriateness, to justify the capacity of the discourse principle to provide impartial grounds for action coordination (Habermas 1996, 109). The argument, is explained in full in *Justification and Application: Remarks on Discourse Ethics* (Habermas 1993, 35–39), and sought to rebut the critique raised by Albrecht Wellmer (1991) on the capacity of Habermas' discourse ethics to regulate moral concerns on action norms in particular circumstances.

In short, Wellmer suggests that the rule of argumentation (U) does not facilitate a clear response when what is at stake "is the right way of acting under the given circumstances", meaning when norms should provide regulation for me, here and now. Accordingly, he considers that universalism, associated with the capacity of individual citizens to decide on moral norms, overtaxes their rational capacities (Wellmer 1991, 155; Habermas 1993, 35). Habermas replied considering that "[t]his characterization misrepresents the role of the principle of argumentation" that "belongs properly to justificatory discourses in which we test the validity of universal precepts" (Habermas 1993, 35). However, unlike Kant, discourse ethics takes into account the problem of application because, analytically, the question over the right thing to do in particular circumstances entails a "two stage process of argument consisting of justification followed by application of norms" (1993, 36).

First, moral rules do claim validity for abstract situations. However, their meaning can be differentiated about "the rationally motivated assent of all potentially affected" and "in terms of the totality of possible situations" (1993, 36). Therefore, the idea of impartiality "demands that we take into account a norm's moral rational acceptance among all those possibly affected with reference to all situations of application appropriate to it" (1993, 36). Nevertheless, to remain operative, the principle refers to "all situations actually used by participants, on the basis of their state of knowledge" (1993, 36). This reservation attaches a "time and knowledge index" to the universalization principle. It avoids impossible demands for participants and implies that "justificatory discourses cannot completely exhaust the notion of impartiality" so that the question on whether valid norms in the light of exemplary situations are valid currently is left unanswered and requires "the changed perspective of a discourse of application" (1993, 37). Second, in discourses of application, the principle of appropriateness replaces the principle of universalization. In the application, the relevant aspect is whether the norm is valid about all of the features of the situation and not "for each individual and his interest" (1993, 37). The problem, in this case, is how to discriminate among possibilities when norms are in conflict and, according to Habermas, this is made possible from the standpoint of coherence. When norms conflict, the particular features of the situation at hand determine the appropriateness of one over the other. Thus, the decision could be different if the problem's features are different. However, this assumption does not entail that norms, when inappropriate for a particular situation, lose their validity, they "form a coherent normative order together with all other valid rules" (1993, 38).

Finally, according to Habermas, this form of proceeding reveals a difference between the treatment of moral-practical questions and empirical-theoretical ones. Regarding the latter, "we cannot know definitively whether the assertion taken to be true will withstand all future objections" (1993, 38). However, the justification of "valid empirical knowledge is not logically contingent on the resolution of questions of application" (1993, 38). On the contrary, the validity of moral norms cannot be resolved without considering the question of application because practical knowledge "is of its very nature related to action" (1993, 38).

Indeed, the fallibility of all knowledge "amounts to the acknowledgement of the critical potential superior future knowledge" (1993, 38). However, in the case of moral-practical questions, the relation to the objective world differs. The social world has, according to Habermas, a different ontological constitution. Our assessment of actual moral norms as valid in the social world, is not only provisionally well-grounded, but also "a function of existential provinciality resulting from historical transformations in the objects themselves and thus in the contexts in which future actions will be determined by the rules accepted at present" (1993, 39).

The justification of the rational and universal basis of the system of norms entails then, not only the rational assent of all possibly affected, but also the totality of possible situations; that makes the system of norms unworkable. Recalling the universalization principles requires acceptance by all possibly affected, but regarding moral norms, actual acceptance affects future actions. Thus, the knowledge and time index attached to the universalization principle entails that it reflects impartially the rational assent of all affected regarding their actual knowledge on possible situations in which norms may have to be applied.

However, to remain impartial with regard to their application to unforeseeable circumstances, norms depend on their appropriateness, and in the latter case, what is required is not the rational assent of all possibly affected, but the appropriateness of moral norms in the light of specific circumstances; meaning for us, here and now. Accepted norms should cohere with the system as a whole, but they are not however subjected to the same test. Moreover, universal and rationally valid moral norms guide action coordination in particular circumstances, but their validity is neither independent of their application, nor defeated due to their inappropriateness in a particular situation. The system of norms evolves, embedded in historical time in the light of a relation of mutual dependence, and between discourses of justification and application whereby the social world constitutes itself.

Looking back to the communitarian critique with these lenses, the universal validity of moral norms does not require citizens to bracket off their commitments in the light of what is rationally acceptable by all. In Habermas words,

> [d]eontological ethical conceptions assume in the final analysis only the moral point of view remains identical; but neither our understanding of this fundamental intuition nor the interpretations we give morally valid rules in applying them to unforeseeable cases, remains invariant (Habermas 1993, 39).

Action coordination regarding moral norms depends on what is appropriate for us, here and now, but decisions on moral norms should remain coherent with the system of norms as a whole. This relation of mutual dependence between what is rationally acceptable by all in general, and what is appropriate for us in particular, evolves in time in a relation of mutual dependence by which the impartiality of the system of rights remains.

Finally, not only does the system of rights evolve, but the identities of citizens engaged in it change too. The identity of citizens holding contradictory moral doctrines in the light of their cultural traditions, evolves within the margins of the constitution making process as members of a self-constituted legal community. The moral point of view beneath the system of rights provides them with a justified reference point in the light of which citizens could coordinate their actions rationally, engage in a collective learning process, but not for a particular cultural community, for a self-constituted legal community of citizens holding a rational identity.

Therefore, up to this point, Habermas provides a convincing reply to the communitarian critique. At least to the point of suggesting that deliberative democracy requires citizens to bracket their identities for the sake of social integration in liberal democratic regimes. Nonetheless, it remains unclear why the outcome of this process of mutual adaptation between the system of rights and the identities of those subjected to its ruling, results in something different. In other words, Habermas should still clarify not only that conventional identities are not excluded from the process, but what exactly does it mean that they become rational, and why is this rationalisation worthy for the sake of social integration.

2.2 *The Rationalisation of Identity: From Moral to Legal Communities*

Habermas considers identity in response to the following question: "Can complex societies form a rational identity?" (Habermas 1974, 92). He responds positively, with the proviso that the following conditions are fulfilled. First, the identity of society is neither related to a specific territory, nor does it rest under specific organisations. Second, it does not find articulation in world images, but presupposes the validity of universalistic moral systems. Third, it is neither retrospectively fixed to traditional values, nor merely means orientated to task planning (1974, 99–102). In short, identity results from a future oriented engagement of those involved in "the discursive and experimental formation of an identity-related knowledge on the basis of a critical appropriation of tradition" (1974, 102–3). This critical appropriation of tradition allows "the formation of universalistic ego structures", because "every position can come to agreement with other positions it is confronted with in the present precisely in its partisanship for a universality to be realized in the future" (1974, 102–3).

As in the case of the rules of argumentation or legal validity, Habermas defends this definition of identity not as a substantive appropriation of the concept, but as a rational acquisition of a reconstructive social theory. Indeed, identity, as usually understood in political theory, is left behind as an expression of a traditionalist nostalgia. On the contrary, rational identity, inspired by the cognitive developmental psychology of Lawrence Kohlberg (Kohlberg 1981), is defended as the expression of historical development that evolved from archaic societies until modernity leads to a final stage whereby universalistic ego structures are possible in conditions of social complexity. Indeed, they are possible not only at the level of the socialised individuals (Habermas 1990b), but also at the level of societal world-views whereby group identities evolve (Habermas 1979b, 106).

Nevertheless, Charles Taylor for example, does not only deny that identity could evolve rationally in reference to a universal set of moral norms, but also that liberalism could represent such a point of view. Recognition of cultural diversity cannot remain true to 'difference-blind' liberalism on the grounds of which "peoples of all cultures can meet and coexist" (Taylor 1994, 62), because "blind liberalisms are themselves the reflection of particular cultures" (1994, 44). What is needed is more than a curt recognition of rights aimed at letting minority cultures survive. Social integration, as a fusion of different horizons of meaning, will result only from an explicit universal recognition of equal worth for each as it is, not as it should be (1994, 64). Taylor's definition of identity then, and his programmatic claim for recognition, challenges not only the possibility of a universal horizon about which identities evolve, but also the capacity of liberal constitutionalism to represent it neutrally in the face of cultural diversity.

In this regard, Habermas reacts to Taylor's critique by suggesting that he focus less on the neutrality of liberal constitutionalism, and more on the procedural conduct of democratic politics (Habermas 1994a, 112). He stresses that deliberative democracy is aware of the ethical content imbued in any system of basic rights. Indeed, "every legal system is also the expression of a particular form of life not merely a reflection of the universal content of basic rights" and that this form of life depends, both empirically and normatively, "on the composition of the citizenry of the nation-state" (1994a, 125–26). However, Habermas recognises that the population of a nation-state is bounded "by the decision of the founding fathers to order their life together legitimately by means of positive law" and "their descendants have implicitly (and as naturalised citizens even explicitly) agreed to continue to pursue a pre-existing constitutional project" (1994a, 125–26). Therefore, the composition of the citizenry is contingent, and the system of rights needs to be actualized correspondingly.

In this sense, the theory of rights that underpins liberal constitutionalism, requires recognition and protection of the integrity of the individual in the context where identity is formed because "[p]ersons, and legal persons as well, become individualised only through a process of socialisation" (Habermas 1994a, 113). However, this requires that citizens neither bracket off their cultural commitments, nor as the communitarian critique suggests, seek an alternative normative model to challenge the individualistic design of the system of rights. Following the lines of Kymlicka's 'group differentiated rights'[43] (Kymlicka 1995, 47–48), political rights to recognition belong to individual members of cultural groups as legal persons. Thus, not to another kind of collective entity because "these and similar obligations arise from legal claims and not from a general assessment of the value of the culture in question" (Habermas 1994a, 129). Legal claims are coordinated impartially through deliberative procedures internally, that is through the conceptually necessary connection between private and public autonomy[44], so that, at the end "[a]ll that is required is the consistent actualization of the system of rights" (1994a, 113).

To clarify, "once we take this internal connection between democracy and the constitutional state seriously, it becomes clear that the system of rights is blind neither to unequal social conditions nor to cultural differences" (1994a, 113). On the contrary, communitarian claims to authenticity regarding cultural diversity are misplaced because "the ecological perspective on species conservation cannot be transferred to cultures" (1994a, 130–31). Indeed, "[w]hen a culture has become reflexive, the only traditions and forms of life that can sustain themselves are those that bind their members while at the same time subjecting themselves to critical examination." (1994a, 130–31) Reflexive cultures assume that in complex societies the citizenry as a whole can no longer be held together by a substantive consensus on values. The unifying force of democratic rules of a constitutional state rests on the universalism of a procedural consensus on legal rules for legitimately enacting laws.

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[43] According to Kymlicka these rights are differentiated according to the specific features of groups: (i) national minorities accommodate through self-government rights, (ii) ethnic minorities accommodate through poli-ethnic rights and (iii) social minorities through special representation rights, in the form of quotas.

[44] In Habermas' words: "The co-originality of private and public autonomy first reveals itself when we decipher, in discourse-theoretic terms, the motif of self-legislation according to which the addressees of law are simultaneously the authors of their rights. The substance of human rights then resides in the formal conditions for the legal institutionalization of those discursive processes of opinion- and will-formation in which the sovereignty of the people assumes a binding character." (Habermas 1996, 104)

Furthermore, the exercise of power is "embedded in the context of a historically specific political culture through a kind of constitutional patriotism" (1994a, 135). The concept of 'Constitutional Patriotism' does not maintain that national identities of states are better than other collective identities, but the fact that in already established constitutional regimes the majority culture should be understood as decoupled from its identification with a general political culture (Habermas 2001b).

In this way, cultural rights to identity belonging to individual citizens do not contradict a political culture in which "the solidarity of citizens is shifted onto the more abstract foundation of a "constitutional patriotism" (2001b, 74). Against this background, the claim for identity and recognition of minority nations, for example, is framed as the "delayed consequences of a history of nation-building that has generated historical fault lines" (2001b, 72). Because, although states "still form a collective identity" (2001b, 107), this collective identity that is embedded in "the actual historical trajectory of the European nation-states", is the identity of a civic nation that "exists neither independent of nor prior to the democratic process from which it springs" (Habermas 2006, 15–16).

This is the basic idea that underlies Habermas' controversial advocacy of the need to rationalise identity. Once the system of rights is established, the legitimacy of positive law is sustained, in that law-making respects procedural rules and its normative binding force, in those very same procedural rules that represent the conditions of possibility for the exercise of popular sovereignty; both are internally connected by the principle of autonomy and enacted through deliberative democracy. Identity evolves within those margins, because if it rejects the legitimacy of law, it is not democratic in so far as there is no procedural rule supporting its legitimacy. On the contrary, if it rejects its normative binding force it is irrational, precisely because it violates the presumption of public reason that law endows to its addresses in a modern constitutional regime.

Therefore, if we take the internal connection between private and public autonomy, democracy, and the constitutional state seriously, citizens rejecting the legitimacy and normative binding force of the system of rights and deliberative democracy on behalf of their particular identity, can only be considered either irrational or illegitimate.

My understanding is that the entire scheme depends on considering identities as fixed sets of moral norms, that compete with the universal moral point of view to provide justification for action coordination. However, in the case of action coordination regarding legal norms, "the positivity of law necessitates an interesting split in autonomy to which there is nothing analogous in the moral sphere" (Habermas 2001a, 779). In the moral sphere, there is no institutional mediation between universal rules and the moral individual. Each citizen experiences the internal connection between private and public autonomy, her conception of the good life and the perspective of all those affected by it, coherently and by virtue of her rational capacity.

In the legal sphere, the binding character of legal norms not only depends on insights regarding what is of equal interest for all, but also from "collectively binding decisions of authorities who make and apply the law" (Habermas 2001a, 779). Therefore, in the case when what is at stake is no controversy over moral norms of action on behalf of different cultural identities, but rather, a controversy over legal norms of action among different institutional bodies, the scheme has serious problems.

2.3   The Constitutional Paradox: Action Coordination and Legal Norms

Bonnie Honig, quoting Thomas Jefferson, beautifully summarised the constitutional paradox in one simple question: Should the dead have rights? (Honig 2007, 9). She presents three versions of the constitutional paradox whereby the legitimacy of law is challenged by the fact that addresses of law and its authors are different. The first, as already noted in Thomas Jefferson's quote, reflects that the binding force of law embodied in the Constitution unfolds its legitimacy diachronically, so that a generational divide arises among those that made the law and its addresses. The second is a spatial version of the same problem, however, in this case, referring for example to geographical alienness, experimented by colonies ruled by laws of foreign nations. Finally, there is procedural version stressing the impossibility of justifying the legitimacy of laws, in relation to the process whereby they were enacted by procedural rules that have to be agreed, but when they themselves are unable to fulfil their own requirements.

The temporal version finds a possible solution by bringing in mechanisms to update the constitutional mandate and adapt it to needs raised by future generations (2007, 10). This solution according to Honig, and sustained by Habermas[45], embeds "temporal distance in national time" so that the founding fathers of the Constitution, although, may have lived a long ago, took decisions binding for later generations because "they are our founders" (2007, 10). Indeed, Honig suggests that this solution even results in a further benefit, because by the passage of time "the people in the present might experience without conflict freedom [in present] and rule [by virtue of the past]" (2007, 10).

However, Habermas underlined the claim, by asserting that although a beginning in time is marked out for constitutions "later generations have the task of actualizing the still-untapped normative substance of the system of rights laid down in the original document of the Constitution" (Habermas 2001a, 774). From this point of view, democratic constitutionalism should be understood in the long run as a self-correcting learning process, not as an uncritical loyalty to a glorious common past. The interpretation of constitutional history as a learning process, entails that "later generations will start with the same standards as did the founders" so that "participants must be able to recognise the project as the same throughout history and to judge it from the same perspective" (2001a, 775). The unifying bond consists of a shared practice established in the constitutional act, but remains dependent "on an ongoing explication that is carried out in the course of applying, interpreting, and supplementing constitutional norms" (2001a, 775).

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[45] In his words: "the allegedly paradoxical relation between democracy and the rule of law resolves itself in the dimension of historical time, provided one conceives the constitution as a project that makes the founding act into an ongoing process of constitution making that continues across generations" (Habermas 2001a, 768).

This procedural response to the constitutional paradox still has a problem: the legitimacy of the constitution making process relies on procedures whereby the project evolves in time. However, the same procedures cannot account for the legitimacy of its origin. Frank Michelman formulated this paradox when he wrote of the impossibility of reconstructing constitution making practices by discourse theory (Michelman 1998). The paradox referred to the fact that "[i]f procedural legitimacy is the standard, the outcome of political elections, the decision of parliaments, or the content of court decisions are in principle subject to the suspicion that it came about in the wrong way." (Habermas 2001a, 774) He follows, "[t]his chain of presuppositions reaches back even beyond the constitution making practice" so that, for example, "the constitutional assembly cannot itself vouch for the legitimacy of the rules according to which it was constituted" (Habermas 2001a, 774). In short, it is the old question of the chicken or the egg.

Habermas does not reply to this paradox arguing the "transparent objectivity of ultimate moral insights" (Habermas 2001a, 774). He refers to a two-stage process whereby, before the constitutions of the system of rights actually takes place, discourse theory simulates an original condition (not a position). In this original condition, an arbitrary number of people meet, "whose 'yes' or 'no' counts equally" (2001a, 776), and are "united in a common resolution to legitimately regulate their future life together by means of positive law" and "ready and able to take part in rational discourses and thus to satisfy the demanding pragmatic presuppositions of a practice of argumentation." (2001a, 776) In these conditions they philosophically clarify "in mente" (2001a, 777), meaning from "behind the empirical veil of ignorance" (2001a, 778), "the conceptual explication of the language of individual rights in which the shared practice of a self-determining association of free and equal citizens can express itself" (2001a, 778).

In sum, the constitutional paradox entails a particular asymmetry that legal norms do not share with moral norms. Whilst for moral norms, the internal connection between private and public autonomy could be traced back to the same individual, in the case of legal norms autonomy splits between those who make and apply the law, and those subjected to their ruling. This division is a pressing challenge consequent upon the central role endowed by Habermas to the principle of autonomy for the legitimacy of the constitutional regime and the normative binding force of the law. Habermas' solution rests on the idea that by common procedural rules and presumption of rationality for both, authors and addresses, the internal connection between private and public autonomy, popular sovereignty and system of rights could be sustained. What is needed is that those in charge of guaranteeing that the interest of all is considered, as well as those acting on behalf of their conception of the good life, remain "in the same boat" (2001a, 775).

Citizens should thus coordinate their actions by recognising that they belong to the same project, and judge it from the same perspective, in the light of the same standards. In other words, they should share a common constitutional practice in the context of which, the institutions of law and popular sovereignty will represent different mandates from the same people. However, as Will Kymlicka recently noted, "democracy is rule by 'the people', but this requires an agreement that citizens of a state do indeed form a single 'people'" (Kymlicka 2011, 285). When conflict over identity reflects disagreement, not on universal moral norms, or their validity in the light of different cultural traditions, but on whether a legal community conforms to a single people or not, there is any easy solution for the constitutional paradox.

In short, the legitimacy of law is challenged on the basis that the system of rights and popular sovereignty represents two different peoples with contradictory democratic mandates under the ruling of the same law, which both accept in general but not in its application to the particular circumstances.

In this context, with regard to the temporal version of the paradox, the fact that the system of rights results from the free and sovereign decision of the founding fathers to constitute themselves as a legal community, loses its binding character because it could be counter-argued that they are not our founding fathers. In response to the procedural version, Habermas acknowledges that the transparent objectivity of ultimate moral insights is not sufficient to halt the type of infinite regress Michelman underlined. Therefore, the justification of basic rights as a whole, so as to constitute the process of self-legislation, is sustained on an original condition exercised *in mente* by participants from behind the veil of empirical ignorance. However, I do not see how this original condition reflects the philosophical modesty that Habermas emphatically stressed when critiquing Rawls' original position.

Finally, the case could be considered an example of the spatial version of the constitutional paradox, initially defined for the ruling of colonies by foreign nations. The problem with this analogy is that unlike colonies in already constituted liberal democracies, the historical argument works poorly as a source of legitimacy, as for example, in the case of minority nations. Habermas states, that in constitutional democracies, collective identities exist neither independent from, nor *a priori* of, the democratic process from which they spring. On this basis, the fact that a given territory holds a collective identity prior to the constitution of the nation-state, is meaningless in the absence of a democratic process testifying to its legitimacy. Furthermore, in the context of the nation-state, it will be impossible, as Habermas explicitly rejects the claim that rational identities constitute around a territory other than that of the self-constituting legal community.

The only exception is the legal community, because Habermas himself recognised that the community of speakers is not an abstract gathering of world citizens, but a particular ethical-political community that decides to self-constitute as a legal community, in a particular historical moment and its circumstances. The rationale behind this assertion makes sense, because in the absence of procedures to exercise a democratic mandate, and legal procedures which sustain their legitimacy, the only source of justification for this type of collective identities will remain a moral one. However, morality is either universal, in which case there is no need for its territorial demarcation, because deliberative democracy in the context of a liberal constitutional regime, provides the necessary means for its integration. Alternatively, it is exclusive to its community, in which case its territorial demarcation in the form of a state, will provide it with dangerous means to ascertain its exclusivity in the face of other cultural communities in the same territory.

However, Habermas does not take into consideration, for example, the case of national minorities that sustain their claim through procedures that arose from the democratic mandate of institutions and were legitimated in the context of contemporary constitutional democracies. A recent study of this type of identity conflicts revealed that what these cases have in common, is that they evolve in the context of liberal democracies. They also share the characteristic of not being part of the majority culture in which they are located, and they all hold a certain degree of institutional administration resulting from decentralisation processes of constitutional regimes (López, Sanjaume, and Serrano 2010, 164). Therefore, they hold a democratic mandate procedurally enacted under the ruling of legitimate institutions that are nonetheless not recognised by the constitutional state; but it is not a moral issue.

In this context, the constitutional paradox leads to an 'either/or' dilemma which is difficult to resolve. From the perspective of the constitutional regime, claims of minority nations are irrational. The legitimacy of the rule of law overrides the democratic mandate of popular sovereignty, because minority nations find no valid procedure outside the law to sustain the normative binding force of decisions taken by democratic means for the rest of the population. In contrast, the minority nation asserts that the claims of the constitutional regime are illegitimate. For them, popular sovereignty clearly overrides the legitimacy of the rule of law, because in the absence of legal means to exercise their sovereignty, the legitimacy of the rule of law is justified *a priori* in the absence of an explicit democratic mandate.

The solution requires choosing between the priority of the principles of law over democracy, or the principle of democracy over the rule of law; either will violate the equal weight on which underpins Habermas' solution to the problem of the liberties.

However, Bonnie Honig suggested a solution that could be sought, if we intend to leave aside either or dilemmas. If this cannot be done, then the debate remains "frozen into a binary paradoxical structure in which each term not only opposes the other but also props it up, and between the vast, complicated and subtle terrain of politics is excluded" (Honig 2007, 15). But it can if we acknowledge that the "*infinite sequence* is[46] the condition in which we find ourselves when we think and act politically" (Honig 2007, 15). In other words, a democratic constitution ought to be able to provide procedural means to navigate through controversy, if both the principles of democracy and law have an equal weight, even when they contradict each other.

Thus, the main task of a procedural understanding of democracy, is to ensure that conflict can proceed without violating a common allegiance of its different constituencies to a moral point of view. A moral point of view, being the only one that remains identical to itself, brings the notion that citizens have the capacity to agree on whether they constitute a community or not, to the forefront of democratic politics.

To summarise, Habermas frames complex diversity like social complexity, in the light of the desired rational unity sought for by the project of modernity. In this context, identity is a set of moral norms bringing citizens back to conventional forms of justification that, lacking the reflexive component needed for social integration in modern constitutional regimes, either have enough room to develop within the margins of the constitutional state, or were to be rejected as illegitimate or irrational. The weak premise of this scheme is not whether citizens can advance in this direction, but whether states do indeed let them, and who is then irrational if they do not.

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[46] Emphasis added

3   Concrete Politics (I): National 'Minorities' in Constitutional Liberal Democracies

Minority nations in contemporary liberal constitutional democracies represent a paradigmatic case of identities, whose members share the universality and rational validity of the moral point of view underpinning liberal constitutionalism, but do not find the means to further the democratic mandate of their constituencies in the language of the law. The case is interesting by itself, but it is relevant in the context of this dissertation because it brings into focus the difficulties of the procedural approach to democracy defended by Habermas, in retaining the neutrality of deliberative democracy in the face of complex diversity.

In a recent interview made by the French magazine L'Express, Habermas was questioned about the recent wave of European minority nations articulating claims to hold a referendum on independence. The 'right to decide', successfully articulated in Scotland, but not so in Catalonia, was not a new phenomenon, but it gained much attention because there is no reference to similar processes involving liberal democracies integrated into the European Union (López, Sanjaume, and Serrano 2010). Habermas replied as follows:

> "Quand, du fait d'une inégalité sociale croissante, l'angoisse et l'insécurité montent au sein d'une population, la tentation existe de se replier derrière des frontières familières auxquelles on croit pouvoir se fier, et de s'accrocher à des entités "natales", qu'elles aient été naturalisées ou qu'on en ait hérité, telles que la nation, la langue, l'histoire. Dès lors, le regain de la flamme régionaliste en Ecosse, en Catalogne ou en Flandre n'est guère, selon moi, qu'un équivalent fonctionnel du succès du Front national en France..." (*L'Express* 2014).[47]

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[47]   Source: http://www.lexpress.fr/actualite/monde/europe/jurgen-habermas-en-europe-les-nationalismes-sont-de-retour_1621409.html (Consulted: 2015-04-03).

Habermas, therefore, framed regional claims for self-determination in Catalonia and Scotland as a reaction to growing social inequalities. In the face of adversity, people tend toward naturalised or inherited allegiances, which provide certainties. However, no matter how sound their claims seem to be, there is no functional difference between them and the neo-fascist claims of the Front Nationale. In both cases, their incapacity to find accommodation in their corresponding constitutional regimes brings into light their return to conventional identities that have little to offer regarding social integration to contemporary liberal constitutional democracies.

Among them, the case of Scotland may be less revealing with regard to Habermas' scheme, because the UK lacks a proper written constitution. Indeed, it could be precisely because it lacks a written constitution that the UK has been more reasonable than Spain. Moreover, the Spanish case is more useful to illustrate the problematic of complex diversity because it is, in theory, a paradigmatic example of constitutional patriotism (Payero 2012; 2016).

The identity of the Spanish state is defined as a paradigmatic case of constitutional patriotism due to its capacity, in the aftermath of the dictatorship, to engage the *two Spain's* in the same democratic project. The Spanish transition faced the challenge of bringing together those who lost the civil war with those who won it and who had remained in power for almost 40 years. The transition process was undoubtedly a success. The fact that Spain remains a political unit, ruled by democratic procedures is testament to that success. However, the transition was not made without costs. For example, Stephanie Golob defined the transition as a paradigmatic case of "reconciliation without truth, a transition without transitional justice" (Golob 2008, 127). She noted that a consensus that was reached through bargaining among representatives of the dictatorship and political parties' elites, designed a transition with impunity and without prioritising the broader societal inclusion of victims of the dictatorial regime[48.]

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[48] The consequences of this transition without transitional justice were recently made visible on the *rude* confrontation and the facto derogation by the PP following the initiative of former Spanish President Jose Luis Rodriguez Zapatero regarding a "Law of Historical Memory" aimed at facing crimes committed by the dictatorship regime and restore the memory of its victims.

Indeed, from the perspective of Habermas' definition of the basic tenets of constitutional patriotism, it could be argued that the Spanish Constitution lacked in its origin, the self-critical appropriation of the past it requires. According to Richard Wolin, this feature is what grounds Habermas' distinction between conventional and post-conventional identities, and it was "[o]ne of the key theoretical arguments Habermas mobilises in his refutation of the revisionist position[49]" (Wolin 1989, xviii), indeed he defended this aspect fiercely in the German case regarding its Nazi past (Habermas 1989b). Therefore, it challenges the idea that Spain represents a case of constitutional patriotism, while Spanish authorities maintain this argumentation as a means to reject claims asserting the 'right to decide.'

Indeed, according to Lucia Payero (Payero 2012), the Spanish constitutional identity does not resemble what Habermas defined as constitutional patriotism in most of its aspects. Along with the attitude towards the past, she underlines Spanish concerns on its national matter, which is absent in the model. Its understanding of the Constitution differs, because "whereas Habermas gives an instrumental meaning to it, Spanish constitutional patriots see the norm in a fundamentalist sense" (Payero 2012, 18). Finally, she underlines the minor role given to political will, while liberty is a central feature of Habermas' model of constitutional patriotism. Altogether she concludes:

> Constitutional patriotism was a theory, firstly advanced by Habermas during the course of the historians' dispute. He tried to provide a kind of political attachment centred on the norms and values of a liberal democratic constitution, instead of on pre-political ties which bind people regardless their will. Yet in Spain, the theory was imported and "misused as part of a wide-ranging debate on regional autonomy and asymmetrical federalism" (Payero 2012).

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[49] The revisionist position refers to the so called 'historians debate' that attempted to avoid a critical revision of Germany's Nazi past and against which Habermas took a clear position rejecting *amnesia* and in favour of the necessity not to proceed as, precisely, Spain did.

Some of the limitations may well have been justified in the specific historical circumstances, and the needs of the ethical-political community that decided to self-constitute as a legal community. Indeed, the argument is reasonable insofar as a transition from a 40-year dictatorship to democracy is not an easy task, and guaranteeing basic rights is a worthy objective in comparison with other necessities. Nonetheless, in this case, Habermas' model requires a consistent path of constitutional reform. The Constitution evolves together with changing needs of a society that, in the case of Spain, is currently very different in comparison to what it was. Amongst other things, later generations have enjoyed the benefits of developing their lives together in the context of a well-ordered European liberal democracy.

However, if we compare the Spanish case with for example, Belgium, the multinational nature of its society resulted in six constitutional reforms between 1970 and 2011 all related to the institutional organisation of the state, its regions, and communities (Brans et al. 2010). This trajectory of reforms is singularly absent in the Spanish case. With the exception of the introduction of a limitation to public debt approved in August 2015 by a mandate of the European Institutions, and without consultation to the citizenry, there has been no substantive constitutional recognition of nationalities questions. Indeed, although constitutional reform is currently an open debate in Spanish politics,[50,] Javier Perez Royo, a renowned Spanish scholar of Spanish Constitutionalism, suggests that it is not a matter of political will; the Spanish constitution was defined to make impossible its reform (Perez Royo 2015).

Therefore, Spanish constitutionalism fails to fulfil, neither in origin, nor in process, the characteristics Habermas' endows to liberal constitutional democracies holding an identity modelled by a constitutional patriotism. However, could the minority claiming for its right to decide also be critically examined? In other words, does the Catalan claim for the 'right to decide' equally constitute a harping back to conventional forms of justification? In this case, the procedural component is crucial and, as Habermas quoted about John Dewey, "[t]he means by which a majority comes to be a majority is the more important thing" (Habermas 1996, 304).

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[50] Source: http://elpais.com/tag/reforma_constitucional/a/ (Consulted: 2017-08-13).

Considering the process whereby this majority came about, the first clarification is that we cannot know whether Catalan citizens support an independent state or not, because what is forbidden is the consultation itself. An attempt to hold such a consultation passed in the regional parliament twice in the last five years. The next is previewed for the 10th of October 2017. The last was planned for the 9th of November 2014. The Constitutional Court outlawed it, and although an informal consultation took place, it lacked the guarantees of an official referendum. Regarding opinion polls, results have been consistent for almost a decade according to the *Centre d' Estudis d'Opinió*[51] (CEO). In all of them, the picture reflects a society divided toward independence, although there is a slight skew towards those in favour of remain.

With regard to the process, there is a wide consensus that the current situation results from the revision of the Catalan Estatut d´Autonomia in 2006 (Gagnon 2015, 101–4). The proposal was approved with the support of 120 out of 135 representatives in the Catalan Parliament. Next, the Spanish Deputy Congress passed it with the agreement of all political parties, except for the PP. Finally, it reached the support of the 73,90% of votes among Catalan citizens via referendum. However, despite the strength of its democratic mandate in both chambers, Catalan and Spanish parliaments, and strong support by civil society, the Spanish Constitutional Court issued its decision after a long deliberation, declaring the new Estatut d´Autonomia unconstitutional by most of its parts under the Spanish law in 2010[52].

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[51]Source: http://ceo.gencat.cat/ceop/AppJava/pages/home/fitxaEstudi.html?colId=6288&lastTitle=Bar%F2metre+d%27Opini%F3+Pol%EDtica.+2a+onada+2017 (Consulted: 2017-08-20).

[52] In a recent book published by Alain G. Gagnon, one of the leading scholars on multinational federalism, the last contribution is an editorial written in 2009 and published simultaneously in 5 different newspapers from Catalonia while the Constitutional Court was evaluating the constitutional validity of the new proposal for a Catalan Statute of Autonomy. In his editorial Alain G. Gagnon ended claiming: "Catalans respect the law, of course, without renouncing to their dignity. This is worth keeping in mind. We are on the brink of a very important ruling. We hope that when the Constitutional Tribunal makes their decision, they heed the specific circumstances of the matter at hand –which is nothing but the demand for improved self-government by an ancient European people. They must remember that there is no absolute justice, only the justice of the concrete case, which is why caution is the supreme legal virtue. Let us remember: the Statute is the result of a double political pact supported by the people through a referendum." (Gagnon 2015, 103)

The initiative was sent to the Constitutional Court by the PP, allegedly on behalf of its interpretation of the better interest of Spain, although a majority of Spanish representatives in the parliament supported the Estatut d´Autonomia in its original form. However, this reaction of the PP, later backed by the Constitutional Court, rendered both the near unanimous consensus among parties, and the largely majoritarian support by citizens, meaningless in legal terms. Indeed, the decision of the court has been interpreted by several scholars belonging to Catalan civil society, as an imposition that although a legitimate act by the Constitutional Court under Spanish law, was manifestly in opposition to the democratic mandate of Catalan citizens and their institutions.[53]

In short, both parties accepted the universal rationality of the need to acknowledge the equal weight of law and democracy in its entirety, and it was not refuted by any other means than those provided by law and democratic institutions. Therefore, it does not represent two different interpretations of the moral point of view under the system of rights of the Spanish Constitution, or any other. Indeed, if the motivations behind each position regarding the independence of Catalonia are considered only 8% of those who would vote for independence if a referendum takes place, supported the decision on identity claims, while the majority of them justify their position on the possibility to gain greater autonomy (26,2%). In the case of those that will vote against, 51,1% of respondents justify their position on the grounds of preserving Spanish unity (CEO 2017, 66-67)[54].

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[53] The reaction of Catalan citizens on the ruling of the Constitutional Court could be exemplified in an opinion article published in the Catalan newspaper *La Vanguardia* in the aftermath of the resolution of the Constitutional Court and written by another leading scholar that, being Catalan in origin, dedicated most of his academic life to defend multinational federalism as the appropriate system of institutional organization for Catalonia inside Spain. Ferran Requejo wrote: "Desde una perspectiva práctica, la perspectiva de la secesión puede evitarse si se establecen modelos de carácter "consociacional" o de federalismo plurinacional. En el caso español, sin embargo, todo apunta a que ya han pasado los tiempos en que se creía posible llegar a acuerdos que acomodaran constitucionalmente a los diversos colectivos nacionales que conviven en el estado. El estado autonómico constituye un flagrante fracaso en términos de pluralismo. Hoy estamos sumidos en una profunda crisis económica y política. La primera acabará por pasar; la segunda está por quedarse durante más tiempo. Frente a este panorama, en Cataluña y el País Vasco la independencia deviene un objetivo cada vez más plausible." (*La Vanguardia* 2010/05/02) Source: http://www.ferranrequejo.cat/Blocdenotes/tabid/704/articleType/ArticleView/articleId/56/language/ca-ES/Article-a-La-Vanguardia-maig-2010--2-Hacia-la-independencia.aspx (Consulted: 2017-08-13).
[54]Source: http://ceo.gencat.cat/ceop/AppJava/pages/home/fitxaEstudi.html?colId=6288&lastTitle=Bar%F2metre+d%27Opini%F3+Pol%EDtica.+2a+onada+2017 (Consulted: 2017-08-20).

In other words, it may not be about morality and law, but between the principle of law underlining the ruling of the Constitutional Court, and its legitimacy to override popular sovereignty underpinned by the democratic mandate of Catalan institutions. The consequences of this either/or dilemma have lead the Catalan parliament to recently declare its willingness to disobey the ruling of the Constitutional Court on behalf of the democratic mandate of Catalan citizens. The reaction of the Constitutional Court, in response to an appeal made by the Spanish government, outlawed the eviction of the Catalan government, and indicated that the Court will, if necessary, enforce its ruling. Finally, a statement of the Spanish Government ensured that it would guarantee the unity of the Spanish State by all means. Therefore, it is the lack of mechanisms, and the inadequate procedures to deal with disagreement, that has led to the escalation of a conflict that has little to do with social integration by democratic means under the rule of law.

4   Conclusions

Habermas explained his contribution as an attempt to resume the project of modernity. In departing from Weber's definition, he defended the need to overcome the side-effects of modern rationalisation, whilst simultaneously retaining its project of rational unity. To counter direct fragmentation, and elitist trends undermining the prospects for social integration, the lifeworld, the common root for each value sphere, needs to develop its own institutions. These institutions find in the communicative telos of mutual understanding their own common root, in the discourse principle as its formal expression, in the institutions of law its materialisation, and through deliberative politics, the channel whereby practical reason is restored to the forefront of democratic politics. However, in this case, not on behalf of the enlightened philosopher but citizens themselves.

The conceptual apparatus deployed by Habermas to justify each step in this trajectory is extraordinarily complex. However, it is precisely this extraordinariness that becomes its main limitation once the burdens of the theory are over. Referring either to the discourse principle, the institutions of law, or his reconstructive social theory, the critiques reveal similar concerns: limitations are justified to make his contribution conceptually consistent, but reveal difficulties of empirical adequacy; and this elicits a challenge for its normative requirements. Rather than the rationality requirement, his contribution is challenged as a consequence of its universal aspirations. Standards allow for the functioning of alternative understandings of justification, different ways to forward participation in the public sphere, or expressions of civil society, are limited when disagreements involve those subject to the law, and those that make the law.

These limits become terminal once attention is turned to complex diversity. The common background of different value spheres differs from Habermas' definition of the lifeworld, in so far as diversity cannot be reduced to moral values to overcome a set of basic and common procedural assumptions. In other words, the agreement cannot proceed on procedures defined *a priori* as universally and rationally valid, and assuming what they have in common in advance. Because when procedures themselves are the source of disagreement, there is no room for deliberative discussion. In this case, the philosophical modesty proclaimed for the role of theory may have done better providing legal means, and establishing democratic requirements instead of precluding disagreement by fencing off certain positions as irrational or illegitimate before any actual deliberation has taken place.

Chapter IV

Deliberative Democracy for Complex Diversity

The previous chapter developed the argument that Habermas' model finds its limits when certain expressions of complex diversity are revealed. The case of minority nations in multi-national states reflected the difficulty that the model has, when dealing with forms of diversity that do not represent conflict among moral doctrines, but relate to democratically justified political projects in the same legal community. Put simply, problems arise for Habermas when deliberative democracy is confronted with, and cannot respond to, complex diversity. The agonistic critique generalises this conclusion. It suggests that, not only the nature of diversity and difference is political, but also that the nature of the political is antagonistic. In this sense, contra Habermas, the role of democracy is to provide the means to transform antagonistic enemies into agonist adversaries, when the aspiration to social integration on the rational and universal bases of discourse fades away.

However, the agonistic model is not without weaknesses. The main issue is that having rejected Habermas' bases for discourse, it does not provide an alternative route towards social integration. In other words, it is not clear how antagonistic conflict will be transformed into agonist relations.

In contemporary deliberative democratic theory, the conceptual debate between the agonistic and consensual models of democracy ran in parallel to what James Bohman called 'the coming of age of deliberative democracy' (Bohman 1998). After an initial period that focused on controversies over Habermas' normative ideal, deliberative democrats turned their attention to the process of deliberation itself: the study of how to democratise real institutions (1998, 401). The aim was no longer the search for a comprehensive alternative to aggregative forms of democracy, but how approximate this ideal could be, to finding solutions in increasingly complex societies characterised by deep disagreements and mistrust of institutions.

The result of this 'coming of age' resulted in two different views on deliberative democracy. Andre Bächtiguer and his colleagues (2010) have elegantly summarised basic tenets of both visions as two types. Type I deliberative democracy embodies ideals of rational discourse, focuses on deliberative intent and the distinction between communicative and strategic action, involves a strong procedural component, and establishes a consensus as for its goal. In contrast, type II deliberative democracy, inspired by the blind spots of the former, involves a more flexible understanding of forms of discourse, a greater emphasis on outcomes, and closer attention to 'real world' constraints over normative ideals.

More interestingly, these two types implicitly suggest a Middle Ground Theory that is attentive to the challenge of complex diversity at both levels: namely the precarious position of normative standards in the face of pluralism, and the problematic location of deliberation within liberal constitutionalism. Regarding the former, normative standards are relaxed, but nevertheless retained to ground the integrative social traction of deliberation. The latter, suggests a sequential approach whereby deliberation is detached from its close connection to liberal constitutionalism, and is reconsidered in the context of the system.

In this chapter, I argue that the Middle Ground Theory provides both the analytical, and 'real world' toolkits, to deal with complex diversity. First, the distinction between type I and type II deliberative democracy and basic tenets of the Middle Ground Theory is presented. Next, I analyse the strengths and weaknesses of this model in the case of identity conflict at both levels. Finally, I outline conclusions, from which the conceptual ground necessary for the empirical analysis of the central case study is subsequently developed, and then employed in the following chapter.

1   Middle Ground Theory

André Bächtiger and his colleagues, usefully summarised the different understandings of deliberative democracy in two basic types (Bächtiger *et al*. 2010). Type I deliberative democracy was defined around Habermas' procedural standards. First, truthfulness or authenticity means that participants express their true preferences openly. Secondly, normative rightness entails the willingness of participants to change their preferences in the light of the "unforced force of the better argument" (Habermas 1996, 306); and where the 'better argument', "must be searched for in common discourses" (Steiner 2008a, 187). Third, theoretical truth refers to the assumption that claims should be based on justifications that provide logical reasons and supporting evidence (2008a, 188).

Taken together, they constitute the universal pragmatic presuppositions on which the validity basis of speech acts rest (Habermas 1979d), through which communicative action is successfully enacted (Habermas 1989c, 1989d), and by the route which channels legitimate interpersonal relations if they are aimed at mutual understanding in an ethical society (Habermas 1990a). Rational consensus follows these conditions, providing liberal constitutionalism with the legitimacy required for both the law, and the normative traction expected from democracy, in the core of the self-constituting legal community (Habermas 1996).

With regard to normative standards, Jürg Steiner rightly notes that nowadays it is widely accepted that real politics "hardly ever corresponds fully" to this ideal (Steiner 2008a, 188). Controversy surrounds the rationality assumption (Sanders 1997), restricted forms of communication (Young 1996), or the understanding of the public sphere (Calhoun 1992). For example, Steiner advocates for the necessity to keep the criteria of truthfulness among the basic core normative standards of deliberative democracy (Steiner 2008b). However, this standard is challenged by more empirically oriented studies due to the evident difficulty in measuring how far someone is sincere in her statements (Steenbergen *et al*. 2003).

The main drawback of this flexibility with standards underlines the risks of 'concept stretching', namely that "[i]f the concept is stretched too far it begins to mean everything and therefore nothing" (Steiner 2008a, 186). Indeed, accounting for a clear and widely acknowledged set of normative standards is a positive thing for empirical research insofar as they provide coherence and enhance the robustness of results (Neblo 2007). This may be the reason underlying the fact that even actually Habermas' procedural standards are still considered the basic normative grounds of deliberative democracy to follow or to strive toward.

In contrast, the main contributions that challenge Habermas' model are summarised by Bächtiger and his colleagues as Type II deliberative democracy (Bächtiger *et al*. 2010, 36). The basic tenets of Type II deliberative democracy include sensitivity towards other forms of communication, a closer attention to contextual variables and functional relations between contextual variables and forms of communication, as well as a more comprehensive overview of the deliberative process.

On the one hand, concerns over forms of communication underline the stringent rationality standards that could result in the exclusion of other forms of communication vital for communities. Storytelling, for example, is considered an important cognitive device for groups, because stories provide groups with the common reference points necessary to create a sense of a moral community (Ryfe 2005, 58–59). Moreover, the exclusion of these forms of communication, as non-rational, fails to sufficiently take into consideration extant inequalities and worse still, may strengthen them. Yet, on the other hand, the focus on context steps, is the conviction that we cannot treat citizens *as if* ideal conditions were guaranteed. For example, Archon Fung analysed the different features of five deliberative initiatives that tried to connect outcomes and design choices (Fung 2003). He concluded that a general defence, or critique on the role of these kind of deliberative exercises is not possible in advance. In his words "the proper realm of dispute concerns what kind of mini-public to have, rather than whether mini-publics generally advance some particular view of democratic governance" (2003, 365).

Finally, the combination of concerns over other forms of communication and institutional determinants of deliberative behaviour, demands that our attention is focused on their interactions. Discourse may be structured following different standards, depending on the specific community of citizens involved, and also how it is functionally related to the institutional conditions in which deliberative dialogue evolves. Moreover, different sites of deliberation may fulfil different roles if they are assessed in the context of the deliberative process.

Against this dual picture of state of the art, or indeed building on it, Bächtiger and his colleagues suggest a Middle Ground Theory able to retain, at least in theory, the virtues of each while overcoming their respective pitfalls (Bächtiger et al. 2010, 54). They defend a 'sequential approach' that involves other forms of communication while retaining a certain sensitivity to potential distortions in the light of normative standards. The theoretical bases of this approach refer a to a 'working agreement' (Eriksen 2007), 'sequential approach' (Goodin 2005), 'deliberative capacity' (Dryzek 2009), and 'deliberative drifts' (McLaverty and Halpin 2008).

First, 'working agreement' refers to "an agreement which testifies to some movements of positions and normative learning, which does not result in a rational consensus" (Eriksen 2007, 111). Rational consensus requires agreement based on the same premises to claim the validity of decisions and sustain their capacity to provide stability to political orders. By contrast, working agreement assumes there are different degrees of agreement. Thus, the conclusion of deliberation can rest on 'mutually acceptable grounds' (Sunstein 1995, 19), as "incompletely theorised as they depict agreement at a certain level leaving the deeper principled question un-clarified" (Eriksen 2007, 111).

Second, the sequential approach follows Robert E. Goodin's (2005) notion of distributed deliberation. According to him, to be able to assert that 'good enough deliberation' takes place, one has to consider deliberation a staged process that might add up by sequencing the standards applied to each stage (2005, 194). He suggests that this kind of distributed deliberation would be useful to figure out, "how group deliberation might proceed among a group not unified by a common 'purpose'" (2005, 187). A sequential understanding of the deliberative process will allow, for example, different standards in its primary stages and more exigent conditions later.

Third, and different to Goodin, Middle Ground Theory states that the process of deliberation should become integrative and promote deliberative drifts at some point. The general idea is that the more authentic, inclusive, and consequential political deliberation, the more democratic the political system is (Dryzek 2009). Authenticity denotes the quality of deliberation to induce, "reflection in a non-coercive fashion, connect particular claims to more general principles and exhibit reciprocity" [55] (2009, 4). Inclusiveness refers to the range of perspectives involved in the deliberative process, without which deliberation may be undemocratic. Consequentiality entails "deliberative processes must have an impact upon collective decisions or social outcomes" (2009, 5).

Finally, when a democratic state includes a healthy deliberative system, it foments 'deliberative drifts' (McLaverty and Halpin 2008). If participants show certain a disposition, expressing reciprocity and real commitment in companion with deliberative capacities at the system level, then "it is logical that the growth of trust can "transform" negotiations around fixed positions to deliberation" (2008, 204).

In sum, leaving aside consensus in favour of working agreement the Middle Ground Theory allows a certain amount of disagreement and different forms of communication to play a role. The sequential approach relocates them at different sites of the deliberative system so that each can play a role from the perspective of the deliberative process. Finally, the transformation from strategic action into communicative action depends on both, a set of deliberative capacities provided by the deliberative system and certain disposition by participants to act with reciprocity. In the end, deliberation provides democratic means to steer society towards integration.

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[55] Dryzek, following Amy Gutmann and Denis Thompson (1996) defines reciprocity as the capacity to make arguments that others can accept.

2   Middle Ground Theory and Deep Divide

Deliberative mechanisms have largely been considered problematic to conduct within deeply divided societies, especially when division lines draw upon different identities. Despite this, Dryzek for example, suggests that discursive engagement across different identities might represent an opportunity to overcome fragmented communication and improve democracy. On the one hand, he asserts that deliberation is not necessarily focused on consensus based on common values, coherent belief systems, and an agreement on preferences, but instead seeks to contribute to the mutual recognition of legitimacy among parties in dispute. On the other hand, it is not aimed at legitimate decisions in the short term. Deliberation is located at a distance from decision making, and might contribute to social learning, creating possibilities for different identities to reflect on particular needs and concrete problems (Dryzek and Niemeyer 2006, 639; Dryzek 2009, 11).

His proposal echoes basic tenets of the Middle Ground Theory. Regarding the former, his proposal reframes consensus as meta-consensus, and rationality as inter-subjectivity, relaxing both with regard to the normative core of deliberative theory, in order to sustain its applicability in the context of identity conflict. Regarding the latter, deliberation is relocated at the macro level and uncoupled for decision-making institutions. The focus therefore rests on the informal public sphere, the context of which being a less heated environment, might facilitate engagement and distance, and avoid the risk of elite manipulation. Indeed, Dryzek follows ideas defended by Niemeyer and Goodin, and provides an interesting and comprehensive account on the application of the Middle Ground Theory to identity conflict.

From the perspective of complex diversity, this model overcomes the problems identified in Habermas', because 'conventional' identities are detached from their reclusion in a pre-given set of moral values, and reconsidered at the level of discourse. However, certain specific requirements for the application of the Middle Ground Theory to identity conflict, cast into doubt whether this application can make a difference to public engagement. In short, regarding the sequential approach, we end up where we began; the formal public sphere takes decisions and citizens remain none the wiser.

In the following sections, I analyse both aspects in detail. First, the definition of the normative bases, and the role deliberation is called in to play in societies with deep divisions. Second, a consideration of the implications at the systemic level of a sequential approach to the deliberative process. In both cases, limitations will be grounded on two concrete examples whereby the role of mini-publics becomes controversial when dealing with the deep divide and integrating citizens' concerns into the deliberative process.

2.1 Coping with Deep Divide (I): Outcomes of Deliberation

Regarding the first task, the general idea is that to relax the normative requirement, but without renouncing to what is considered essential, the Middle Ground Theory provides a viable path towards integration in societies with deep divides. Indeed, Dryzek and Niemeyer consider that deliberative democracy could overcome debates confronting ideals of pluralism and consensus by translating the outcomes of deliberation as meta-consensus and inter-subjectivity (Dryzek and Niemeyer 2006; Niemeyer and Dryzek 2007).

In unpicking this, normative meta-consensus and intersubjective rationality are defined to clarify the terms over which it overcomes the debate between agonist and consensual models. This is followed by a short review of the contribution this kind of intervention can make in societies coping with deep division from the perspective of conflict resolution theories, Finally, I will point to some of the limitations, illustrated by an example of a mini-public, that the main requirements of the Middle Ground Theory face when confronted with deep divisions leading to ambivalent results.

2.1.1 Meta-Consensus and Inter-Subjective Rationality

Consensus at the meta level means recognition across different normative commitments: a mutual recognition that facilitates the cooperative search for mutually acceptable solutions. It could also entail the creation of problem-solving publics capable of integrating a diversity of epistemic frames. In addition, agreement on the relevant dimensions of choice over preferences, must result in a reduction of the number of available options too (Dryzek and Niemeyer 2006, 642–46). Whether normative, epistemic, or preference, meta-consensus as the most desirable outcome will depend on the types of issue deliberative exercises face.

Normative meta-consensus is considered especially well-suited for conflict resolution in cases where deep divisions affect basic societal values (2006, 639). Conversely, epistemic meta-consensus mediates the contested credibility of beliefs, and can accommodate "the multiplicity of perspectives required by epistemic arguments for the political rationality of pluralism" (2006, 640), that is especially necessary in the face of growing complexity and uncertainty. However, it is also useful insofar as it facilitates conditions for the emergence of normative meta-consensus. Finally, preference meta-consensus is especially adequate to face strategic manipulation of choice, without resorting to legal constraints on available options, because "deliberation could produce consensus on the range of acceptable alternatives" (2006, 641).

Nonetheless, meta-consensus still allows considerable space for disagreement on the positions of deliberating actors regarding preferences, beliefs, and values whilst at the same time steering towards greater integration by virtue of the mutual recognition of corresponding legitimacies, the credibility of belief systems, or by reducing the scope of available preferences. However, for the special case of identity conflicts, two forms of meta-consensus appear to be crucial: normative and epistemic; the latter, insofar as it facilitates the emergence of its normative counterpart.

Moreover, normative meta-consensus is further advocated depending on the type of issue at hand (2006, 644): three are commonly specified. First, when issues involve identity clashes in a divided society, the key would be a normative meta-consensus that remains open to contestation. Secondly, when the division involves deep moral conflicts, stability will be necessary. Thirdly, when interest, and not identity or moral values, is what is at stake, the key is unveiling an existing normative meta-consensus that is obscured by the strategic behaviour of partisans. Niemeyer and Dryzek point out that this type of meta-consensus can reconcile the concerns of agonist and consensual democrats, but both pluralism and meta-consensus needs to acknowledge some limits too.

Agonist democrats reject the claim that a universal frame of reference can serve as a mirror to judge political perspectives regarding their moral grounds or cognitive frames. Although, even agonistic democrats assume that the recognition of another's point of view entails certain basic grounds, allowing a shift from taking the other as an 'enemy' to consider her an 'adversary' (2006, 644). For example, participants ought not deny the identity of others, neither should they be dogmatic, nor fuelled by resentment. Equally, they should neither be guided solely by self-interest nor search for other's subordination, or refuse the recognition of a constitutive other, for example, by appealing to their superior rationality.

Conversely, inter-subjectivity entails agreement is rational if it reflects inter-subjective coherence, namely, if the resulting individual positions reflect the integration of all concerns present in the meta-consensus in a consistent manner (Niemeyer and Dryzek 2007, 507). In other words, the idea of rationality that underpins inter-subjectivity, involves the assumption that to be rational, each pair of deliberators with similar subjective positions ought to agree on preferences. However, if they disagree on values and beliefs, it is reasonable to expect that their preferences will also diverge. Moreover, the virtue of inter-subjectivity is that in its 'purest form' "it precludes incompletely theorised agreements, involving a working agreement or a *modus vivendi*" (2007, 507).

This final assertion may seem to contradict the central role that 'working agreement' plays in the Middle Ground Theory presented above. However, a closer look reveals this to not be the case. For example, Erik O. Eriksen differentiated working agreement from *modus vivendi*, arguing that working agreements rest "on mutual respect for conflicting interests, as it is stabilised with normative arguments – with non-egoistic justifications" (Eriksen 2007, 112). This assertion does not mean that his argument belongs to a method of avoidance; excluding unreasonable comprehensive world-views as in, for example, Rawls' idea of an overlapping consensus[56]. It simply means that 'working agreement' builds on public reason, but a public reason that is also plural. Thus, working agreement, "on the basis of existent plural value systems, manages to establish a cooperative scheme that compels compliance and support" (2007, 112).

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[56] I have already explained the meaning of an overlapping consensus in Chapter 1 Section 1.3

In a similar vein, Niemeyer and Dryzek do not suggest that inter-subjective rationality is more likely to be more deliberative in the ideal sense. Rather, they suggest that when deliberation meets inter-subjective rationality standards, vulnerabilities would be better assessed than in other workable alternatives. In other words, although agreement on outcomes without agreement on reasons is a feature of real world deliberation, inter-subjective rationality is more desirable from a normative deliberative perspective (Niemeyer and Dryzek 2007, 507).

Qua Erikson, desirability does not necessarily rule out the possibility of different levels of agreement in practice. However, according to Dryzek and Niemeyer, the search for intersubjective rationality is worth it, insofar as it may also be desirable for agonistic democrats.

The underlying reason is that meta-consensus produced by "relatively un-coerced dialogue", and "recognition across differences", facilitates a "cooperative search for mutually acceptable solutions to joint problems while respecting deep and irreconcilable value differences that can remain deep and irreconcilable" (Dryzek and Niemeyer 2006, 647). However, meta-consensus is not *necessarily* the outcome of mutual recognition but, can also be "produced by symbolic politics in the service of partisans or (worse) hegemonic actors" (2006, 647). In this case, "[e]lites can manipulate public opinion using arguments that invoke "symbolic" values and beliefs" (2006, 646).

Therefore, according to Dryzek and Niemeyer, agonist scholars would also accept that "we need to introduce some procedural norms for the evaluation of particular instances of meta-consensus" (2006, 647). In other words, the desirability of inter-subjectivity does not deny normative meta-consensus should remain open to contestation, and establish a settled ground on the basis of its rationality. The alternative means that inter-subjectivity seeks to reach common ground, and avoid elite manipulation assuming rational consensus among parties is, at best, unlikely.

On this basis, Dryzek suggests deliberation is a workable alternative in the face of deep divide on two bases. It acknowledges diversity so far as it departs from the assumption that different normative frames do operate in contemporary complex societies. However, it does provide avenues toward integration, because of the mutual recognition of their corresponding legitimacy. Indeed, the agreement remains open to contestation; recognition is facilitated by the visualisation of the multiplicity of perspectives, and the risk of elite symbolic manipulation overcome, which underlines the desirability of intersubjective coherence among values, beliefs, and preferences under the proviso that public reason itself is plural.

2.1.2   Deep Divide: Mutual Recognition and Social Learning

In Dryzek's view, the focus on identity conflict is necessary because, "[t]he same decade that saw the rise and rise of deliberative democracy also saw identity politics prominent, sometimes in murderous form" (Dryzek 2005, 218). Identity politics, according to him, may involve nationalism, religious or ethnic conflicts, and religious versus secular forces. However, common to all of these, is the potential for the identity of one, to be validated or constituted by the suppression of the other. Therefore, the challenge for deliberation is to provide the means for each to affirm itself, without having to, or seeking to, deny the other.

Indeed, he defends deliberation is an interesting alternative to agonism and 'analgesia', as far as it takes both identity and democracy seriously (Dryzek 2005). First, identities are "means allowing different communicative forms that can accompany particular identities" (2005, 224). These different forms of communication may not strictly refer to taken for granted cultural aspects. On the contrary, identities could be better understood as bound up by discourses in terms of 'imagined communities'[57] (2005, 225). Moreover, attending to the discursive dimension of identity, it is possible to shift their focus from values to needs. The assumption underpinning this is that once the focus is on needs, common general values obscured by confrontation could emerge.

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[57] This concept was introduced by Benedict Anderson in his seminal book *Imagined communities: Reflections on the origin and spread of nationalism* (2006).

Second, it is also an alternative to 'analgesia'. Analgesia refers to the strategy to deal with the deep divide of consociational models. In brief, consociationalism involves segmental communication keeping conflicting identities separate and mediating among them through their corresponding elites (Lijphart 1969). Deliberative democracy takes democracy more seriously, insofar as it accounts for the risk of elite manipulation, and brings back citizens to the core of the democratic equation. Moreover, according to Dryzek, consociational solutions preclude any possibility for social learning that might play an important role in conflict resolution processes (Dryzek 2005, 222).

Both aspects meet in contemporary theories of conflict resolution where deep divisions involving contested identities, deteriorate into open conflict; and what directly connects this debate to the case study of this dissertation. Indeed, according to Dryzek, a large body of the literature on conflict resolution, "emphasises the effectiveness of deliberation among key parties to a dispute in producing durable solutions to conflicts, especially in mediation and through 'consensus-building' exercises" (Dryzek 2009, 11). The consensus is not interpreted as a universal agreement, but in the sense of meta-consensus, agreement by which all sides could reflectively assent.

Classical theories of conflict resolution design interventions for a peace settlement and focus on bargaining among empowered elites in line with the consociational model (Ramsbotham 2011, 60). The basic assumption is that the main actors are states, and main drivers contradictory interests either within or between states (Malone and Berdal 2000). In these cases, when disagreement involves positional politics, or adversarial debate, engagement tends to be dismissed until conditions are in place for 'true' dialogue, and claims by contending parties do not challenge the legitimacy of the state as the appropriate framework for resolution.

However, recent contributions suggest that the emphasis should shift from resolution to transformation of conflict, and this change in perspective reframes both the role of identity and elitist shape.

The role of the state is diminished in the light of the progressive deterioration of its position, both externally and internally, consequent upon pressures from above and below the nation state (Münkler 2005). The resulting complexity requires a more comprehensive approach to the multidimensional structure of contemporary conflicts including closer attention to conflict behaviour; meaning cooperative and coercive attitudes and beliefs in addition to classical concerns on values (Galtung 1996). Thus, there is greater attention to the different levels of intervention and their interactions (Lederach 1997), and careful analysis of the different stages in the sequence either of resolution or conflict escalation (Ramsbotham, Miall, and Woodhouse 2011).

There are different applications of these general guidelines for dealing with deep identity divides, among which John P. Lederach's *Little Book of Conflict Transformation*[58] (2003) and Jay Rothman's *Antagonism, Resonance, Invention and Action* (ARIA)[59] (1997) represent two insightful examples. In both cases, proposals pay attention to the narrative dimension of identity, its relational nature, and the complexity of its assessment. In short, identities are not taken for granted sets of pre-given moral norms. On the contrary, they are considered important for both conflict, and its resolution. Indeed, in conditions of intractability where the positions of contenders are reasonable, even if their means are not, is not a question that could be demarcated in advance, neither taking states or identity claims for granted.

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[58] John P. Lederach's model (Lederach 2003) departs from the assumption that two central roots of social conflict belong to identity and relationship. Identity refers to a relational dynamic that is constantly redefined in relationship to others. This narrative dimension of identity, whereby peoples respond questions on who they are, where they come from and so on, is, nonetheless, closely related to power and the structure governing those relations, so that, when addressing identity-based concerns attention should be paid to both.

[59] Jay Rothman presents ARIA (Antagonism, Resonance, Invention and Action) (Rothman 1997) as a framework specially designed to transform identity conflicts. Rothman differentiates among interest based and identity based conflicts. The former are conflicts more clearly defined and the potential for win-win outcomes is greater, while identity based conflicts, based in people's psychology, culture, basic values, beliefs and so on, ask for more complex assessment. In particular, Rothman highlights the importance that in these cases have to focus interactions in needs and values instead of positions of participants.

On the contrary, complexity requires intervention, if not aimed at resolution, then with the goal to explore possible patterns for conflict transformation emerging from dialogue among and within contending parties. This is the main idea underlying the inclusion of 'linguistic intractability' as a relevant case for intervention and analysis aimed at conflict transformation. Ramsbotham refers to 'linguistic intractability as a "singularity in the universe of discourse", confronting hegemonic positions with resources to control public discourse and contenders resisting from the margins (Ramsbotham 2010, xii). The challenge for him, is to occupy the sum of discursive space, leaving no room for the coexistence of contending belief systems and discourses. This lack of capacity to share 'discursive space' is the core of 'linguistic intractability', and its chief manifestation is 'radical disagreement' (Ramsbotham 2011, 58).

Radical disagreement can be traced back to "embedded discourses within the dynamic conflict system in question" that, in turn, are defined as "inherently inter-relational" and involve not individual beliefs, or belief systems in isolation, "but relations of belief" among contending parties (2011, 59). Overall, this phenomenon contributes to the reinforcement of "cognitive, emotive, conative, and behavioural mechanisms that feed attractors for destructive conflict"; therefore, enhancing the escalatory "process dynamics" (2011, 59). Indeed, Ramsbotham suggests, to transform this dynamic when there is no condition for mutual understanding, 'agonistic dialogue' within and between contending parties, reveals much about conflict dynamics and could supplement "attempts to conflict transformation in the communicative sphere when these do not yet succeed" (2011, 65).

Therefore, his recommendation is not to look to one side when the radical disagreement is in place, but rather to investigate the 'agonistic dialogue' as a mechanism which is revealing about the conflict dynamics and relevant identities at play. In short, it is not an identity that explains conflict but conflict that explains identity.

Moreover, it is in this context where the contribution of deliberative democracy meets real concerns about identity conflict. The agonistic dialogue might enhance our understanding of conflict dynamics but, the middle ground theory approach provides the added value: namely, the means to advance towards social integration. Dryzek maintains that the contribution of deliberation to these cases is to facilitate the emergence of a normative meta-consensus: the mutual recognition of legitimacy by conflicting parties. Identities could thus be better understood as bound by particular discourses and therefore elitist claims can be avoided by the need to disclose social learning.

The idea that deliberation might play a role in coping with deep divisions is also grounded to a certain extent on empirical findings (Luskin et al. 2014; Caluwaerts and Deschouwer 2013). For example, following the model that James Fishkin and his colleagues termed 'Deliberative Polls' (Fishkin and Luskin 2005) experiments have shown that, contrary to what the theory predicted, deliberative democracy involving ordinary citizens in deeply divided societies could result in high-quality deliberations.

Luskin and Fishkin tested whether as the law of group polarisation predicts, "members of a deliberating group usually end up at a more extreme position in the same general direction as their inclination before deliberation began" (Sunstein 2009, 3). They brought together Protestant and Catholic citizens, from an area in the North of Ireland that had only recently emerged from protracted violence, to discuss controversial policy issues. Results showed that participants were able to conduct meaningful and constructive deliberation, emerged better informed about the policies in discussion, and their attitudes changed towards positions closer to the interests of society as a whole (Luskin et al. 2014).

In a similar vein, a recent deliberative experiment in Belgium included citizens from both sides of the linguistic border, to deliberate over highly controversial issues. The experiment tested between two variables, first, *group composition* – linguistically homogeneous or heterogeneous; and second *decision-making rules* – majority, supermajority, or unanimity; to see which one was more closely related to the deliberative quality of standards according to Type I deliberative democracy. The results showed that the decision-making rules had more influence on the quality of deliberations. However, in the case of group composition linguistically heterogeneous groups scored higher than homogeneous groups (Caluwaerts 2012; Caluwaerts and Deschouwer 2013). Thus, the experiment suggests that in these cases, facing the out-group might enhance rather than damage deliberation.

In general, both experiments suggest deliberation between ordinary citizens, in societies marked by deep divisions and characterised by identity conflicts, is not only possible but can also have positive outcomes. On this basis, it could be that deliberation facilitates productive interactions among citizens. The specific role for exercises of this kind may not be consensus with regard to agreed preferences based on mutual understanding, but the clarification of conflict terms, and the emergence of common grounds that allow for the mutual recognition of differences. Moreover, common grounds may contribute positively to conflict resolution by building capacities of citizens to engage democratically.

Despite this, it remains unclear to me how this kind of deliberative exercise can contribute in the wider context of the deliberative system. Let me explain this idea with an example, before going into details in the next section.

2.1.3   Concrete Politics II: The g1000

In parallel to the exercise referred to above, a more politically ambitious exercise took place in Belgium. The g1000 was a civil society initiative, involving ordinary citizens, that took place in the middle of a political deadlock in government negotiations after 2010 elections (Caluwaerts and Reuchamps 2014). Electoral results had led to difficult negotiations, that in combination with the specific requirements for a government agreement, lead Belgium to achieve a curious record: became the country that lasted the longest in the world without a government. On the 21st of February, after 253 days, The TIMES reported this with a provocative headline: Belgian Waffling: who needs government, anyway?[60]

In the face of the difficulty that political elites were having to reach agreement, the g1000 seemed to be trying to respond to the question posed by the TIMES: if elites cannot agree, give citizens an opportunity. The initiative itself was sponsored by 25 Belgian intellectuals and encouraged 704 Belgian citizens from both linguistic communities to come together and discuss. The exercise was an attempt to show that the problems in Belgium were not related to lingual divisions, or community differences, and that members of both linguistic communities were able to deliberate together. Furthermore, the success of the experiment illustrated how the elitist orientation of contemporary Belgian politics, was an obstacle to the development of mechanisms that could facilitate this kind participation. Indeed, the experiment provided a very different perspective, relative to the explanations commonly articulated, for the characterization of identity conflict in Belgium.

The problem of constituting a government could be one of the side effects of the consociational, or consensual model, that Belgium employed to manage the linguistic divide. The model was designed to deal with a country federalized by disaggregation (Swenden, Brans, and De Winter 2009, 2). Moreover, it established strong guarantees with regard to minorities, for whom "proportional representation, executive power sharing and grand coalitions, and minority vetoes are key elements" (Mnookin and Verbeke 2009, 168). Therefore, communities remained separate, parties became the main representative channels at the level of both linguistic communities, stringent rules avoided unilateral solutions, and elites mediated conflict at the federal level.

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[60] Source: http://content.time.com/time/world/article/0,8599,2052843,00.html (Consulted: 2017-08-13).

The side effect of this, is that politics at the federal level becomes an elite phenomenon and in the absence of agreement between parties, deadlock is unavoidable (Deschouwer and Van Parijs 2013). Indeed, the g1000 could be interpreted as an attempt by citizens to challenge some of the most basic assumptions that underpin this model. In other words, the exercise could be understood as a claim that the solution designed to overcome the linguistic divide, had become the problem itself.

The g1000 intended to demonstrate that dialogue among citizens belonging to different linguistic groups was not the problem, but that "[t]here is an ever growing gap between politics and citizens, and the public and political agendas no longer coincide." (Caluwaerts and Reuchamps 2014, 3) Indeed the agenda setting exercise suggested that, in the current moment, the linguistic divide was not the main issue for those participating.

The exercise brought participation until the very end of the deadlock, and established a participatory process to set the issue agenda for discussion. Surprisingly enough the question of the linguistic divide, or that of constitutional reform, did not appear to be a priority among citizens. Instead, they opted for social security, welfare in times of economic crisis, and immigration (Caluwaerts and Reuchamps 2014, 5). It was surprising because the issue was central to political debate in Belgium; and certainly, a key element to the rise of Flemish nationalism.

In the 2010 federal elections, the *Nieuw-Vlaamse Alliantie* (N-VA) became the first party, called to form a government. Negotiations had ended with the so-called butterfly agreement, a wide coalition of forces that excluded the N-VA. However, the N-VA kept growing, winning federal elections again in 2014, and this time constituting a government coalition. The fact that a nationalist political formation, having very little history in the Belgian political arena, grew from scoring 3.2% of votes in 2003 to 17.4% in 2010[61], suggested the federal reform issue would have been the central issue of interest for citizens.

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[61] In 2007, it was in cartel with CD&V and together reached an 18,5% of the votes. Source: http://www.parties-and-elections.eu/ (Consulted: 2017-08-13).

It may be that voters chose N-VA for reasons other than its position regarding the federal reform. Indeed, the newness of N-VA proposals seem to be multidimensional (Beyens *et al*. 2015). Moreover, N-VA itself used this distinctiveness as an argument to identify its proposal in the electoral campaign. For example, the main slogan in 2010 was "Nu durven veranderen" what means *Now dare to change,* and positioned the party against politics as usual. The point here is not a conversation about party politics, but to illustrate that the long government crisis and heated political controversy, was punctuated by the g1000 which shifted the dominant political narrative, by suggesting some premises of the debate may have be controversial.

In one sense, the initiative itself suggests citizens from both linguistic communities do indeed have the capacity to meet each other, deliberate and take decisions. Thus, the lack of agreement at the federal level may be a response to other factors, though not necessarily an unavoidable effect of the linguistic divide. In a different sense, by taking the initiative, citizen participation also constituted a threat to the elitist character of Belgian democracy. What might be tentatively concluded, is that a different perspective on the same problem, questions some of the taken for granted assumptions that may in fact be mistaken for, or at least, more complex than, the impression that first sight suggests.

From the perspective of Middle Ground Theory, the initiative fits in well with the requirements noted above (Caluwaerts and Reuchamps 2012). For example, much emphasis was placed on inclusiveness, facilitating the integration of different perspectives, as well as their actual expression during the discussion. We cannot know with any certainty that inter-subjectivity was achieved, but the design-choices certainly facilitated a more reflective attitude, projected citizens' proposals to the plenary, and allowed participants to reflect on their position in front of the group. A sequential design allowed different objectives to be met at each phase, therefore rules were adapted, and facilitators trained to that end. Finally, citizens conducted the process, and in so doing uncoupled it from institutional decision making.

Indeed, outcomes suggested that design choices were adequate, and permitted the sustained adequacy of certain theoretical suggestions of the Middle Ground Theory. In the first instance, the initiative showed that deliberation can be successful in deeply divided societies (Caluwaerts and Deschouwer 2014), but also, that the initiative represented a kind of meta-consensus of citizens from different linguistic communities and with different political preferences regarding citizens' participation. For example, the analysis of crowd-funders for the g1000 revealed funding came from socially advantaged groups, but involved people who holding very divergent preferences towards democracy itself (Jacquet and Reuchamps 2016).

Nonetheless, there were certain limitations. The initiative was held at a distance, but not isolated from, the wider political debate. Assessing the internal legitimacy of the initiative, for example, the influence of the wider context was analysed (Caluwaerts and Reuchamps 2015), and among others, two aspects were underlined. First, the fact that the initiative itself did not meet strong public endorsement throws up the limitation of its impact on the wider political agenda. Second, this impact may be unexpected and dependent on external factors.

For example, Jean-Pierre Rondas[62], emphatically underlined that the exercise was an artificial picture of the problem agenda, that focused on its Francophone frame at the expenses of Flemish concerns[63]. Therefore, in this case, the legitimacy of the event was questioned by critiques coming from the north of the country regarding the Belgian flavour of the initiative.

The relationship between the initiative itself then, and the context in which it was implemented, suggests ambivalent conclusions. With regard to social learning, the level of satisfaction amongst participants suggested it had a positive effect. The heuristic value of the initiative could be defended on the grounds of its capacity to provide evidence for certain assumptions about the Belgian issue that may otherwise have been overlooked. Indeed, it pointed to a different aspect that could enhance the search for solutions from a problem-solving perspective. Finally, as the organisers underlined, design choices played a crucial role to these outcomes, and in this sense, the assumptions that coalesce around Middle Ground Theory seem to work in line with findings from real world experiences.

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[62] Jean Pierre Rondas participated in the event organized by the Re-Bel Thinking initiative in Brussels to discuss on the background paper on behalf of Flemish critiques on the g1000. Source: http://www.rethinkingbelgium.eu/rebel-initiative-events/seventh-public-event-g1000-european-citizens-initiative-malaise-democracy (Consulted: 2017-08-13).

[63] Source: http://www.doorbraak.be/nl/nieuws/content/rondas-over-de-g1000-en-het-democratisch-verdriet-van-belgi%C3%AB (Consulted: 2017-08-13).

Nonetheless, the ambivalent lecture regarding location and role in the wider context also raises some doubts. On the one hand, the lack of influence over the political agenda. places a question mark over the objectives of this kind of exercise. On the other hand, the lack of impact could even be misinterpreted, or worse still used to fuel already present controversy; by endowing the initiative with an intentionality that seems not to be on the agenda of its organisers. In this case, the unexpected side effect of high-quality deliberation among citizens can be growing mistrust and even hesitation on the legitimacy of the event.

In my view, these findings highlight certain contradictory elements that undermine the application of Middle Ground Theory to identity conflict in the case of citizens' engagement, and point to the next step; the location and function of this kind of exercises in the wider context of the deliberative system.

2.2   Coping with Deep Divide (II): Process of Deliberation

The controversy over the impact of deliberative initiatives is closely intertwined with the question of their location, which connects this discussion to the role deliberation is called to play in societies coping with deep divisions, from the perspective of the deliberative process. In this regard, Middle Ground Theory underlines the sequential character of deliberation as a process, meaning that each site of the deliberative process could play a different role, and that standards may differ from one to another.

Dryzek provides an account of this sequential process of deliberation as capacity building (Dryzek 2009). This model is adapted to transnational settings, and thus defines a set of constitutive elements, including: a relatively unrestricted public sphere, an empowered space for actors who are 'recognisably part of institutions', the means through which either critical or supportive relationship between the two are channelled, and the means whereby "the empowered space is made accountable to public space" (2009, 7).

The criteria to evaluate how far this system is deliberative, and therefore one which makes a contribution to democratisation are the already mentioned deliberative capacities: authenticity, inclusivity and consequentiality (2009, 5). A system with high deliberative capacity will feature 'authentic deliberation' in all spaces as well as all means, inclusivity in both empowered and public spaces, and will be decisive. However, the kind of deliberations present can be more or less deliberative for each and does not require a particular set of institutions. In the case of societies coping with a deep divide, Dryzek suggests the appropriateness of locating 'interactive forums', where parties in dispute deliberate at a distance from institutional decision making. The distance may allow mutual recognition of legitimacy among parties, and facilitate the structuration of political interactions across them if the outcomes are reflectively accepted by key political actors (2009, 11).

However, I suggest below, that this distance might be counterproductive, when in place of key parties, citizens are called to engage in deliberative initiatives aimed at conflict transformation in societies coping with deep divisions. Following Niemeyer and Goodin amongst others, I will first review the assumptions that underpin Dryzek's understanding of the sequential approach, and the role of deliberation among citizens. On this basis, I will then revisit several pathologies of deliberation to highlight the multifaceted challenge of elite manipulation. Finally, concrete examples of citizens' participation at EU level will enable the negative consequences of deliberation taking place at a distance from decision making, to be clearly underlined.

2.2.1   *From Micro to Macro Deliberation*

According to Dryzek, in the case of deep division, deliberation "can play a part healing division" (2009, 11). It is however desirable, he argues, to keep deliberators at a distance from institutional decision making, because

> ... face to face variety connected tightly to state authority, can only ever be for the
> few [and] ... in a politics of mass voting tightly connected to the definition of the
> sovereign state they can all too easily be overwhelmed by demagogues (2005, 228).

A certain distance from institutional decision making then, is a positive aspect for Dryzek because, "changing minds in common" is more likely to occur with "a space for exploratory interchange across differences" (Dryzek 2005, 230).

The systemic interpretation of this idea necessitates that deliberation contributes in two ways. By social learning, thus helping to "determine how different segments live together, without necessarily being validated in explicit policy decisions" (Dryzek 2009, 11). In addition, "mutual recognition of the legitimacy of disputed values and identities", the absence of which means a contest becomes "a fight to eradicate the values of the other side"; deliberation "has force in structuring political interactions across division to the degree it is reflectively accepted by key political actors" (2009, 12).

Dryzek defines these deliberative encounters as 'interactive forums'. However, it is not clear whether, consonant with the distance from decision making, these forums are for 'key political actors', or that elites should simply give assent (or not) to the outcomes of citizens' deliberations. If 'interactive forums' are defined as a means to enhance public engagement, we may have to suppose citizens take part. But in this case, the question is glaringly obvious: how do we justify the transition from normative meta-consensus and social learning among citizens, to reflective assent by key political actors?

In response to this question, Niemeyer and Dryzek place the accent on the 'deliberative self' (Niemeyer and Dryzek 2007, 500–502). The influence at the more collective level is justified in terms of enhanced public debate that suggests a priority of 'deliberation within' over 'deliberation with others' (Goodin 2000). This apparently contradictory response to the problem, demands a more detailed explanation.

According to Niemeyer and Dryzek, meta-consensus, or the agreement on the nature of the issue at hand, "requires individuals transcend private concerns" (2007, 500). In other words, meta-consensus provides the 'deliberating self' with greater "intersubjective understanding of competing perspectives and consistency in subjective position and preference positions" (Niemeyer and Dryzek 2007, 501). The arguments raised by deliberating individuals in support of their preferences, will be less prone to contestation by others, because the perspective of the other is already part of the outcome. Moreover, it is not crucial to meet 'others' physically, because this change occurs in the course of deliberative reflexion within.

Conversely, 'deliberation within' (Goodin 2000, 2005), means deliberation values the 'internal-reflective' dimension, over its 'external collective' aspects. It does so to adapt the deliberative ideal to large scale societies, where direct deliberation among all those concerned with a particular issue, is an extremely unrealistic assumption (Goodin 2000, 81). Thus, deliberation within, is something that happens inside individual minds: it is the outcome of an internal-reflective attitude of an individual towards the other. Goodin and Niemeyer sustain this line of argumentation based on empirical research (Goodin and Niemeyer 2003).

The example to which they refer is a citizen's jury. At the end of the project, participants were questioned over what helped to change their mind, and were asked, from different options, to select the factors that had proven to be decisive. For example, learning, listening to witnesses, a shift in perspective, and group discussion (2003, 635). A positive response to the first two options was interpreted as corroboration that a shift had occurred in the informational phase. But, if the last option was selected, it was interpreted to mean that group discussion was important. Based on the results, they concluded that,

> ... internal-reflective processes of 'democratic deliberation within' are more central to the process of democratic deliberation [than external-collective ones, and moreover that] attitudes really do seem to have changed substantially before the formal discussion actually began, and much less substantially *during* formal discussion (2003, 632).

Regarding the problem placed at the beginning of this section, this proposal is interesting insofar as the consequential impact of deliberative dialogue is considered to be an indirect effect, linked only to the robustness of arguments raised in favour of a position. Deliberation is an internal reflective dialogue, conducted by each individual to consider her position in contrast to other's perspectives. This reflective process provides her position with robustness, and the decision-making process equally benefits, because more robust perspectives enrich public debate at the collective level.

In sum, this social learning aspect of deliberation entails, albeit indirectly, that deliberation does indeed have an impact on the political decision-making process. In Habermas' terms, citizens' deliberation at a distance from decision making, has the effect of enhancing robustness to their positions. In this way, citizens are better prepared to transform their communicative freedom into communicative power, and also be heard in the formal public sphere, because on this basis, those in charge of taking decisions could reflectively assent on their position. In this way, the dilemma between consequentialism and distance is solved. Indeed, several deliberative scholars take this position regarding public engagement and the function of mini-publics.

Fishkin and Luskin (2005), for example, consider that the relevant context, against which deliberative experiments should be evaluated, is not that of the political process, but the wider context of a *theory* of the political process. They defend that

> [l]ike Rawls' 'original position,' Deliberative Polling, in gauging what people *would* have think if they thought, knew, and talked more about the issues, has some recommending force – to policy makers and, at least conditionally, to the public itself (2005, 294).

Therefore, as underlined by Dryzek, deliberation is not *mainly*[64] about the impact on policy making. It is about the investigation of public opinion and the appropriate institutional means to make its conduct possible. Impact is possible, but it is indirect, and depends on the robustness of claims raised in the battle for recognition in the informal public sphere.

In sum, what these deliberative exercises represent, is an attempt to bring empirical investigation 'beyond armchair empiricism' by locating 'thought experiments' into real circumstances (Fishkin and Luskin 2005, 294). In short, they are considered 'a poll with a human face' aimed at getting "a maximally reliable picture of a counterfactual public forming and revising its opinions under normatively desirable conditions" (2005, 295).

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[64] Commenting of a Deliberative Pool that took place in Australia before the 1999 referendum, for example, Fishkin asserts that if broadcasted and due appropriate media coverage deliberative pools can have a significant effect in mass public (Fishkin 2003, 131).

This perspective has several virtues. Empirical testing can serve to unlock conceptual dead ends, deeply ingrained in theoretical thinking, and facilitate a more creative approach to problem-solving. Indeed, the very fact of integrating citizens in the theoretical discussion is positive, and the possibility to influence policy-making reliable. In short, this position has the virtue of being intellectually modest and politically sincere. However, even from the perspective of research this division between theory and practice is questionable, and if we take a more ambitious stance, and seek to sustain the contribution of deliberation to conflict transformation in societies coping with deep divisions, it is naïve and, at worst, can become counterproductive.

The contribution of experimental exercises in theoretical thinking, for example, prompted Caluwaerts to note, that even the outcomes derived from this approach should be taken cautiously. He highlights that this kind of experiments tend to enhance the conditions that allow high internal validity to the experimental setting, and the interpretation of its results, reliable; but this comes at the cost of having low ecologic validity (Caluwaerts 2012, 191). For example, results of the experiment conducted in Belgium, suggested that discursive encounters between members of opposed groups should not necessarily exacerbate political conflict. However, he noted: "in such cold deliberative setting, participants might be tempted to give in and betray their own group identities just for the sake of getting the discussion over with, and going to lunch" (2012, 192).

Regarding counterproductive effects, more crudely, John Parkinson, for example, openly rejects "the tendency to reduce deliberative democracy to a consultants' toolkit of trademarked techniques" (Parkinson 2012, 171). Moreover, he raises concerns that on this view,

> ... deliberation becomes just another tool of depoliticization, the attempt to take the politics out of politics and replace it with impersonal analysis, treating people as mere bearers of values with an uncertain grasp of facts rather than citizens with the agency and cognitive abilities that allow them to practise self-government (Parkinson 2012, 171).

Nonetheless, Dryzek, Niemeyer and Goodin all maintain that, even though it is indirect, public engagement does have an impact on policy making. Indeed, I might be inclined to assume, that distance is positive when engagement involves key political actors. However, if public engagement intends to unite citizens, distance only distances citizens from decision-making. Indeed, it casts doubts the potentialities of their proposal at the levels of both the underlying conception of identity and the locus of citizens' deliberation in the sequential process.

Mutual engagement may well unveil common ground, by which growing coherence among belief systems might facilitate a more reasonable debate over preferences, and for example, reduce the scope of negative possibilities. However, if there is no mechanism that guarantees the consequential character of this process; meaning institutional decision-making echoes this structuration of conflict dynamics; we might end up assuming conflict is mainly a matter of discourse.

However, even from the perspective of classical theories of conflict resolution (Galtung 1990; E. E. Azar 1990), this is not sustainable. Attention to identity, and in particular to the discourse dimension of identity in its different forms, does not rule out other concerns associated with the protracted nature of identity conflicts as, for example, power asymmetries[65] and the role these different dimensions of conflict dynamics play in the search for a durable resolution[66].

In sum, the main problem is that deliberation among citizens at a distance, relies on either the willingness of key political actors to give reflective assent to citizens' concerns, or they need to provide a clear account of how this assent can be made effective. However, in either case, citizens remain reliant on others to act on their decisions. Therefore, the challenge is the function and location of 'interactive forums' so as to involve citizens in the wider context of the sequential process of deliberation.

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[65] Conflicts in societies with deep identity divides tend to be considered as 'Protracted Social Conflicts' (E. E. Azar 1990). This type of conflicts reflects certain unbalance between state's behaviour and the role and status of nations and communities under its rule (Holsti 1996, 20–21). Power asymmetries play an important role and evolve towards violent confrontation "when communities are deprived of satisfaction of their basic needs on the basis of the communal identity" (E. E. Azar 1990, 12). Analysis of this kind of conflict requires attention to genesis and process because PSCs tend to be particularly pervasive.

[66] In this case, each vertex of the *Galtung's triangle* plays a role in conflict and its transformation towards a stable peaceful settlement requires transforming the conflict structure as a whole. In addition to direct violence, attention is recommended to structural violence -the hidden suppression of basic needs for survival, well-being, identity and freedom- and cultural violence or "the symbolic sphere of our existence (…) that can be used to justify or legitimize direct or structural violence" (1990, 291).

2.2.2   From Macro to Micro Deliberation

The role that deliberative exercises play in involving citizens in the wider political process is a contested issue among deliberative democrats, not only in cases of identity conflict. Goodin and Dryzek offered a consistent review of possibilities by focusing on 'mini-publics' (Goodin and Dryzek 2006). Following Archon Fung (2003), 'mini-publics' are artificial devices employed by scholars, activists, or foundations, that seek to improve the quality of the public sphere. They are modest projects of 'reformist thinking' that gather representative samples of the citizenry to experiment with a democratic ideal. They are interesting because they represent, "the most promising actual constructive effort for public engagement," and a viable alternative, "given the fragmentation of political and cultural life", to efforts that try to recreate the one big public, and inform in detail about possibilities for "institutional design for effective public deliberation" (2003, 338).

They are interesting for my purposes here, insofar as they are the chosen mechanism when the goal of deliberation is to integrate citizens' concerns, and the optimal option whereby different trade-offs linking location and function, can be assessed.

In their review, Goodin and Dryzek noted that when considering impact in decision making, the academic literature tends to focus on failures in one of those possible pathways, namely, that which has a direct influence on the content of policy. Indeed, deliberative mini-publics at best, and very rarely, "have a politically (but not constitutionally) guaranteed place in policy making on a particular issue" (2006, 223). However, they argued that through several other routes, the influence of mini-publics' could extend well beyond the boundaries of the exercise itself. In particular, they enumerate several possibilities (2006, 225–36): direct influence in actually policy making, being taken up by the policy process, informing public debates, shaping policy by means similar to market testing pools, legitimating policy, building confidence in a constituency, forcing accountability, and co-opting opponents to proposed policies.

However, the review reveals that in almost all cases, their having any actual influence on the political process, largely depended on the disposition of those in power taking these exercises into consideration. The review also pays no attention to the potential pathologies of deliberation, thus overlooking how the process affects citizens' in deliberative systems.

Regarding the first option, influence is guaranteed if the deliberative initiative is already part of the policy making process. However, as noted before, even Goodin and Dryzek recognise that this 'rarely' happens. With regard to the second, by informing public debate, mini-publics can influence, not only officials, but also public opinion; through which they might gain influence over the actual political debate. Nevertheless, this influence will for example, be dependent on media coverage, and access to media coverage is not equally distributed among different social strata. The third option moots the possibility of participants rejecting policy proposals in the context of mini-publics following the market testing model. In this case, Goodin and Dryzek argue that influence can still be effected, assuming that legislators acknowledge that when the opinion of the public is previewed to be negative, "it is good for the macro-political system – in terms of its functionality, its legitimacy, and its democratic responsiveness – not to try to force wildly unacceptable proposal down citizens' throats" (2006, 234). This is possibile, but questionable for example,without the option to set the issue agenda of the mini-public.

Finally, through participation in deliberative mini-publics aimed at confidence building, mobilised groups could position themselves against the policy process, and such forms of popular oversight may increase pressure on officials to become accountable to the public. In these cases, rather than 'one-off micro-deliberations', 'on-going or recurring mini-publics' are recommended (2006, 235–36). However, as Adam Przeworksi crudely stated, "deliberation can occur only if someone pays for it" (Przeworski, in Elster, 1998: 148), consequently, this is not the most common occurence.

Most of these mechanisms appear to be well suited to the consideration of outcomes where the policy making process is taken as a given. It can however, widen the informational base (Goodin and Dryzek 2006, 228), preview reluctant positions in time (2006, 231), make its outcomes more legitimate (2006, 232), decrease the level of scepticism among the public, increase the level of psychological confidence (2006, 235) and even deactivate opposition by co-opting opponents for the policy process (2006, 36).

In short, they are well suited to *framing* political debate among citizens, but not *making* political decisions at the institutional level. Indeed, Adam Przeworski and Susan Stokes documented several ways in which this kind of malfunctioning could occur in deliberative exercises, and result in people holding induced preferences (Stokes 1998) and beliefs "that are not in their best interest" (Przeworski 1998).

Both depart from acknowledging that deliberation "is a form of discussion intended to change the preferences on the basis of which people decide how to act" (1998, 140). They suggest that preference change is largely dependent on beliefs, because preferences are endogenous to the political process. In other words, "most public discussion concerns, not aims but means" (1998, 141). Beliefs, in turn, depend on "the causal models we have in our minds about the effect of a given course of action on our well-being and that of others" (Stokes 1998, 123).

Following Przeworski, beliefs are classified into two categories: technical beliefs refer to "models of causal relations between policies and outcomes", and "equilibrium beliefs, that is, belief's about other peoples' beliefs" (Przeworski 1998, 143). The first source of inequality depends on technical beliefs: information pooling or the symmetrical presentation of arguments preceding deliberation. In this case, the use of reasons to discriminate about goals in the light of consistent beliefs is inherently unequal, certainly in so far as neither access to information, nor the capacity of participants to adequately handle technical beliefs, is equally distributed amongst all participants.

Moreover, unequal distribution is exacerbated according to Stokes, because the external dimension of this process is highly dependent on public communication. She describes different sequences, whereby the transition from people's preferences to politicians' proposals and then to government policy (Sequence I) could be manipulated, resulting in induced preferences (Stokes 1998, 125). Sequences include: the capacity of economic interests to influence the cause of government decisions when elite debate precedes public opinion (Sequence II) (1998, 126), the capacity of special interests to change perception of legislators on public preferences inducing change in public preferences (Sequence III) (1998, 128) or inducing misperception of public opinion by legislators (Sequence IV-V) (1998, 130, 132).

Indeed, some of these pathological sequences seem to be especially acute for the case of identity conflict. Insofar as Stokes is concerned, "public communication may change not only preferences but indeed identity" (1998, 134). The creation of pseudo-preferences refers to "preferences falsely imputed to electorally significant segments of the public" (1998, 127) in their grounding of decisions. Moreover, on these bases, pseudo-identities "seem to work against the needs, interests, or character that their bearers would express if left to their own devices" (1998, 134). Abstract narratives concerning the category of people, and tailored for political ends, for example, "are believed by people whom the narrative is about" (1998, 134), even against their own experience, and it is these narratives that entail how we think about the world, our capacities, and those of others.

This possibility should be taken into consideration because if we bear in mind that deliberation tends to be mostly about means rather than ends, and technical beliefs call for validation that usually is not available to ordinary people, then as noticed by Przeworski; the resulting picture reveals the prominent role that equilibrium beliefs play in the final decision. In other words, the crucial component of deliberation is the reliability, adjudicated by each, to the beliefs of others. If preferences were a given, and the capacity to question the validity of technical beliefs supporting them depends on unequal access, what deliberation mainly does is lock individuals' capacity to deviate from dominant beliefs by accommodating equilibrium beliefs to already given preferences. The outcome is that deliberation fixes identities, through which we identify with others and adjudicate, or reject their reliability. Following Stokes, if we also consider that pseudo-preferences could result from manipulations in the sequence of the policy making process, and identities externally adjudicated to their bearers; the outcome is that deliberation will serve to enhance the process of fixing pseudo-identities.

Deliberative democratic theorists will argue against this sequence, suggesting that deliberation bypasses this closure, because it is not about uncritically holding already given beliefs and associated preferences. On the contrary, it is about moving away from what is given, reflectively turning against it using counterfactual idealisations based on a reason that is by definition public, and sustained by capacities, that are by definition universal to all human beings.

However, as Przeworski commented, "endogenous beliefs cannot be used to make normative evaluations of counterfactual states of the world" (Przeworski 1998, 155). For example, in the case of technical controversies, this capacity to evade from deeply held beliefs will depend largely on access, not to a generic public reason, but to reliable information. Moreover, although in the last two decades this problem may have been diminished by the evolution of the internet, access to reliable information and criteria to discriminate between trustful and non-trustful information, remains far from being accessible for all equally.

In sum, the operation of pathologies in deliberative systems is complex and multifaceted. Of course, all these possibilities are based upon a caricature of politicians, public officials, and institutions. Goodwill for citizens should be equally assumed for politicians as well as for public officials. Moreover, institutions are, for better or worse, equipped with checks-and-balances aimed to preclude the misuse of power. Moreover, representative institutions are subjected to the verdict of the public that did, or did not, vote for them, and ultimately exercise control over what their representatives do.

However, if we think about the contribution that deliberative initiatives aimed at enhancing public engagement make in this context, a clear conclusion is diffcult to draw. The proposals presented by Dryzek, Niemeyer, and Goodin for example, do not rule out the possibility of citizens acting against decision-making at the institutional level, either through deliberative forums, or other devices located in the public sphere. However, potential benefits rely far too heavily on the disposition of those already in power to either make, or change a decision, that takes their opinion into consideration. They also overlook the potential negative consequences that can arise when authentic deliberation among citizens takes place, and the substance of that deliberation remains, in political terms, meaningless.

2.2.3 Concrete Politics III: EuroPolis Project

The 'democratic deficit' (Marquand 1979) has been a longstanding dilemma affecting the EU integration process: the transference of competencies from nation-states to supranational institutions, has seen classical mechanisms that ensured democratic control appear to be exhausted, thus affecting the legitimacy of the political decision-making process negatively. Academic debates on the democratic deficit (Majone 1998; Moravcsik 2008) present a two-sided picture about the optimal way to sustain the legitimacy of the EU Integration process. On the one hand, legitimacy is defended as an outcome of the effectiveness of EU institutions to deliver their functions. On the other hand, legitimacy depends on inputs linked to the democratic process and its representative institutions embodied in member-states. However, more contemporary contributions (Follesdal and Hix 2006; Jensen 2009) consider this two side picture of the 'democratic deficit' too limited.

A standard formula of the 'democratic deficit' includes five claims. First, that European integration has decreased the capacity of national parliaments to control the increasing executive power of EU institutions. Second, the weakness of the European Parliament, the only directly elected institution, enhances this deficit, relative to the Council and the Commission. Third, this weakness is even stronger considering that, strictly speaking, there are no 'European' elections. Elections to the European Parliament are 'second order national contests' (Follesdal and Hix 2006, 536) in which neither EU issues, nor EU personalities and parties, are the core of the electoral agenda. Fourth, the distance between EU institutions and voters is deepening: citizens do not understand the EU, cannot assess it, and accordingly are not able identify with it. Moreover, fifth, due to this distance between voters and institutions, the integration process produces a 'policy drift' between voters' ideal policy preferences and the political process by which they are supposed to be represented (2006, 536).

Recently, and in the light of the limitations to so called grand narratives to successfully confront the democratic deficit, the deliberative turn has gained the attention of scholars (Neyer 2006). However, interest has overlapped with the burdens of the theory to be acknowledged by the European Commission. Indeed, several programs have been implemented among which certain attention was given to the role that citizens initiatives, following the lines of deliberative democracy, could play in overcoming the democratic deficit. Mundo Yang, for example, identified 23 projects funded by the EU focusing on citizens involvement in EU policy processes from 2001 to 2010 (Yang 2013, 26). One of them was the *EuroPolis Project*[67], and among its promoters, we find prominent names in Deliberative Democratic Theory, such as Jürg Steiner and James Fishkin (Isernia et al. 2013).

The *EuroPolis Project* was presented as a Deliberative Citizens Involvement Project (DCIP), founded and implemented by the European Commission (EC) with the aim of facing the widely debated issue affecting the legitimacy of EU institutions; namely, the democratic deficit (Jensen 2009). In the foreword, Viviane Reading, Vice-President of the EC, highlighted the importance of these initiatives for the Europe 2020 strategy. She stated:

> when it comes to defining the European project for the twenty-first century we need a Europe strengthened by widespread *participation,* a Europe looking to co-operate for the *common good,* a Europe stimulated by ideas and sustained by *reflection*[68] (Kies and Nanz 2013, xviii).

The reference to participation, common good and reflection help to figure out how important the deliberative paradigm seems to be in the Europe 2020 strategy.

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[67] Source: http://www.circap.org/europolis.html (Consulted: 2017-08-13).
[68] Emphasis added.

In the particular case of the *Europolis Project*, the aims of the DCIP were to promote a properly European public sphere by exposing "a microcosm of European citizens to an ideal democratic setting" (Isernia et al. 2013, 79). Indeed, it represented a highly ambitious project[69]: divided into four phases, it involved a random selection of participants, informational input about the issues in discussion, and moderated small group discussion and plenary sessions.

Results were, according to reports, successful. For example, "Europolis attests that through public deliberation, we can reduce the EU's democratic deficit" (2013, 106). In particular, "identification with the EU rose 37 percent among participants right at the beginning of the event and to 53 percent after deliberation" and the percentage of those who think it is their duty to vote increased "from 48 percent before to 56 after the event" (2013, 105). Results included a change in policy preferences, knowledge gain and interesting correlations between voting and debate. More significantly, it demonstrated that when "Europeans deliberate together, they become a bit more like ideal citizens" reflecting "what the European project could evolve into if the barriers of language and nationality are overcome" (2013, 106).

Legitimate questions would be first, does it matter whether or not languages and nationalities are something to be 'overcome'. Is feeling more European and Belgian, than say more Belgian and Flemish, but not European, questionable? Or, does feeling only Bruxellois, therefore neither Belgian, Flemish, nor European have nothing to do with 'ideal citizenship'? Furthermore, it is also highly questionable that asserting the acceptance of the duty to vote or change one's preferences, reflects any better what the 'ideal citizen' looks like, than refusing to vote, or restating one's own opinion on a particular issue, for example.

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[69] For example, in order to ensure that efforts randomly selecting participants were not conditioned by other factors participants got travel expenses and accommodation funded as well as an additional financial incentive (80 euro) for their participation. Each participant was also allowed to speak in his or her own language due to more than 150 translators that made it simultaneously in the 21 languages involved. Previous to the exercise 4300 citizens were interviewed, from them 3000 invited and finally 348 actually participated in the event. Participants expend a weekend in Brussels to discuss public issues, in particular immigration and environmental issues, in small groups and later shared their opinions in the panel where politicians and experts also took part (Isernia et al. 2013, 82–88).

In recent research on indifference towards integration, Virginie Van Inglegom suggests that indifference could be indeed interpreted in several ways, and not necessarily by noticing weakness or abnormality, but, more precisely as meaning that integration is becoming 'normal politics' (Van Ingelgom 2014, 180). She argued that "greater visibility of European issues and more direct experience of the EU may, in fact, lead to ambivalence", but, according to her results, ambivalence "is not a non-attitude". On the contrary, it is rational, pragmatic and stable and can be qualified as "assent or pragmatic acquiescence" (Van Ingelgom 2014, 180).

Her approach suggests that along with consenters and dissenters, 'assenters' may lack "any commitment, participation and/or interest in political activities" (2014, 183). Though, "indifference or hesitancy about the EU is not a sign of principled opposition to further integration but, an inclination to make a pragmatic judgment of a proposal" (Rose 2013, 155 cited in (Van Ingelgom 2014, 185). Therefore, abstinence from actual participation should not be taken as a non-position, but rather a position in the face of the integration process and therefore taken into consideration as what it is, and not judged as abnormal in the light of what it should be.

Furthermore, not taking the position of assenters into account, may amount to another large and venerable tradition regarding the disposition of European institutions in considering inputs coming from citizens as regardless. Van Ingelgom notes that when called to express their opinion, citizens indeed, "judged the European democracy and the European economy harshly" (Van Ingelgom 2014, 185). However, taking Europeans seriously means taking them seriously when they make a pragmatic judgement too. Moreover, she adds: "Not taking 'no' for an answer and pushing forward the integration process lead citizens to believe that European Integration will go on regardless of what they do or whom they vote for" (2014, 185).

Thus, from this perspective, it is not that citizens are incapable of engagement in European policy making because, either it is complex, or too distant from their daily lives. It is, on the contrary, because assenters are distant, that they are conscious that the possibilities to be taken seriously. In addition, instances when the answer does not fit with expectations, are no greater now than they were before. Moreover, on these bases, "politicisation (I would be tempted to add: and the daily experience of European integration) may give rise to expectations that cannot be satisfied" (2014, 181). In short, this either means to consider citizens' preferences as implemented or, in the absence of a disposition to take citizens seriously, at least their assent needs to be taken into consideration.

From this perspective, the evaluation of DCIPs like *EuroPolis Project* can be controversial. They account for effective influence on citizens' preferences, and even have a positive impact regarding how citizens frame the integration process, and their role in it. However, in the concluding chapter of the compilation on the referred DCIPSs Graham Smith noticed that, overall, the most striking finding was that in the course review "we cannot point to one case where citizens engagement has had any noticeable effect on the formal decision-making process" (Smith 2013, 214). This is arguably the same concern that was amplified by Virginie van Ingelgom, who underlined the risk of generating expectations that cannot be satisfied.

Taking part in such participatory exercises, requires that citizens are able to give time, effort, and embrace the openness necessary to challenge their own positions. Personal benefits do count with regard to learning and self-clarification, however, this disposition needs to be reciprocal, vis a vis the institutions holding deliberative exercises with ordinary citizens. If not, a legitimate question emerges over the intention that the initiative taking place sought to achieve. Moreover, if Van Ingelgom is right, it is precisely this kind of mistrustful interaction what can lead citizens to shift their positions from assent, ambivalence, and indifference, to opposition.

3   Systemic Approach, Identity Conflict, and Public Engagement

I have suggested that Middle Ground Theory, on the basis that it takes both identity and democracy seriously, can provide a solution for deliberation in societies with deep identity divisions. I reviewed this proposal at two levels: the level of expected outcomes and the level of the deliberative process. The baseline is defined following Dryzek, Niemeyer, and Goodin. The reason behind this choice is that they provide a comprehensive account of the application of Middle Ground Theory to societies coping with deep divisions.

With regard to normative requirements, deliberation can acknowledge different degrees of agreement, and therefore departs from a relaxed set of normative standards. Equally, its application to identity conflict, gives rise to a consensus that is not expected in agreements based on mutual understanding, but on mutual recognition of differences (meta-consensus), and coherent frames of values, beliefs, and preferences (inter-subjective rationality). Nevertheless, following Erik O. Eriksen (2007), I have underlined that this second aspect should be considered as an acknowledgment that similar values may lead toward different preferences, because public reason itself is plural.

The second aspect brings about the sequential character of the deliberative process and the idea that deliberative exercises are part of wider systems. According to the Middle Ground Theory, deliberative systems are characterised by authenticity, inclusiveness, and consequentiality (deliberative capacities). The fact that normative standards affect the system as whole frees each site from the obligation to mirror ideal conditions. In consequence, different sites of the deliberative system might play different roles.

On these grounds, deliberation values social learning on behalf of participants in deliberative exercises, and conflict resolution prospers from the clarification of underlying terms of controversy. However, coping with deep divisions, requires distance from institutional decision making in order to provide the necessary conditions for mutual recognition, and the potential structuration of conflict dynamics towards more ambitious objectives later in time, or at another site of the system.

The problem is that distance from decision making at the institutional level might provide more detached settings in conflictual environments. However, in the absence of involvement by key actors, and without specific requirements to assure the consequential requirement, deliberative initiatives become at best, less attractive to engage, and at worst, a process whose objective remains unclear, and where mistrust can fester and legitimacy can be called into question. This could be logically assumed if expectations on the effect of this kind deliberative initiative are assessed in the long term, as well as indirectly, as the model of deliberation within suggests. However, as shown in the previous chapter, it is problematic because, deliberation within is not free from manipulation and equally, the lack of impact is not innocuous.

In the following section, I ground the theoretical debate of the previous pages in order to provide the set of guidelines that structure the assessment of the central case study of this dissertation. In particular, I draw on recent debates surrounding the systemic turn (Parkinson and Mansbridge 2012), to suggest that instead of distance, mini-publics in societies coping with deep divisions require institutional coupling. The rationale for this assertion is that mini-publics are not only devices whereby citizens learn from each other, but ones where they learn from each other to make better decisions. Finally, I suggest better decisions require deliberation with real others, thus overcoming the burdens of the deliberating individual, to locate deliberation, as fundamentally a social activity.

3.1   *From Distance to Connectivity: The Deliberative System*

The definition of the systemic approach, follows the sequential model suggested by the Middle Ground Theory (Parkinson and Mansbridge 2012). The systemic turn defines the deliberative process as a set of distinguishable, although interdependent parts, that require not only differentiation, a functional division of labour, but also integration: namely relational interdependence. In short, they suggest the systemic approach attends to the emergence of "deliberative ecologies" (Mansbridge *et al.* 2012, 4–7).

From this perspective, deliberative exercises could play different roles, and their evaluation could be advanced, but I am minded to also consider, "the value or disvalue of non-deliberative practices that have often been considered antithetical to deliberative democracy" (2012, 26). For example, we could identify tight institutional coupling, that precludes the self-corrective capacity of the system, or conversely, decoupling, avoiding cross-fertilization, along with expressions of either social or institutional domination and deep division (2012, 10–13, 22–24). But either of them is assessed by their contribution to the deliberative system because "two wrongs can make one right" (2012, 3).

This conception of the deliberative system entails overcoming Habermas' definition of deliberative arenas "as rings around the state" (2012, 9). The boundaries of the system are not given in advance, but differentiated around institutions, or issues at each case. Deliberative systems include binding decisions by the state, preparation activities, as well as informal talk related to those decisions, and formal or informal talk on other matters that fulfil criteria for inclusion; meaning, they are matters of common concern with a practical orientation.

Therefore, the model sketched in the *manifesto* provides a working definition of deliberative systems, sites, or boundaries, in the context of which controversy on the appropriate location and function of deliberative mini-publics takes place.

Following Fung (2003), I have defined mini-publics as artificial devices for improving the public sphere. I have also reviewed, following Dryzek, the positive contribution that this kind of 'interactive forum' can make regarding conflict transformation. But, Dryzek suggests distance from decision-making at the institutional level is required for these participatory devices to succeed, and I have raised several doubts about the appropriateness of such a requirement for public engagement.

Indeed, for example, Hendriks (Hendriks 2006, 493–95), and Parkinson (Parkinson 2012, 161–62), identify Dryzek with Habermas as the central references of the macro deliberative approach. This model focuses on civil society and the public sphere, and deliberation "is called to play an unconstrained and even oppositional role *against* the state by engaging in acts of communication" (Hendriks 2006, 495). It is focused on macro-deliberation and restrains citizen's capacity to influence decision-making at opinion formation (2006, 494). Indeed, deliberation among citizens takes place in the informal public sphere, and

> ... the very fact that macro deliberation is based on less stringent communicative
> norms renders it a more inclusive version of deliberative democracy (2006, 495).

The problem is that "they lack a clear account of how that contestation is translated into acts of governance" (Parkinson 2012, 161).

Parkinson, on the contrary, quoting Papadopoulos (2012) recommends "coupling mini-publics and empowered decision-making sites: not so tight that the former become co-opted, not so loose that they are ignored" (Parkinson 2012, 157). In the concluding chapter of the collected edition on *Deliberative Systems* (2012), he underlines the contextual turn regarding mini-publics as justified "not just in terms of effects on participants or the rationalisation of a particular decision making, but in terms of their connections with other institutions and with systems of governance more broadly" (2012, 170). In other words, "it is the impact they have – or fail to have – on binding collective decision what matter" (2012, 170).

However, neither of them may be free from side-effects. Carolyn Hendriks, for example, underlines the fact that macro deliberation not only suffers from the difficulty to account for influence in policy making, but "the market-like functioning of ideas in the public domain makes macro deliberation more accessible to the loud, well-organised and well-resourced actors in civil society" (Hendriks 2006, 495). Conversely, micro-deliberation, in the form of mini-publics "might also be resisted by actors in civil society, especially partisans, because they fear co-option and further marginalisation" (Hendriks 2006, 495). Therefore, neither mini-publics oriented to influence policymaking at the institutional level, nor macro deliberation oriented to opinion formation in the public sphere, are free from the compound risks of elite manipulation and political irrelevance.

Hendriks suggests testing whether indeed, two wrongs can make one good. She advanced an 'integrative approach' (2006) that combines both, maintaining that "a more integrated system of public deliberation is best conceptualised as an activity occurring in overlapping discursive spheres – some structure, some loose, some mixed – each attracting different actors from civil society" (Hendriks 2006, 503). This model celebrates the 'multiplicity of deliberative venues', and "fosters *connections* between these venues" (2006, 499). In other words, it underlines *agency, diversity,* and *interconnectivity* and, in contrast to the two-track model, it overcomes the distinction between informal and formal public spheres and the corresponding division of their roles.

Regarding the location of mini-publics then, the main difference between this interpretation of the sequential model and Dryzek's account, is that instead of distance, it recommends coupling with institutional decision making. Awareness is focused not on the consequences of institutional coupling within mini-publics alone, but in the context of relations established between mini-publics and other sites and, in particular, institutional decision-making. Because, at the end, what matters is the impact they have on binding collective decisions. Coupling mini-publics with decision-making does not mean it is free from the risk of elite manipulation, but the focus is placed on the *interconnectivity* between them. In other words, the possibility that empowering citizens in decision-making processes indeed countervails the risk of elite manipulation is not ruled out.

3.2 *Impact on Decision-Making: Function of Public Engagement*

Thinking about the role of deliberation, and more concretely mini-publics within the democratic system, Parkinson underscores the view that coupling deliberation at different sites with institutional decision making, brings about the reconsideration of the principal agent model of representation (Urbinati and Warren 2008). The underlying idea is simple. Participants in mini-publics are not elected representatives, therefore, it is no clear on behalf of whom they will act within a representative democracy.

Parkinson suggests, on the contrary, it is the very idea of representation that needs to be reconsidered. According to him, representation is better conceived as 'relationships of representation' (Parkinson 2012, 163–64). This refers to an "ongoing relationship based on flexible constituencies rather than a fixed, positional relationship between principals and agents" (2012, 168). Thus, good deliberative systems are those "being richly representative ones, hitched to a combination of direct and indirect decision-making institutions like referendums, minidemoi, and elected assemblies where appropriate" (2012, 168).

In short, the idea is that 'politics as usual' in contemporary representative democracies falls short to respond to specific challenges of contemporary complex societies. Therefore, enhancing the stock and diversity of decision making mechanisms does not replace but enhance the capacity of representative democracies.

For example, instead of mini-publics, artificial devices aimed at enhancing public opinion, we might think on minidemoi (Bohman 2012, 85). Minidemoi, being mini-publics, can account for communicative and decisional status. Bohman defines communicative freedom as "the exercise of a *communicative status,* the status of being recognized as a member of a public" (2012, 84). However, to transform communicative freedom into communicative power, minidemoi require 'decisional status' within an institution, thus being able to "place an item on the institutional agenda" or "influence decisions made about items on that agenda" (2012, 85). In short, minidemoi are mini-publics with decisional status.

The contribution of minidemoi is defended by Bohman by means of creating 'multi-perspectival' polities (Bohman 2006, 2007, 2012). Multi-perspectival polities are those in which the democratic process is defined as a mode of inquiry that seeks to consider not only social conditions, but also to "incorporate the various perspectives of relevant social actors in attempting to solve a problem" (Bohman 2006, 182). On this basis, the function of minidemoi in deliberative systems, links to enhancing their multi perspectivality because "[t]he lack of epistemic diversity may be procedural, as when there is insufficient diversity not just among deliberative participants, but also among the collective agents making various decisions" (2006, 183).

Parkinson, for example, agrees with this idea. He argues that, the key criterion used to judge representative bodies (including not only 'elected' ones) in a deliberative system, "is that they are 'grounded' in the experience of those they represent" (Parkinson 2012, 169); meaning that the pool of perspectives is inclusive, and representatives themselves are diverse enough. However, he points an interesting side-effect. In short, by valuing all the availability of perspectives, with no attention to how they came about, the model overlooks that *raw* perspectives are, indeed, a fair representation of social inequalities.

Bohman, for example, specifies that within a multi-perspectival polity, with a functioning democratic mode of inquiry, "participants need not be either neutral or impartial" because "both properly identify perspectives as the object of inclusion" (Bohman 2006, 182). He refers to Helen Longino and Iris Marion Young who suggest that citizens or social actors are not required to transform their perspectives, but enjoins the democratic system to include them, because diversity requires perspectives that are different *in kind*.

However, according to Parkinson this systemic emphasis on the availability of perspectives proceeds as if perspectives were independent of the deliberative process. On the contrary, he suggests, "to maintain its deliberative capacity there should be a 'default mode' of reasonable, respectful discussion" (Parkinson 2012, 169). In short, if different decision-making bodies are empowered with decisiveness certain mechanisms should be defined for these decisions to be fair, equal, or free because in their absence decisions taken in this bodies will fairly represent already ruling social inequalities.

Owen and Smith, for example, suggest that in every site, political talk is required to fulfil a 'deliberative minimum' or stance; meaning "a relation to others as equals engaged in the mutual exchange of reasons *as if* to reaching a shared practical judgment" (2015, 228). This minimum is applied transversally at each site of the deliberative system, to test whether deliberation is practised or not. The assumption is not that other forms of communication do not play a role, but deliberation, indeed, and this minimum requires what is necessary for deliberation to be, at least, possible.

Therefore, instead of distance I suggest an integrative approach that will critically assess the connectedness between different sites of a deliberative system to assess whether, in the case of mini-publics, citizens do indeed have an influence on binding decisions. The function of decisiveness is to open up the decision-making process giving *more* voice to citizens and social actors in representative democracies. In other words, overcome the principal-agent scheme and think representation less as a delegation and more as a relationship. A relationship that presents different modes, or involves different agents, depending on the issue at stake or the kind of solution required.

However, it will be naïve to think that these mini-bodies will no replicate inequalities so as they are in the wider public sphere. Moreover, if there is any criteria that defines in what terms those bodies are deliberative it could "result in judging a system as deliberative with little, or even nothing, in the way of actual democratic deliberation between citizens taking place" (2015, 218). Yet, the other way around I have consistently reviewed the problematic status of normative standards that are defined universally, meaning they apply equally to public representatives and citizens.

In this regard, the solution suggested by Parkinson is attentive to both points of the dilemma. Parkinson suggests a kind of proportional distribution of duties in the form of a 'stepped pluralism'. In short, the idea is that a normative requirement is necessary to be able to define when deliberation is good enough at any site of the system, but "it becomes more legitimate to move away from deliberative norms the less one is treated with like regard" (Parkinson 2012, 167). In other words, norms apply more strictly in the formal end of the public sphere, leaving the relatively powerless free to try by other means if they are treated unfairly; a privilege denied to the powerful at the other end of the public sphere.

3.3 From 'Deliberation within' to 'Deliberation with Others'

The final step concerns the theoretical model of deliberative reasoning underneath Dryzek's approximation to the systemic turn and Goodin and Niemeyer's definition of the deliberating self. In short, if deliberation within is the model to conceive the operation of practical reason it is pointless to suggest the necessity of meeting others more closely. The risk of elite manipulation oversteps the potential virtues, for example, of institutional coupling so far as, at the end, there is no need to meet others. On the contrary, I suggest that, indeed, meeting other is a condition of possibility for deliberative reasoning. Moreover, I consider that Hélène Landemore's definition of *Democratic Reason* (2013) provides a viable response to the question over why others are necessary.

Landemore presents her proposal in opposition to the model of 'deliberation within' (Goodin 2000; Goodin and Niemeyer 2003). She points to the deliberative intent for citizens to transition from the peripheral to the central routes towards attitude change. The peripheral route suggests that attitude change relies on cognitive shortcuts and intuitions, while the central route depends more on the careful weighing of positions and arguments. Goodin and Niemeyer highlight that there is nothing intrinsic to the central route that asks for deliberation with others. However, Landemore conversely suggests that,

> ... while human beings do not need an actual collective deliberation to be able to reason properly, the fact that the normal conditions of reasoning are those where one naturally encounters a variety of points of view makes it more likely that individuals will use central routes when discussing with other than when reasoning alone (Landemore 2013, 136).

The Argumentative Theory of reasoning proposed by Landemore, states that an "activity is deliberative to the extent that reasoning is used to gather and evaluate arguments for and against a given proposition" (2013, 127). Moreover, argument gathering requires not only information, but also argumentative interaction with real others. In other words, it is not sufficient for the virtual inclusion of other's perspective in one's mind using plain information, but necessary to be facing others and their arguments. From this perspective, the argument for deliberation within, seems problematic insofar as it will be acceptable, but in companion to actual deliberation with others.

As noted earlier, Goodin and Niemeyer ground their theoretical conclusion on the results of a citizens' jury (Goodin and Niemeyer 2003). Hélène Landemore however, has underlined several questionable aspects regarding the validity of the experiment itself (Landemore 2013, 132–35). For example, according to her, the design of the informational phase did indeed involve much deliberation with others, because invited witnesses talked and were interrogated by participants. Therefore, it seems to her that the first phase of the experiment did not fulfil all the requirements to be considered purely informational. Moreover, her main argument suggests deliberation with others may be not only recommendable if feasible, but from a deliberative perspective, preferable to deliberation within. She summarises the contribution of an argumentative definition of deliberation as follows:

> To sum up, according to the new theory presented here, reasoning is an argumentative device. Its function is social: to find and evaluate arguments in a dialogic context. The key aspect of the argumentative theory of reasoning is that contrary to traditional classical models, which see reasoning as best deployed in the solitary confinement of one person's mind, reasoning is here assumed to perform best when deployed to argue with other human beings. In other words, reasoning is supposed to yield an epistemic betterment of individual beliefs through the social route of argumentation rather than the individual route of private ratiocination (Landemore 2013, 130).

First, instead of the search for truth, argumentation theory suggests that the function of reasoning is to find and evaluate reasons, that convince other people and evaluate their arguments in dialogic contexts (2013, 126). Second, the definition demands that both steps are necessary to find reasons, and to evaluate them. Indeed, each shape two different tasks, both necessary for deliberative argumentation. On the one hand, participants need to produce arguments to support their position but, on the other, they should also be capable of evaluating arguments raised by others in support of their own beliefs. Third, both processes are necessary, so that the evaluation of reasons raised by others cannot be made in the light of my necessity to support mine, and the solution for this risk (confirmation bias) is to consider that 'normal' conditions for deliberation are 'social' (2013, 127).

The most hitting thing about this argumentative turn is that it does not entail a rejection of the Habermasian foundations of deliberative democracy. Although theories of deliberative democracy ground their normative claims regarding discourse in Habermas' *Discourse Ethics* (1990a), argumentation theory occupied a prominent place in his understanding of discourse and communication. Indeed, deliberation was defined as a model of rational argumentation and, in his words, "to it [argumentation theory] falls the task of reconstructing the formal-pragmatic presuppositions and conditions of an explicit rational behaviour" (Habermas 1989c, 1:2). Nevertheless, as Isabela Fairclough recently underlined, "neither political theorists nor discourse analysts seem to be aware of the way deliberation is theorised in argumentation theory, nor of how deliberative practice can be systematically evaluated as an *argumentative* activity" (I. Fairclough In Press)

Indeed, deliberation holds a prominent place in current argumentation theory (I. Fairclough and Fairclough 2013; McBurney, Hitchcock, and Parsons 2007; van Eemeren 2013; Walton et al. 2010). It is considered an argumentation 'genre', thus, a "socially ratified way of using language connected to a particular type of social activity" (N. Fairclough 1995, 14). The centrality of deliberation for argumentation in the political domain is justified, because "[p]olitics has to do primarily with decision for action on matters of common concern, and decisions are the outcome of deliberation" (I. Fairclough and Fairclough 2013, 236). The main type of reasoning of deliberation is practical reason, and it is defined as "considering *alternative practical arguments*, supporting *different claims* and examining and weighing considerations that support these alternatives" (2013, 50).

Therefore, following Landemore, I leave aside discourse ethics and move one step back to the argumentation theory which preceded it. From this perspective, some of the basic tenets of Habermas' model remain valid, but it is not necessary to stick to his moral and legal theory. Indeed, the universalization of principles regulating discourse as norms regulating action coordination, either for moral or legal norms is a step that grounds his moral and legal theory; the basis of which articulates his definition of deliberative democracy. But, argumentation theory provides tools for the analysis of argumentation. In other words, standards may ground empirical analysis and assess argumentation in the light of ideal templates, but they do not judge the appropriate moral or political behaviour of participants; this is left for normative theories of democratic politics and these theories can both reasonably and legitimately differ.

Landemore, explained this additional virtue of the argumentative turn, because

> ... the claims made by the argumentative theory of reasoning are descriptive – that
> is, they can be true or false – but they have no implications in terms of what is
> morally right or wrong or in terms of the norms that ought to guide deliberators
> (Landemore 2013, 129).

She does not deny the claims that this theory of reasoning is "compatible with many normative views of politics", but she states that it "does not carry a normative agenda by itself" (2013, 129). It is on this basis that this proposal provides the analytical rigour to ground the analysis of discourse in the light of, for example, the deliberative minimum. I bring about the normative agenda on the multiple bases established in this section, but the assumption for grounding the empirical analysis does not carry a normative agenda of its own

4   Conclusions: Normative Baseline

In general, the systemic turn retains the classic emphasis on deliberative functions as a cooperative effort aimed at seeking truth (an epistemic function), mutual respect and recognition (an ethical function), and inclusiveness (a democratic function). It is in the light of those normative requirements that systemic inadequacies are defined. Indeed, by guaranteeing security in the context of mutual respect, and an inclusive process of collective choice, "[t]he successful realisation of all three of these functions promotes the legitimacy of democratic decision making" (Mansbridge et al. 2012, 12).

From the discussion above I can specify those requirements to be fulfilled to different degrees at different levels and sites of the system and, for the particular case under analysis in this dissertation, I take the deliberative minimum to represent the normative baseline.

The deliberative minimum requires at each site "a relation to others as equals engaged in the mutual exchange of reasons *as if* to reaching a shared practical judgment" (Owen and Smith 2015, 228). This formulation could be interpreted as one which entails two compound requirements. "A relation to others as equals engaged in the mutual exchange of reasons", which basically refers to 'mutual respect'. On the other hand, the disposition to engage in this mutual exchange of reasons "*as if* to reaching a practical judgment" seems to resemble Parkinson's concern about the loosening of 'reasoning together'" (Parkinson 2012, 167).

Regarding the former, if we look at the *Discourse Quality Index* (Steenbergen *et al.* 2003), for example, mutual respect is specified as respect towards groups, respect towards demands under discussion, and respect to counter arguments. The importance of the last two is stressed because "[i]n particular, respect towards counterarguments is a necessary condition for the weighing of alternatives, which some view as an essential element in deliberation" (2003, 26). Moreover, current argumentation theory is concerned on this particular mode and defines, in line with this definition, that deliberation *at a minimum* requires "balancing each argument against a *counter-argument*" (I. Fairclough and Fairclough 2013, 236).

In sum, the normative baseline refers to 'mutual respect' as deliberation *at minimum* for each site of the system and entails participants engage in an exchange of reasons balancing arguments against counter-arguments.

Regarding the latter, concerns on the loosening of 'reasoning together' basically underline the expectation that at some point deliberation leads towards social integration based on reason. Parkinson resumes this aspiration on the idea that "[p]olitical legitimacy involves not just doing things right, but doing the right things." (2012, 158) Yet, Parkinson himself and Owen and Smith (2015, 226) suggest this aspiration should be calibrated differently in different sites of the system and both point to Archon Fung (2003, 2005).

Fung suggests that we may be able to acknowledge that, despite Habermas' contribution to reintroduce the common good, or rather the essential connection between individual liberties and collective rights,

> ... as attractive as they are, the very revolutionary nature of these accounts renders them incomplete. In particular, they offer little guidance regarding the responsibilities of deliberative democrats in the decidedly non-ideal circumstances that characterise contemporary politics (Fung 2005, 398).

In short, as Fung plainly stated, the aim is to provide "an account of how it is possible to practice deliberative democracy in the face of inequality and hostility without being a political fool" (Fung 2005, 416). To assesses whether violations of ideal conditions occur at the institutional level, he defined an analytic scheme in the context of which, deviations from ideal deliberative behaviour on behalf of citizens might be allowed. The novelty of this approach is that when non-ideal conditions are in place, it permits the assessment of citizens deliberation and the contribution of mini-publics, to provide for "public accountability, social justice, effective governance, and popular mobilisation" (Fung 2003, 340).

Therefore, the disposition towards agreement is considered in relation to the wider system and in the context of which deliberation is aimed at contributing. But takes into consideration actual conditions in which deliberation, specially citizen's deliberation, takes place.

The centrality of 'mutual respect' in the assessment of deliberation covers one among the three functions associated in the systemic turn to deliberative systems; the ethical function. The assumption is that not every site should fulfil all of them, 'mutual respect' reflects what is expected *at minimum,* but the other two aspects should also be taken into consideration, although at the system level. More specifically, the analysis should be attentive to the democratic and epistemic aspects.

The democratic aspect of the systemic turn requires the system to be an inclusive political process regarding equality (Mansbridge et al. 2012, 12). The inclusion of multiple and plural 'voices, interests, concerns, and claims' is not considered an ethical addendum, but "the central element of what makes deliberative democratic processes democratic" (2012, 12). Moreover, exclusion can only be justified "by all citizens, including the excluded" (2012, 12). In this regard, discussion underlined, however, inclusion should be accompanied by decisiveness, specially, in the case of complex diversity where the differentiation between sites for decision and space for deliberation is the problem.

Finally, the epistemic aspect of the systemic turn entails that the function of a deliberative system "is to produce preferences, opinions, and decisions that are the outcome of substantive and meaningful considerations of relevant reasons" (Mansbridge et al. 2012, 11). Relevant considerations should be brought forth "from all corners, aired, discussed, and appropriately weighed" (2012, 11) Publicity is not necessary, but recommended, because deliberations involve issues of common concern, epistemically grounded preferences, or opinions, and "decisions must be informed by, and take into consideration, the preferences and opinions of fellow citizens" (2012, 11).

All amount to reasons suggesting the epistemic adequacy of 'listening to what others have to say'. In this regard, the model sketched above goes one step further. Hélène Landemore (2013) suggests deliberation also provides democratic decision-making with greater epistemic quality. As rightly noted by Parkinson (2012), empirical proof in this regard is problematic, however, in theory, the epistemic quality of decision-making processes that combine 'deliberation with others' and majority rule, is sustained by the fact that by involving more people the probability of greater 'cognitive diversity' increases and 'cognitive diversity' outperforms ability for collective problem solving (Landemore 2013, 89–117). In short, 'the many are smarter than the few.'

Moreover, 'cognitive diversity' refers to "the variety of mental tools that human beings use to solve problems or make predictions in the world" (2013, 89). They include perspectives, interpretations, heuristics, and predictive models. These resources are distributed all around the deliberative system, and what an inclusive deliberation provides, is the means to bring these resources together to a process of 'deliberating with others.' Therefore, it is better to have a group of cognitively diverse people than a group of people who think alike. In short, 'the many are smarter than the few, no matter how diverse are many."

Finally, Landemore adds that we are obliged to "notice that cognitive diversity is correlated with other forms of diversity, such as gender and ethnic diversity", therefore, "the argument suggests that affirmative action and the use of quotas might be a good thing not just on fairness grounds, but also on epistemic reasons" (2013, 103). Therefore, the idea that cognitive diversity is the main asset of democratic decision making from an epistemic perspective provides added value to the compound requirements of inclusiveness and deliberation with others. Even taking a conservative stance towards the argument, we can advance, on these bases, the hypothesis that complex diversity, does not preclude but could enhance the epistemic capacity of deliberation among the many over the few.

In sum, the normative baseline for the case-study requires deliberation to be inclusive and decisive, to be based on a mutually respectful exchange of arguments and counterarguments with others and prone to enhance the cognitive diversity involved in the decision-making process.

Chapter V

Concrete Politics (IV): The Konpondu Initiative

The deliberative exercise analysed in this dissertation is *Konpondu. The Initiative for Citizens Participation in the Construction of Peace* (CICR 2007, 2009) Together with several civil society organisations, it was held by the Basque Autonomous Government[70] between 2007 and 2009. Its aim was to foster citizen's participation in the resolution of the Basque conflict. Over a period of almost two years, citizens expressed their opinions and discussed with peers, politicians, and experts on the opportunities, risks, and paths to follow. In total, the initiative provided support for participation in citizen's forums held in 101 municipalities (153 forums), the diaspora (16), the university (6) and the youth council (6), as well as a web forum (www.konpondu.net) where more than 20,000 comments were collected and over 1,000.000 hits documented.

Several features make this initiative unique. It was initiated by the government, and therefore close to decision making. It was implemented in a very tense environment marked by heightened emotions, during a period of escalation in the aftermath of peace negotiations between 2005 and 2006 The political arena was one where communication was highly segmented and political dialogue was characterised by no communication among parties at all (Goikoetxea 2010). In a multilingual society, with a minority language (Basque) struggling for survival against the second most spoken language worldwide (Spanish), and in a multinational state with strong territorial tensions and all that implies.

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[70] Entities that participated the initiative: Presidency of the Basque Government, EUDEL (Association of Basque Municipalities), *Parte-Hartuz* (Research group at University of Basque Country), *Lokarri* (Citizens Network for Peace), *Basque Youth Council*, *Emakunde* (Women's Institute) and the Direction for Public Participation of the Basque Government.

Nevertheless, the most challenging feature of this exercise was the political context in which it took place. At that time, the Basque Country was host to the last violent conflict within the EU, which, since the beginning of hostilities, had accounted for 1.430 casualties[71], 3.993 military actions, 30.000 arrests, and 4009 officially documented alleged instances of torture in a small country that barely passes 3 million inhabitants[72]. Therefore, political debate in the Basque arena has been completely determined by a sequence of events that made a constructive approach almost impossible. In short, The Konpondu Initiative involved almost every feature that suggested it was bound to fail. However, it is for this reason that it provides an invaluable standpoint to analyse how deliberative initiatives stand up to the difficulties of a society coping with deep divisions, and where the fault lines are rooted in substantially different understandings of the relationship between identity, democracy, and the state in the context of a contemporary European liberal democracy.

The documentation grounding this case study include the transcripts of 117 forums held in 66 municipalities with 1170 participants, 773 evaluation sheets, methodological guides provided to practitioners, media recordings, leaflets and other materials produced to promote the initiative, as well as academic, operative, and executive summaries evaluating the process and its outcomes, among others[73]. The analysis will show, that the role of a deliberative exercise like *The Konpondu Initiative*, could create opportunities for constructive engagement in a situation far from ideal for deliberative dialogue. To that end, I present a compound analysis of the contextual circumstances, institutional design choices, and citizens discourses in *The Konpondu Initiative*.

To begin, I will establish the analytical framework that structures the empirical analysis of *The Konpondu Initiative*. This section will specify how I am going to empirically implement the conceptual bases established in the previous chapter, as well as defining the main research question and hypothesis resulting from the precedent critical-conceptual analysis.

Second, I critically assess the wider socio-political context, and the institutional design choices for the case of *The Konpondu Initiative*. This section, will determine the relationship between the concrete features of the site or communicative setting, the wider political process, and the outcomes of the initiative.

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[71] Sources: Ministry of Interior (http://www.interior.gob.es/) and Euskal Memoria (http://www.euskalmemoria.eus/eu/db) (Consulted: 2017-08-13).

[72] Source: Gaindegia (http://www.gaindegia.eus/) (Consulted: 2017-08-13).

[73] A complete list is provided in Appendices.

Third, I present a discourse analysis of citizens' deliberation, where I will apply the linguistic analysis to the study of deliberation as a genre. This methodological choice is unconventional, however, the material collected on The Konpondu Initiative is equally distinct from known previous deliberate experiments. Nonetheless, it allows for a compound analysis of contextual variables, institutional design choices, and deliberative discourse.

1   Analytic Frame: Deliberation Genre

As already noted, in argumentation theory, deliberation is an argumentation 'genre': "a socially ratified way of using language connected to a particular type of social activity" (N. Fairclough 1995, 14). In the case of deliberation, the main type of reasoning is practical reason, and defines deliberation as "considering *alternative practical arguments*, supporting *different claims* and examining and weighing considerations that support these alternatives" (I. Fairclough and Fairclough 2013, 50). More concretely, *at minimum* deliberation requires "balancing each argument against a *counter-argument*" (2013, 236).

In the light of this definition, the link between deliberative and argumentative definitions of deliberation *at minimum*, underlines the central role both assume for counter-arguments. While the crucial difference is that from the perspective of Argumentation Theory, this minimum does not provide an ethical principle of discourse, but a minimal requirement for the structure of argumentative discourse to be considered deliberation. However, to take deliberation as 'genre' entails three further assumptions: deliberation is a communicative practice, this communicative practice evolves through different stages, and these stages are determined by the general purpose of the communicative event under analysis.

From the perspective of Argumentation Theory, deliberation is assessed and reconstructed in the light of an ideal model of 'critical discussion' (I. Fairclough and Fairclough 2013, 54; van Eemeren 2013). Critical discussion frames deliberation as a collective procedure of argumentation, thus, deliberation is detached from its reclusion in the deliberating individual (I. Fairclough and Fairclough 2013, 34). Moreover, this ideal model is anchored in four meta-theoretical principles: i) functionalization, ii) externalisation, iii) socialisation and iv) dialectification (van Eemeren 2010, 2:5).

First, argumentation is considered a complex of linguistic acts with a 'communicative function' in a discursive context. Second, instead of trying to grasp internal motives, the focus is placed on 'public commitments' participants undertake through speech acts, and what the consequences of those commitments are for the argumentative process. Third, argumentation always involves disagreement among 'two or more inter-actants' aimed at finding a reasonable solution. Finally, the study of argumentation is not merely a descriptive endeavour, but involves a normative dimension. Together, functionalization, externalisation, socialisation, and dialectification, define deliberation as a communicative practice.

In addition to this, the procedure of critical discussion unfolds in a sequence of stages. The four stages analytically distinguished in the model of critical discussion correspond to

> ... the different phases any argumentative discourse must pass through, albeit not
> necessarily explicitly, to resolve a difference of opinion on the merits (2010, 2:10).

In the ideal model, for example, stages include: i) an initial disagreement (*Confrontatio*n); ii) the definition of standpoints at issue (*Opening*); iii) challenge/defence interactions (*Argumentation*) towards; and iv) the final result (*Concluding*) (2010, 2:10–11).

These ideals serve two main aims: a) the analytical reconstruction of the process of argumentation and b) its critical evaluation. The crucial underlying idea, is the link argumentation theory establishes between genre related stages, and argumentative profiles. In short, each stage corresponds to a 'dialectical profile', and each 'dialectical profiles' assists the reconstruction of pragmatic moves whereby participants advance towards solutions to their differences; in our case using deliberative argumentation (van Eemeren, Houtlosser, and Henkemans 2007). Therefore, deliberation is argumentation that unfolds in a series of stages that allow it to be analytically reconstructed, and against which deliberative dialogue can be critically evaluated.

Finally, the reconstruction of argumentation transcends the level of logic – schemes and structures– not only using pragmatic moves – stages – but also carefully attending to different contextual levels (van Eemeren 2010, 2:17–18). Along with the linguistic context – micro-context – attention is given to the specific properties of the setting, and situations where the reconstructed argument occurs – the meso-context – and the 'genre', or type of speech event of which this argument is part – macro-context – (van Eemeren 2016, 19).

In other words, argumentative speech acts are uttered in speech events – in this case The Konpondu Initiative – and considered instantiations of more general communicative practices – participatory deliberation. These practices are conventionalized in the form of communicative activity types – mini-publics – implementing different genres of communication activity – deliberation – for each domain of communication – in this case, political communication (van Eemeren 2010, 2:138–44).

Indeed, it is by using the appropriate genre of communicative activity for example, that mini-publics could serve the 'institutional point' or "exigency in response to which the activity type has come into being" (van Eemeren 2016, 9). In the case of deliberation genre, this purpose is specified by the socially ratified way of using language, with the institutional mission being that of "preserving the democratic political culture" (van Eemeren 2013, 19).

At a minimum then, deliberation entails mutual respect that with regard to argumentation theory and deliberative democracy, underpins the central role played by counter-arguments. Nevertheless, instead of respect towards counter-arguments, argumentation theory underlines the use of counter-arguments to support or reject one's claims, as expressed in the structure of argumentative discourse. To properly assess the discourse structure of argumentation demands a consideration of how argumentation overcomes the level of logic, and represents a communicative practice. This assumption requires argumentation to proceed through a sequence of stages that are aimed toward a general purpose, and both are given to each communicative event by 'genre'. Therefore, the concept of genre becomes the crucial link connecting text, speech, and context.

It is on this basis, that I will analyse whether *The Konpondu Initiative* provided an appropriate political ecology to enable movement toward more constructive engagement among participants. Constructive engagement is assessed in the light of the degree to which participants' discourses achieved the deliberative minimum. I therefore test, whether contextual variables associated with the general purpose of The Konpondu Initiative, institutional determinants in the form of design choices or cultural profiles associated with the identity of the participants, actually influenced the deliberative behaviour of participants.

The main hypothesis is that the diverse identities involved, will enhance the deliberative structure of argumentation in citizens' discursive interactions, and that the extent to which participants are capable of engaging in constructive dialogue, will depend largely on contextual variables, as well as the institutional design-choices of the concrete deliberative event in which deliberation takes place. In short, I will show, that the question of whether the many are smarter than the few, largely depends on the capacity of the deliberative system to provide, at each site, the means for different perspectives to *recognise* each other, and engage in a constructive argumentative exchange. To do this effectively, I will proceed in three steps.

First, I will clarify the relationship between the initiative and the wider socio-political environment, in which it took place (the macro context). By illustrating the socio-political background of the initiative in the period between 2006 and 2009, I will be able to assess its contribution in the context of the wider political process which defined its shared purpose.

Second, I will attend to the characteristics of the setting (the meso context). By moving forward to the analysis of the specific design choices, I will be able to determine how far The Konpondu Initiative contributed to its institutional goal, or its shared purpose. This step is necessary to reveal conventions, and with an understanding of these, define the structure of the communicative event. In other words, define the sequence of stages leading the event towards its shared purpose.

The third step is to analyse the discourse structure of texts in the corpus (micro-context). This step is crucial, insofar as it is on the basis of this, that I will be able to test whether relational discourse structures of text, map onto the stages of deliberation genre, and whether they were affected by institutional design choices, or dependent on the linguistic identity of participants.

Each of these features of the communicative event under analysis represents an indicator of, correspondingly, the macro-context (stages), meso-context (design-choices) and micro-context (language) of texts. Therefore, in the end, I will be able to test the main hypothesis of this dissertation using a compound analysis of deliberation as a structure of argumentation in context.

2   Macro-Context: The Basque Conflict

The Konpondu Initiative tabled citizens a question, about a problem, with a seemingly intractable solution: peace in the Basque country. Beginning in the 1950s, in the context of Franco dictatorship, the violent conflict that characterised the region, survived the Spanish transition and became, for the time when The Konpondu Initiative took place, the last remaining violent conflict within the EU. Several attempts had been made to resolve the conflict over a long period. Historically, the negotiation process in Algiers (1989) between ETA and the Spanish Government, and the agreement of Lizarra-Garazi (1998), mark two important staging posts. Nevertheless, it is precisely just before, and closely after The Konpondu Initiative, that the sequence of proposals became especially prolific.

Within a short time-span, the *Christian-Democrat Nationalist Party* (EAJ-PNV) presented the so-called *Ibarretxe Plan* (2004), and the leftist nationalist movement (*Abertzale Left*) its proposals of *Anaitasuna* (2007) and *Uztaritz* (2007). More conflict resolution oriented proposals were the *Anoeta Proposal* (2004) or the *Consultation Law* (2008). Finally, unionist parties (PP and PSOE) met in the *Agreement for the Liberties and against Terrorism* (2000). All of these initiatives failed.

The last attempt for official negotiations between ETA and the Spanish government took place. just before *The Konpondu Initiative*. In 2005, the Spanish President Jose Luis Rodriguez Zapatero (PSOE) asked the parliament for permission to open talks to ETA. This step was unprecedented, and marked the beginning of a dialogue that lasted for a very short time.

A year later, two tables were constituted: one in Geneva sitting delegates of the Spanish Government and ETA, and another one in the village of Loiola, with representatives of Basque political parties. Official records account for the first meeting between ETA and the Spanish government in June 2006 (Whitfield 2014, 151). However, only three months later, on August, ETA released a statement suggesting that the peace process was at stake. In September, ETA and the Spanish Government met again in Geneva. The third meeting between them took place in October, this time in Oslo, and in a palpable atmosphere of crisis, marked by complaints from both parties about a bomb attack perpetrated by ETA in Madrid with the consequence of two civil casualties.

In the midst of this, *Batasuna*, the outlawed political party of the *Abertzale Left*, the *Christian-Democrat Nationalist Party* (PNV) and the Basque branch of the *Socialist Party* (PSE), inaugurated their talks in Loiola. In between September and November, political parties met 12 times aimed at finding a viable solution to the Basque conflict (Murua Uria 2014, 7). Indeed, they arrived close to an agreement, according to reports. However, in November the Loiola talks also broke down.

According to experts that followed the course events closely, the failure of the *Loiola talks*, and the *Geneva Negotiations* had a devastating effect. In her recent book on the Basque conflict, Teresa Whitfield explained what occurred by quoting Irish Journalist Paddy Woodworth: "I had never seen such pessimism amongst those characterised by different ideologies as on this visit" (Whitfield 2014, 201). Indeed, the preparation and setting of this negotiation process took longer.

By 2001, Jesus Egiguren, who became the elected president of the PSE in 2002, and the leader of the *Abertzale Left*, Arnaldo Otegi began to meet secretly. According to Imanol Murua, the content of those talks lead the former to publish an epilogue titled *"Bases for a solution"* (Egiguren 2003) in which he acknowledged a solution inspired by the Canadian Constitutional Court ruling on Quebec, might have been possible[74] (Murua Uria 2014, 11–17). On the other side, this publication was followed by a change in position of Batasuna, and was formalised in the *Anoeta Proposal* (2004). In short, the *Anoeta Proposal* (2004), introduced the two-table scheme later implemented in peace talks. This methodology meant that, unlike previous attempts, the Abertzale Left assumed that political negotiations were to be conducted by political representatives. Thus, ETA and Government limited their roles to the discussion of the so-called consequences of the conflict; meaning, victims, arms-decommissioning, and political prisoners (Zabalo and Aiarza 2010, 35).

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[74] In short, if a qualified majority of the Basque people was willing to vote for independence Spanish authorities shall acknowledge this claim but this right was not innated to the Basque Country but the consequence of a democratic mandate. Ref to case docs

The fact that parties from both sides met according to the definition of the methodology represented a major step forward. Accordingly, the end of the peace process indicated the failure of a long walk that aimed to build up a democratic situation. In January 2007, in the aftermath of ETA's bomb attack, the government declared the peace process was dead. Two further meetings took place in Geneva: first, between ETA and the Government, and later with the inclusion of the *Abertzale Left* and International observers. Nevertheless, talks failed. In June 2007 ETA declared the end of the cease fire officially and resumed its armed campaign by killing two members of the *Guardia Civil* in Capbreton (France).

This is the context in which *The Konpondu Initiative* took place. The political umbrella of The Konpondu Initiative was the *Initiative for Citizens Participation in the Construction of Peace*, presented in September 2006 in the Basque Parliament by Juan Jose Ibarretxe. Therefore, in parallel to peace talks among parties in *Loiola*, ETA and the Spanish government, began to blame each other for the lack of progress in the peace talks. The web page hosting online forums was launched the 19th January 2007, 20 days after ETA's bomb attack in Madrid. Moreover, the *Citizen's Participation Plan,* the institutional materialization of the initiative was announced in June 2007. Just after *Geneva Talks* broke down, the same month Arnaldo Otegi was imprisoned, and ETA declared the cease fire over (Whitfield 2014, 200).

In practical terms, The Konpondu Initiative consisted of three channels, each providing citizens with different platforms to make their voice heard on the resolution of the Basque conflict. The first channel was officially opened on 19th January 2007[75]. *Konpondu.net* was a platform whereby citizens had the opportunity to send their opinions, feelings, and proposals to political parties, while hosting institutions took the role of transmitting them. The second channel was more ambitious. It involved citizens' forums in several municipalities all over the territory of the Basque Country and the diaspora. The initiative was launched in March 2007 in agreement with EUDEL, the Association of Basque Municipalities, and the University of the Basque Country (UPV-EHU). Finally, it also included a more informal track for civil society groups, stakeholders, and other peace organisations.

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[75]Source: http://www.euskadi.eus/gobierno-vasco/contenidos/noticia/inter_20070119_konpondu/es_int_konp/inter_20070119_konpondu.html (Consulted: 2017/06/17).

The initiative was valued as much as it was criticised[76]. The first source of mistrust came from other political parties, who blamed the initiative as incoherent due to the small role the PNV was playing in the peace process[77]. Indeed, according to Jorge de la Herran[78], who was responsible for the firm that managed the web service, the initiative failed to gather more support, because of its strong connections with the Government. Nonetheless, as the report, written by experts from the *Columbia University* (CICR 2007, 2009) testifies, it was also valued as an innovative approach to both conflict resolution and citizens participation. Indeed, the initiative was part of a wider program, sponsored by the *Lehendakari*, and justified as an attempt to make the government an active agent for peace and resolution[79]. Ibarretxe presented his road map for peace in September 2007, and his speech began by referring to "the more than 50 participation forums or more than million hits the *Konpondu.net* web page has" (VIII/68/20070928, 37). The roadmap consisted of several steps.

The first was the offer of a political agreement to the Spanish Government to be achieved before June 2008. Second, he proposed a plenary in the Basque Parliament to ratify the agreement, and authorise a consultation to the Basque society. If there was no agreement, the plan included an 'enabling' consultation, to clarify the democratic mandate of Basque institutions. Finally, the plan included the consultation, dated the 25th of October 2008. The consultation would have asked citizens, first, "if they supported a solution to violence through dialogue if ETA had previously expressed its unequivocal intention to end violence" and "if Basque political parties should initiate negotiations to reach a democratic agreement on the right to decide" (Whitfield 2014, 200).

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[76] Source: http://www.agoranet.es/blog/la-participacion-ciudadana-sigue-siendo-una-asignatura-pendiente/ (Consulted: 2017-08-13).

[77] According to Imanol Murua, the role of the PNV was reduced "to play the mandolin" aimed at getting Romeo and Julieta to kiss each other (Murua Uria 2014, 232). This quote refers to the explanation given by Josu Jon Imaz, former president of the PNV, of their role during *Loiola Talks*.

[78] Interview conducted in the course of this research (Bilbao, 2014-02-19).

[79] Source: http://www.legebiltzarra.eus/pdfdocs/publi/2/08/000038.pdf (Consulted: 2017-08-13).

As planned, the project was passed by the Basque parliament on the 27th June 2008. The parliamentary vote was divided in two blocks. 34 members of parliament voted yes, including the three government parties (EAJ-PNV, EA[80] and EB[81]) and the branches of the left nationalism (EHAK[82] and Aralar[83]). On the other side, the 33 members of parliament of the two unionist parties (PP and PSE) rejected the initiative. Indeed, the Spanish government brought an action against the initiative to the Constitutional court the same day, and after deliberations, the court outlawed the plan in 11th September 2008 due to a violation of art. 149 of the Spanish Constitution. The article establishes that consultations are the exclusive competence of the State.

Indeed, almost no debate on the initiative itself took place. The initiative was considered the second act of the *Ibarretxe Plan* (Castells 2003), a governmental initiative to reform the basic framework regulating Basque institutional self-government approved by the Basque Parliament in 2003 and discussed and rejected in the Spanish Parliament in 2005. Indeed, the debate between Jose Luis Rodriguez Zapatero and Juan Jose Ibarretxe included exchanges that related back to the core of the controversy. In one moment during his intervention, Zapatero reclaimed from Ibarretxe reasonableness 'because we have to be able to live together' and Ibarretxe replied 'to live together, we have to able first to decide whether we want to live together.'

Ibarretxe lasted in government for several months after his initiative was rejected. Indeed, The Konpondu Initiative remained until January 2009 and closed its doors in parallel to the end of Ibarretxe's legislature. For the first in the Basque Autonomous Community, a government led by a unionist party was constituted. Patxi Lopez was designed Lehendakari the 7th of May 2009. The *Konpondu.net* web page was shut down for the following 15 days[84]. Nevertheless, the peace process lasted, and civil society found its way through, with or without governmental support.

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[80] Splinter social-democratic party of the PNV created in 1986 (http://www.euskoalkartasuna.org/) nowadays is part of the coalition EHBildu.

[81] Basque branch of Spanish United Left until 2011, disappeared in 2014. Source: https://eu.wikipedia.org/wiki/Ezker_Batua-Berdeak (Consulted: 2017-08-13).

[82] Basque Communist Party created in 2002. It took part in elections for the Basque Parliament for the first time in 2005 after the illegalisation of the platform *Aukera Guztiak*. The parliamentary group named *Abertzale left.* Source: https://eu.wikipedia.org/wiki/Euskal_Herrialdeetako_Alderdi_Komunista (Consulted: 2017-08-13).

[83] Splinter party of Batasuna created in 2001 (http://www.aralar.eus/) nowadays is part of the coalition EHBildu.

[84] Source: http://paulrios.net/tag/konpondu/ (Consulted: 2017-08-13).

In the aftermath of the ceasefire, the *Abertzale Left* conducted an extensive debate that resulted in a resolution entitled *Zutik Euskal Herria* (2010). Therein, it publicly announced its unilateral commitment to the campaign for independence, exclusively by civil and political means, thereby confirming their commitment to peace by undertaking, and calling for others to undertake, the so-called *Mitchell Principles*. *Zutik Euskal Herria* was followed up by a series of declarations and agreements at both national[85] and international levels[86], culminating a year later in Donostia for the *"International Conference to promote the resolution of the conflict in the Basque Country"*[87] (2011).

The *Aiete Conference*, chaired by Kofi Annan, Gro Harlem Brundtland and Jonathan Powell, and backed among others, by Jimmy Carter and George J. Mitchell, sat together with international personalities, representatives of Basque society, and, with the exception of the PP, all political parties from both sides of the border. The most important direct effect of the *Aiete Conference* was that on the 20th October 2011, ETA declared the definitive cessation of its armed activity. On the other side, the Spanish government refused to play any role in the process. Moreover, the narrative of the Spanish government (Powell 2014, 109–43; Whitfield 2014, 265–86), led since 2011 by Mariano Rajoy, was that ETA had been defeated because of the effectiveness of the security forces and, moreover, the absence of a realistic expectative of a peace process.

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[85] At national level, different agents including political parties (EA, Alternatiba, Aralar, EB), labour unions (LAB, STEE-EILAS…), social movements and civil society organizations gave this approach a positive reception endorsing the *Gernika Agreement* (2010). In the following years, this agreement was materialized in the institutional arena by several coalitions of forces (Bildu, Amaiur and EHBildu) that received a strong electoral support becoming in 2012 the second political force of the territory (%25), behind the PNV (34,61%).

[86] At international level, the *Brussels Declaration* (2010) became the reference. Several international personalities – Archbishop Desmond Tutu, Mary Robinson, John Hume, Albert Reynolds, Frederick DeKlerk, the Nelson Mandela Foundation and Jonathan Powell – welcomed the "proposed steps and new public commitment of the Basque pro-independence (Abertzale Left) to 'exclusively political and democratic' means" considering that "this commitment can be a major step in ending the last remaining conflict in Europe."

[87] The conference concluded with a comprehensive roadmap. The roadmap included 5 points calling upon ETA to "make a public declaration of the definitive cessation of all armed action", upon the Spanish and French authorities to "welcome it and agree to talks" on the consequences of the conflict, urged for "major steps be taken to promote reconciliation, recognize, compensate and assist all victims", suggested the appropriateness of addressing "other issues" that could contribute to a new era without conflict and, finally, the international personalities involved in the conference agreed to create a committee to follow up this recommendations (Aiete 2011).

In the immediate aftermath of the *Aiete Declaration*, *Lokarri*[88] assumed the peace process in the Basque Country was at risk. Indeed, in its last annual report, *Lokarri* highlighted the risks that were perceived to menace the peace process. However, taking a constructive stance, a change was proposed in the extant paradigm based on two ideas (Lokarri 2014). First, civil society should play a leading role in the resolution process, representing the majoritarian will of Basque society in favour of a resolution process. Second, civil society should look for mechanisms with enough legitimacy to encourage new steps by political representatives towards lasting peace.

In practice, this change of paradigm led to the organisation of the *Basque Social Forum* in March 2013. The forum was organised by several associations including *Lokarri* itself, *Citizen's Network for Peace*, *Bake Bidea*, *Ahotsak* and several other associations supported by NGOs and International Organisations. More than 700 people took part, and a set of recommendations was released (Social Forum, 2013). Moreover, several similar initiatives took place in the following months to socialize its conclusions.

Recommendations state the need for "an exercise of dialogue and reconciliation that establishes a solid basis for future coexistence through the wide-ranging and active participation of institutions, political parties and civil society". It urges the design of a process to disarm ETA and dismantle its military structures. It reclaimed the "integration of prisoners and people on the run" and recommends the promotion of human rights "facilitating different ways of narrating and remembering what happened, encouraging self-criticism in every social and political sector and an honest exercise of recognition of the serious mistakes made."

According to Paul Rios, the outcome of this forum should not be underestimated. It provided a unique opportunity to bring together social sectors willing to cooperate in the peace process, and contributed to the search for new solutions and helped to "add legitimacy to an agenda for the Basque peace process, at least by ensuring the key issues for Basque society are represented in discussions" (Rios 2014, 43). Indeed, it facilitated a paradigm shift regarding conflict resolution in the Basque case.

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[88] *Lokarri* was a citizens' network (https://eu.wikipedia.org/wiki/Lokarri_(gizarte_mugimendua) that together with *Conciliation Resources* (http://www.c-r.org/) and *Berghof Foundation* (http://www.berghof-foundation.org/) hosted the *Aiete Conference,* and collaborated in the setting and development of The Konpondu Initiative.

Until then, elite negotiations characterised all attempts; the actors changed, but closed-doors ruled the talks. Yet, in the absence of closed-doors tracks, Rios summarised the proposal of the civil society as follows. In the face of radical disagreement between the two main parties involved, moving forward demands that the Spanish government must modify its prison policies, "not because ETA is asking for it, but because Basque society is calling for it." At the other end of the equation, ETA must take steps towards disarmament, "not because the Spanish government is demanding it, but because Basque society needs it to eliminate any kind of threat*" (Rios 2014, 41). Moreover, in the light of forthcoming events, it seems that finally, some, though not all, took notice.

On the 8th of April 2017, an event took place in Baiona (North of the Basque Country), where ETA completed its disarmament process by releasing its stockpile of weapons to a civil society organisation named *Les artisans de la Paix*, and under the supervision of the *International Verification Commission* and representatives of the Vatican. This unexpected sequence of events leaves a scenario that, according to the New York Times, represented "the region's best chance in decades for a durable peace"[89] (*The New York Times* 2017/04/14).

3   Meso-Context: Institutional Design-Choices and Outcomes

To call deliberation a 'genre', infers that argumentation represents not only a theoretical construct, but also that it is a communicative practice. Therefore, analysis involves different levels. On one level, the macro-contextual dimension of political deliberation connects each communicative activity type with the wider political process. In this case, The Konpondu Initiative was designed to involve citizens in the resolution of the Basque conflict. More concretely, to

> ... offer regular citizens the opportunity to participate in constructing peace in the
> Basque region and for their participation to contribute to progress in the peace
> process and normalisation (CICR 2009, 32).

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[89] The editorialist refers the reaction of the Spanish government and its commitment not to change a coma in its position. A reaction considered bizarre, for example, by Jonathan Powel, former chief of staff of Tony Blair and one of the endorsers of the *Aiete Declaration*, that declared in Financial Times: "[u]nlike any other government I am aware of in an analogous position, that administration went out of its way to put obstacles in front of Eta giving up its weapons." (*Financial Times* 2017/04/09) Source: https://www.ft.com/content/d511c5c8-1bb3-11e7-a266-12672483791a (Consulted: 2017-08-13).

This shared purpose neatly fits with what is expected from communicative events instantiating the deliberation genre, namely the institutional mission of "preserving the democratic political culture" (van Eemeren 2013, 19). In this case, by bringing citizens into the equation.

On another level, each speech event entails certain conventionalized norms associated with the concrete communication activity type, and resulting from its genre. In other words, as a communicative practice, deliberation is constrained by several institutional conventions associated with the particular activity types under study; in our case, deliberative mini-publics (van Eemeren 2013, 19). However, conventions serve as an analytical point of reference for the reconstruction and critical evaluation of argumentation in a communicative event, because argumentation never proceeds in ideal conditions. Therefore, this analytical reference point should be empirically grounded; carefully attending to the specific institutional conditions at each case (2010, 2:170–83).

A widely-used model for the empirical description of generic features of communication activity types, defines six relevant questions. The location where communication takes place (Where). The generic purpose of the event (Why). The time in which it takes place (When). Who takes part (Who). What is being communicated (What) and how it was practically settled (How) (Yoshioka et al. 2001; Yates and Orlikowski 2002). Indeed this model (5W1H) already has been applied, in the analysis of genre features in e-democracy exercises (Johannessen 2012) and the European Citizen's Initiative (Grönlund and Susha 2012). My choice here will follow the basic requirements of this model, but takes as a reference point a proposal concretely defined for the analysis of deliberative mini-publics[90], and consistent with the conceptual tenets established in the previous chapter.

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[90] Indeed, the parallel unfolding of concerns on context associated to the so-called fourth generation of deliberative democratic theory (Elstub 2010; Elstub, Ercan, and Mendonça 2016) lead some to conclude, that "argumentation research and political research in the traditions of deliberative theory of democracy converge in their steps from ideal theoretical models towards a systematic study of concrete contexts of argumentation." (Lewiński and Mohammed 2015) Lewinskin and Mohammed stressed the contribution deliberative democratic theory could make to the contextual characterization of communication activity types instantiating genre of deliberation.

In particular, I will follow Owen and Smith (2015) and apply Archon Fung's proposal to assess how far institutional conditions of particular sites and venues in the deliberative system, deviate from the ideal, with a special attention to the deliberative minimum. Archon Fung (2003, 2005) defines an analytical model to assess the relationship between institutional design-choices, contextual variables, and deliberative outcomes in response to the following questions: who participates, what is being discussed, how is the initiative designed, when it takes place and why (Fung 2003, 340–47). He also, considers the purpose and vision of the initiative, the level of empowerment, and the kind of connection from public space to state. Thus, the model could be considered an adaptation of the 5W1H model, for the specific case of deliberative mini-publics.

The description that follows is based on the information recovered from evaluation sheets 773 participants filled in at the end of the initiative, supporting material provided to practitioners, executive summaries of the promoters, as well as reports written by experts, transcripts of parliamentary debates on the initiative, interviews, and several press reports. Together they provide a comprehensive overview of the initiative and permit cross-checking several of its features from different perspectives.

3.1   Vision and Type

First and foremost, deliberative mini-publics vary with regard to the vision they have of the exercise itself. Fung distinguished four models. *Educative forums* are aimed at providing citizens with conditions different to those in their daily lives. Therefore, citizens are given ideal conditions to "form, articulate and refine opinions about particular public issues through conversations with one another" (2003, 340). *Advisory Participatory Panels*, on the other hand, differ, because their aim is not to improve the quality of opinion, but to align public policies with participant's preferences. *Participatory Problem-Solving Collaboration* imagines a continued relationship between political institutions and the public sphere, aimed at solving collective problems. Finally, *Participatory Democratic Governance* presents the most ambitious model, and envisions mini-publics incorporating citizens in institutional decision making.

In the case of The Konpondu Initiative, the dimensions and the different layers involved, suggested different visions were embraced. It simplifies matters to begin by discarding what it was not.

It was not an exercise of *Participatory Democratic Governance*. In this type of deliberative exercise, citizens are incorporated into decision making, and that was absent in The Konpondu Initiative. This aspect was expressed by Ibarretxe addressing basic guidelines of the participation plan. He explained:

> My last contribution refers to the necessity of incorporating active participation of society during the process as a companion of the irreplaceable role of political parties (VIII/38/20060922, 29).

The connection of this participatory process to decision-making was direct, inasmuch as the government itself was the main promotor of the initiative. But the division of roles within policy-making, between 'irreplaceable actors' and their 'companion', suggests a clear division of roles between citizens and elected representatives.

The function of the initiative seems to rather bridge the gap between citizens and institutions, at least if we attend to the literality of the initiative. For example, it was explained in the promotional leaflet as a personal commitment of the *Lehendakari* "to collect all opinions received, elaborate a report of conclusions and deliver it directly to Basque Parliament and political parties to be taken into consideration" (Doc 1). Moreover, in this case, the initiative was part of a wider political process in which different devices enacted citizens' participation in different roles. Shortly after in the same speech Ibarretxe stated:

> I am convinced we will reach peace and political normalisation if we are capable of making citizens feel this process as their own and actively engage in the search for a solution. The Basque society is who at the end will decide and, therefore, the real protagonist of its future (VIII/38/20060922, 29).

The problem is, we cannot know whether he was speaking about the initiative itself, or the forthcoming consultation. However, being one or the other, the lecture over the motivation behind the initiative differs.

Having said that, certain aspects of it may have played a role associated with *Advisory Panels*. For example, the report was written by experts from the *Centre for International Conflict Resolution* at *Columbia University* (CICR). The committee was formed by Andrea Bartoli, Harry Barnes, Mica Estrada-Hollenbeck and William Weisberg (CICR 2007, 5). Their roles extended well beyond the report itself. Moreover, members of this expert committee, for example, Prof. Dr Andrea Bartoli has long maintained a relationship both at the institutional level with the Basque Government, and particularly with *Lehendakari* Ibarretxe with whom nowadays she collaborates with in the context of different initiatives conducted in the *Agirre Lehendakaria Center for Social and Political Studies* (ALC).

The web platform, however, was an attempt to establish a continued relationship between political institutions and the public sphere, as in the case of *Participatory Problem-Solving Collaboration*. It enabled a direct channel whereby not only citizens were able to reach politicians, but citizens could engage each other in discussion. In addition, their interactions were not only reported to politicians, but politicians directly responded to them. Nevertheless, as is common on social networks, it seems this virtual dialogue did not create too many constructive interactions. In conversation with the promoter of the web page, Jorge de la Herran,[91] he explained that they decided to leave the space open, but the consequence was that it was dominated by some voices and little interaction in constructive terms.

Finally, the fact that the initiative provided an unusual space for discussion, in an otherwise evasive environment, suggests citizens had conditions very different to those they usually encountered in their daily lives; contributed to the learning required for the establishment of more constructive interactions. For example, the report by *Parte-Hartuz* (EHU) on six University forums, underlined the contribution made by these meetings, because "the confrontation and political-ideological sectarianism are even higher in the university that in the Basque Society" (Doc 2, 3). In this case, forums might have played a role as *Educative Forums,* providing citizens with conditions hitherto absent, to enhance debate in the public sphere. Indeed, as the following sections will show, it seems this is the most prominent trait to feature in the vision, and type of deliberation, in The Konpondu Initiative.

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[91] Interview with Jorge de la Herran (Bilbao, 2014/02/19).

In sum, given that the initiative involved several different dynamics at several different levels, it is difficult to establish which was the vision of deliberation being played out univocally. However, aspects associated with different types do emerge, depending on the perspective taken for their consideration, or the concrete feature that is underlined. In municipal forums for example, the objective was to "offer regular citizens the opportunity to participate in constructing peace in the Basque region and for their participation to contribute to progress in the peace process and normalisation" (CICR 2009, 32). Therefore, we could suggest while the expressed aim is closer to *Participatory Problem-Solving Collaboration*, in practice the vision and type of deliberation relates more closely to *Educative Forums.*

3.2   *Participant Selection and Recruitment*

A second dimension to take into consideration is who takes part (2003, 342). In this regard, it is important to distinguish between voluntary self-selection; namely, the possibility for all to participate acknowledging that only some take part, and those that are specifically selected as say a representative sample. However, those implementing strategies to avoid bias, for example, rules over economic incentives or targeted recruitment, could be differentiated regarding their objective. First, mini-publics could be defined to mirror the profile of the general population. Second, there is the possibility for active recruitment; the selecting of citizens whose perspective is necessary for a fruitful debate. Finally, incentives could be provided to animate people that otherwise would choose not to take part.

In this regard, incentives were not used to recruit participants, and the initiative was designed as an open invitation to citizens. Therefore, the main mechanism of selection was self-selection. However, reports and conversations with organisers conducted during the research, revealed efforts to involve certain people to enhance the representativeness or diversity of the group. Indeed, this effort may be related to the challenging context in which the initiative took place. For example, in the mentioned report on the six University forums, it is said that "difficulties to find people – attending to criteria of pluralism established (mainly gender, age, social condition, and political ideology) – willing to take part were undoubted" (Doc 2, 6). In this case, the report refers to previous municipal forums[92] also conducted by Parte-Hartuz as facilitators. However, in the case of the University forums they followed, they "found an important number of people that rejected our invitation, either due they had to work at the scheduled time or, unfortunately, because they did not want to take part in an initiative of this kind" (Doc 2, 6).

Therefore, difficulties in guaranteeing diversity and sociological quotas, were encountered, and as the report makes clear, self-selection was combined with active recruitment to guarantee a certain balance of sociological profiles, as well as political pluralism.

Another important aspect to clarify, is 'who took part' and 'where it took place'? In the combination of different reports collected, I have been able to account for 153 forums, held in 101 different municipalities[93] from Araba (23), Bizkaia (51), Gipuzkoa (21) and Nafarroa (2). Therefore, regarding the territorial distribution of the initiative, it was balanced for the three territories of Basque Autonomous Community, but not in Navarre which seems reasonable insofar as it was an initiative of the government of the former.

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[92] In particular forums conducted in Amurrio, Azkoitia, Bermeo, Gautegiz-Arteaga, Gernika and Laudio.

[93] Abanto Zierbena, Agurain, Aia, Amorebieta-etxano, Amurrio, Aramaio, Arantza, Areatza (Villaro), Aretxabaleta, Arraia-Maeztu, Arrankudiaga, Arratzu, Arrazua-Ibarrundia, Arrieta, Arrigorriaga, Artziniega, Asparrena, Azkoitia, Azpeitia, Bakio, Balmaseda, Barrika, Beasain, Bedia, Berantevilla, Bergara, Bermeo, Bernedo, Derio, Dima, Durango, Elantxobe, Elgeta, Elgoibar, Erandio, Ereño, Errigoiti, Forua, Galdakao, Gautegiz, Gernika, Getaria, Getxo, Gordexola, Gorliz, Gueñes, Harana, Hondarribia, Ibarrangelu, Ispaster, Iurreta, Kanpezu, Labastida, Lagran, Laguardia, Lantaron, Larrabetzu, Lazkao, Legazpi, Legorreta, Leioa, Lekeitio, Lemoa, Lemoiz, Lesaka, Leza, Lezama, Lezo, Llodio, Loiu, Maruri-Jatabe, Mundaka, Mungia, Muskiz, Mutriku, Nabarniz, Oñati, Ondarroa, Ordizia, Orduña, Orio, Orozko, Ortuella, Ribera alta, Santurtzi, Sestao, Sondika, Tolosa, Ugao, Urnieta, Urretxu, Valdegovia, Zaldibia, Zalduondo, Zalla, Zambrana, Zamudio, Zigoitia, Zizurkil, Zuia, Zumaia

Conversely, at the level of the municipalities involved, we find that the initiative took place mainly in small villages. Their populations were mostly fewer than 2,000 inhabitants (44) or between 2,000 and 10,000 (36) while only one municipality had more than 50,000 inhabitants involved; and many of the capitals took part. Finally, if we look at the level of municipalities regarding political pluralism, we find that only 1 out of 101 was ruled by a unionist party (PSE). Moreover, in 79 of them, the majority was from one of the parties in the Basque Government: EAJ-PNV (73), 5 (EA) and 1 (EB).
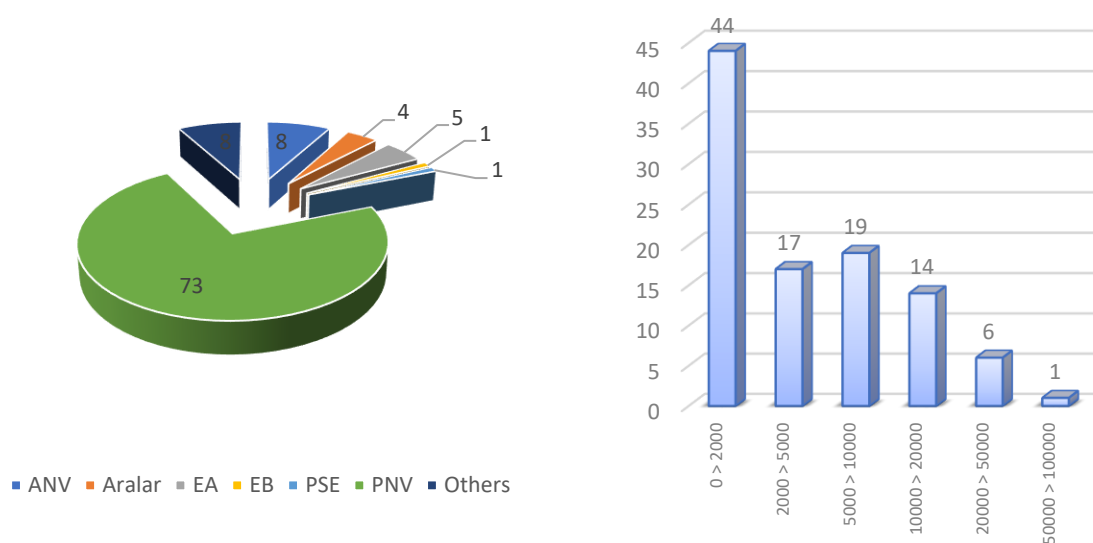
Graph 1: Municipalities by Governing Party and Population

At the level of participants, I recovered transcripts from 117 forums, and on the basis of those, at least 1305 persons took part, including 696 males, 532 females, and one transgender among which more groups were composed of mainly males (%59). The average age of participants was 49 years, which is higher than the average age in Basque society (42 in 2011[94]). Indeed, both reports written by Columbia University experts underlined the lack of participation of young people (CICR 2007, 30), and this concern is also present in citizen's evaluations[95].

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[94] Source: Gaindegia-Datuak (http://www.datuak.net/) (Consulted: 2017-08-13).
[95] In the next table is included under the heading of participation, but 23 respondents underlined the engagement of young people as a recommendation for future forums.

Regarding the language of forums, most of them were conducted using both official languages in the territory (%53) while among those that were conducted only in one language, those exclusively Spanish (%33) outnumbered those in Basque (%10).

Regarding participation at each forum, on average 11 people took part with at least 3 participants, and with 24 at most. Participation reached its peak in April 2008 (260 participants) and as expected lower rates were recorded in summer time in 2007 and 2008. Finally, regarding occupational roles, only partial information was available. However, amongst those who responded, 14.2% were technical specialists, 26.5% were scientific or intellectual professionals. It is known that better educated people tend to be more prone to participate in this kind of events (Caluwaerts 2012). However, the percentage is rather high. This group is followed by 9.7% who were retired, 7.1% who identified as homemakers, 6% who were professionals in the service sector and 4.7%. from the first sector.

Therefore, it can be safely asserted that the scale of the initiative was remarkable. Self-selection seemed to be the dominant rule according to leaflets and official records, but reports from organisers signalled that targeted recruitment was used to ensure a certain sociological balance as well as ideological pluralism. Participant's profiles however, seem balanced with regard to gender and language, the latter being given the initiative, replicates percentages in Basque society. The age rate is higher than average, and the occupational role reflects a certain bias towards the educated, but this seems to be common in this kind of initiatives.

The most controversial aspect may be whether diversity in terms of ideological pluralism was achieved. As noted before, the reports suggest that an effort was made in this direction. But, for example, the political colour of Town Halls and the municipalities involved seems to suggest the opposite.

Participants were directly asked in the evaluation sheet: "*Zure ustez, anitza izan al da foroa parte-hartzaileak eta entzun dituzun iritziak kontuan hartuta?*[96] " (Doc 3) 69.7% of respondents (498 participants) replied the initiative was diverse enough and 20.1% responded negatively (144), while 9.8% responded they did not know (70) and three did not respond. Overall, results suggest most of the participants were satisfied with the level of inclusiveness achieved. Though, in response to the question "*Zer hobetuko zenuke antolatu behar diren hurrengo udal-foroei begira?*[97]" (Doc 3), concerns on diversity were amongst the most repeated ones along with greater participation and methodological recommendations.
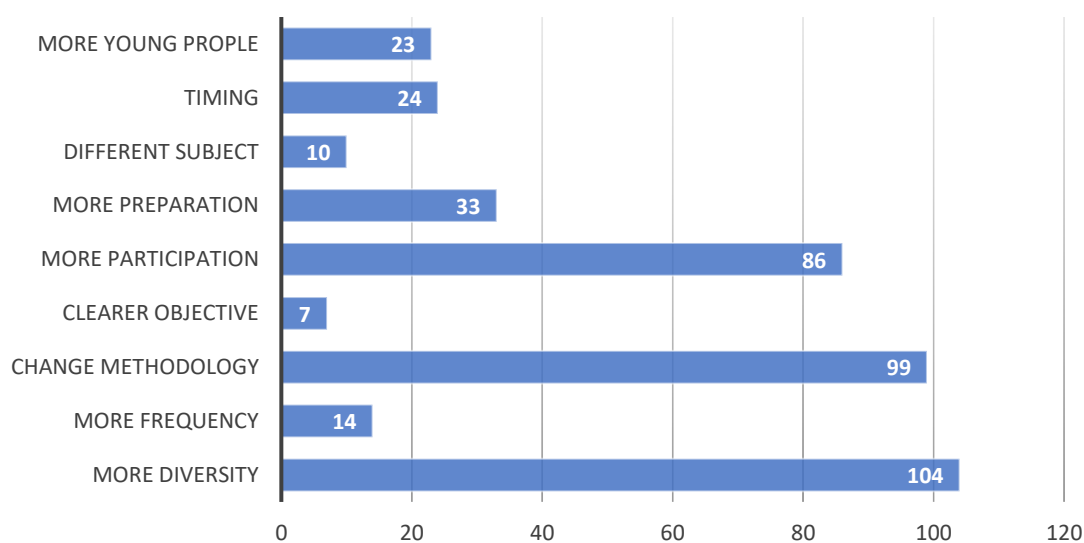
Graph 2: Summary of responses to open-ended question

To conclude, the fact that the lack of diversity appeared in response to an open question, enhances the idea of a certain bias. Nonetheless, experts from the *Columbia University* would disagree, they concluded "[t]here was an ample evidence of ideological diversity in the sense that many participants emphasised what would usually be considered nationalist sentiments and others put forth sentiments usually associated with non-nationalist views." (CICR 2007, 30) After reading the transcripts, my impression is ambivalent. On the one hand, different sensibilities were present and made their positions part of the discussion. However, on the other hand, it feels as if participants were mainly closer the Basque nationalist sphere. Yet, the Basque nationalist sphere is majoritarian in societal terms.

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[96] **English Translation**: Do you think this forum has been diverse considering participants and heard opinions?
[97] **English Translation**: What would you ameliorate for coming municipal-forums?

3.3 Subject and scope

The third dimension attends to the subject and scope of deliberation, and interrogates the decision to take over the appropriate issue for discussion. In this dimension, choice affects the scope of debate, and the balance between a previous assessment on appropriate terms, and the capacity of discussion to lead the problem agenda. In *The Konpondu Initiative* the problem agenda for discussion was entirely determined by the wider political process; the participation plan of the Basque Government. In this sense, it is plausible to suppose that the most open aspect was the web platform, certainly insofar as citizens were free to comment and interact. Though, the general frame for debate was also previously defined: the Basque Conflict.

In the case of forums, there are certain differences depending on the phases of the initiative, and this is reflected in the questionnaires (Doc 4; Doc 5). In the first phase, questionnaires guiding moderators were structured in two moments. In the first turn, citizens were called to respond to a general question over which initiatives they considered would benefit a new opportunity for peace. Ultimately, they were called to summarise the most interesting ideas they heard during the discussion.

Question 1: "Egoera honetan, zein ekimenek lagun dezakete bakerako aukera berri bat sortzen?"[98]

Question 2: "Txanda honetan, partaide bakoitzari beste partaideek egindako ekarpenetatik 3 ideia interesgarrienak azpimarratzea eskatzen da."[99]

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[98] **English Translation**: In the current situation, which initiatives could contribute to create a new opportunity for peace?
[99] **English Translation**: In this turn, we invite participants to underline 3 most interesting ideas from contributions made by other participants.

The second was more demanding because it required: first a reflexion on the opportunities and risks; second, to evaluate the potentialities, weaknesses, and doubts; and third, a closing round to reflect on the better ideas. Moreover, with regard to subject and scope, this change is meaningful because the scope of the debate was narrowed down. The second question specified the initiative to be discussed: the consultation. Therefore, it was no longer an open question. Moreover, citizens knew about its content from the beginning (Doc 6). Therefore, this initiative took the opposite approach of experiences reviewed in this dissertation, for example, the g1000 (Caluwaerts and Reuchamps 2014) were the issue agenda was defined by citizens themselves.

Question 1: "Gaur egun bizi dugun egoeran zein arazo eta zein aukera ikusten dituzu bakea eta normalizazio politikoa lortzeko?"[100]

Question 2: "Ados zaude herritarrak kontsultatuak izan daitezen bizi dugun egoera desblokeatzen laguntzeko?"[101]

Question 3: Txanda honetan, partaide bakoitzari beste partaideek egindako ekarpenetatik 3 ideia interesgarrienak azpimarratzea eskatzen da.[102]

In the report written by *Columbia University* experts, they noted this change "appeared to induce a very different response type of response from participants, both in mood and content" (CICR 2009, 9). Regarding the former, they underline the emphasis on risk, before opportunities, for example, may have influenced so that discourses "exuded greater frustration and scepticism" (2009, 13). Regarding the latter, they underlined this method lead to "discussion that contained more layers, more overtly political discussion, and allowed for greater difference of opinion to the surface" (2009, 31).

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[100] **English Translation:** In nowadays situation what problems and opportunities do you see to reach peace and political normalization?

[101] **English Translation**: Do you agree that citizens are consulted to unlock the current situation?

[102] **English Translation**: In this turn, we invite participants to underline 3 most interesting ideas from contributions made by other participants.

I will return to this in the next section, but suffice to say they wrote of the consultation that: "[w]e applaud the organizers for asking about obstacles and opportunities for peace, or for asking about the *Consulta*, an important political topic of the day, by inducing analysis (opportunities, risks, doubts) rather than simply a yes or no response" (2009, 31). Moreover, in the section of recommendations, they suggest a more focused approach to "exploring the issue of self-determination more full" (2009, 35). However, just after, they suggest, it would be pertinent, given the change of mood perceived in reports, to step back to the methodology of the first phase. Therefore, roll back to less demanding questions.

In sum, agenda setting took place without the participation of citizens, and the scope of the debate was narrowed down as the initiative advanced. In the second phase, the subject was more clearly defined in close relation to the wider political process, moreover, the changes affected citizens' discussions. However, in the light of expert recommendations, it is not clear whether they were related to the issue under discussion or the structure of the event.

3.4   Deliberative Mode

The fourth dimension calls into question the expected outcome. As has been widely documented by empirical theory, citizens do not behave in the same manner if a consensus is expected, or the mini-public is geared to provide citizens with an opportunity to express their point of view. The first option resembles Type I models of deliberative democracy. The second is closer to Type II. The first type of mini-public follows a clear path through different stages, beginning with participant's proposals, justification in favour or against, and finally, agreement on planning possible ways for implementation. The side effect of this model is that weak positions tends to be dismissed and controversial issues avoided for the sake of agreement.

On the contrary, when no agreement is expected attention ought to be focused on opening the floor to different perspectives, and foster individual will formation to consider others. In this case, each phase seems to correspond to one model in the light of their structure. The first would be focused more on opening up the floor, while the second considers fostering discussion on the consultation law. However, in this regard, the methodological guide that was distributed to guide facilitators (Doc 6), specifies clear guidelines that contradict this differentiation.

In short, the main idea was that forums were conceived as a paradigm change from "vamos a hablar" (*Let's talk)* to 'vamos a escuchar' (*Let's listen*) (Doc 6, 5). The basic tenets underlying this 'paradigm change' are explained in a guide distributed among facilitators. They are specified as follows:

Let's Listen

a. It is important the attitude face the encounter, we are all in the same boat, and we are going to continue to share it.

b. We should analyse the attitude through which we observe the problem. We should avoid 'us and them' positions. Key is the attitude change. We should sit all on the same side of the table and understand we all need to solve the problem.

c. We must think on the appropriate frame question: which is the problem and who is guilty? Alternatively, where is the solution and could we reach it together?

d. To begin listening, we have respect certain principles:

-   All participants have something interesting to share

-   There a better solution than the one I take as unbeatable.

-   It is always possible to extract common elements with the most opposed positions to mine.

-   The other side always has part of the reason.

-   Dialogue, in 'vamos a escuchar' should be used to walk in other's shoes

-   The aim is not just listening but advancing in the search for solutions

-   Every problem has a solution

-   How do we imagine this solution? Neither I win you lose nor I lose you lose are good options we should search for win-win solutions.

Example 1: Methodology Guide 'Let's Listen' (DOC 6)

Distributed for facilitators, the guide is almost an 'ethical code' for the initiative. Further procedural rules are specified, for example, interruption is not permitted, nor is contradicting other's proposals. Respect towards the position of other is required. Indeed, the idea that critique of the other is not allowed, is repeated at least three times to specify the ideal model of 'vamos a escuchar', the schedule of the meeting, and the role of the moderator.

Regarding the outcome, the guide established "agreement is not aimed, therefore do not seek consensus among participants" (Doc 6, 7). Indeed, the fact that the last question asked participants to reflect and choose between other's ideas, somehow contradicts this aim. Indeed, the requirement to underline those they considered the best, indicating agreement, or at least some kind of convergence was thus expected.

However, it is clear that the main motivation of the initiative was not consensus, but to give participants the possibility to express themselves freely. Regarding the second phase, the conclusion is similar, but not so clear. The emphasis on active listening was the same, and they did not encourage consensus. However, the questionnaire was more demanding and less open-ended. Therefore, citizens had less space to express their concerns, and they were more determined by the agenda set by the organisers.

It would have been interesting to see if evaluation sheets in the first phase and second phases where different, and to what extent these differences were related to the methodology. However, there are no records from evaluations sheets of forums in the first phase. Regarding the second citizens evaluated the initiative (8.13/10) very positively, as well as the methodology (8.00/10) and the role of the moderator (8.55/10). Yet, if we look at their responses to the open-ended question on what would they change, it is possible to be more specific about how it finally proceeded.

Among those participants that commented on the methodology, the subject of discussion, the objective, or the method of the forum, only four participants underlined that they were unsatisfied with the initiative, blaming it for being "more of the same", leaving them "indifferent" or simply recommending not to organise more forums. Most of them underlined four issues: the questions, previous information, the level of discussion, and the participation of politicians. Nonetheless, there is no clear position in either of them, although comments on the questions posed and the presence of politicians are especially dispersed.

Regarding the former, there is a bit of everything, including a demand for 'more specific questions', to 'more common questions for the people', or 'fewer questions because it is a very intense session at these hours in the evening.' Regarding the latter, it is almost the same; responses are contradictory with some participants asking for politicians to be present, to others complaining because they were. On the contrary, regarding the level of discussion there is some claim to 'follow-up interviews, more familiar', but mainly the absence of discussion is characterised by asking to 'give priority to debate', asking for 'some debate' or even some 'dialogue among participants.'

Self-expression then, not consensus, was evidently the purpose, but significantly it was an articulation of different perspectives consistent with Type II deliberation. Indeed, stringent rules were applied to guarantee this outcome. In terms of design choices, this stringency seems to contradict for example, the introduction of a concrete question on the consultation, at least if the eliciting of different perspectives were the aim. Nonetheless, participants' comments suggested that the objective was achieved, at least in the second phase, although experts underlined the point that the debate was more heated. Finally, in either case, participants were very satisfied with the overall result.

3.5 *Recurrence and Iteration*

Timing constitutes the fifth significant dimension. The frequency of mini-publics reveals how deeply engagement was sought for. However, contrary to what intuition suggests, timing should be designed with purpose. In other words, one-shot mini-publics may not be adequate at first sight, but neither is the recommendation to enlarge them with no clear purpose. They should conclude, allowing the contributions of citizens to lead to a trajectory, that in the end produces a tangible outcome. In this case, the initiative provided a long-term engagement platform. Nevertheless, this could be seen differently depending on the perspective we take.

If each different forum is considered by itself, in 72[103] municipalities (71.3%) the initiative was a one-shot isolated event with no continuation. In 23[104] (22.8%) two forums were organised, in Barrika, Gorliz, Iurreta and Mundaka there were 3 and, a separate mention for the case of Mungia where, according to reports, 18 forums took place. I have been able to recover 17 of them, and on the basis of these, a pilot exercise took place the 6th March 2007, followed by 17 different forums between the 30th of September and 3rd of October 2008. They took place in several neighbourhoods, and two specific forums only with women. In total 231 people took part 95 females and 136 men in a village of 15.000 inhabitants. Most of them were bilingual (12) while the other 5 took place in Spanish and all of them followed the methodology of the first phase. The average age of those who filled the evaluation sheet (130), was similar in comparison to other forums (51) and, also, the evaluation of the initiative (8.45), the methodology (8.04) and the role of moderators (8.52). Indeed, asked whether they would be willing to repeat if called, 108 out of 130 responded positively, 2 rejected the offer, five hesitated and 14 did not respond. Regarding diversity 79 participants considered it was not diverse enough, therefore, a higher percentage (28.5%) than in the initiative (20.1%). 79 considered it diverse enough (60.8%) and 14 (10.85) either did not respond, or replied they did not know.

Nevertheless, Mungia was the exception to the rule. So, to explain the long-term approach of the initiative, focusing on the municipal level is not the adequate. On the contrary, to make sense of the length and intensity of the initiative, it should be assessed in the wider context. From this perspective, the process was highly iterative and the contributions sustained in time.

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[103] Agurain, Amorebieta-etxano, Aramaio, Arantza, Aretxabaleta, Arraia-Maeztu, Arratzu, Arrazua-Ibarrundia, Arrigorriaga, Artziniega, Asparrena, Azpeitia, Bakio, Beasain, Bedia, Berantevilla, Bergara, Bernedo, Derio, Dima, Elantxobe, Elgeta, Elgoibar, Erandio, Ereño, Errigoiti, Forua, Galdakao, Gautegiz, Gordexola, Gueñes, Harana, Ibarrangelu, Ispaster, Kanpezu, Labastida, Lagran, Laguardia, Lantaron, Larrabetzu, Lazkao, Legazpi, Legorreta, Lekeitio, Lemoa,, Lemoiz, Lesaka, Leza, Lezama, Lezo, Llodio, Loiu, Oñati, Ondarroa, Ordizia, Orduña, Orio, Ortuella, Ribera, alta, Santurtzi, Urnieta, Urretxu, Valdegovia, Zaldibia, Zalduondo, Zalla, Zambrana, Zamudio, Zigoitia, Zizurkil, Zuia, Zumaia

[104] Abanto Zierbena, Aia, Amurrio, Areatza (Villaro), Arrankudiaga, Arrieta, Azkoitia, Balmaseda, Bermeo, Durango, Gernika, Getaria, Hondarribia, Leioa, Maruri-Jatabe, Muskiz, Mutriku, Nabarniz, Orozko, Sestao, Sondika, Tolosa, Ugao.

In short, the relevant agenda for this initiative, and how it was designed regarding recurrence and iteration, seems to correlate with the Basque political agenda. Indeed, looked at differently, several effects of the Basque political agenda appear to be clear if the time sequence of the initiative as a whole is followed. Graph (3) shows the particular ecology of participation in the Initiative during the two years it lasted. As expected, low rates reach their peak in summer time in 2007 and 2008. However, it is remarkable the steady and low rate in the period between June 2007 and January 2008.

Graph 3: Number of total participants 2007-2009

If this period is considered in the wider context it reveals much more. In June 2007 ETA declared the end of the cease-fire, on September 23, Ibarretxe presented his plan for popular consultation, in October, members of *Batasuna* were detained in, and in December, ETA killed two Guardia Civil officers in Capbreton. The previous armed attack perpetrated by ETA, and with with intended casualties, dated back to 2003. Therefore, it was what in the Conflict Resolution literature is named an 'escalation period'. Yet, if we look at this sequence in Graph (3), between June 2007 and January 2008 very few, if any, forums took place.

Looked at differently, one can see that Ibarretxe presented his proposal for a consultation in the Basque Parliament the 28th September 2007, and except for Arrieta (9th October 2007), all the following forums included the question over the referendum. Until the 30th of September 2008, especially in Mungia, where the methodology of the first phase was recovered. Twenty days later the Spanish Constitutional court ruled out the Consultation Act approved by the Basque Parliament in June[105] (*ElPais*, 2008/09/12).

Two conclusions present themselves regarding recurrence and iteration. First, the initiative offered the possibility for a sustained, and iterative, effort as the case of Mungia demonstrates. Secondly however, the timeline for the initiative seems to be more related to the macro context of the initiative, as opposed to the meso context of each forum.

3.6   Stakes

The sixth variable refers to a very extended idea, already challenged in the conceptual discussion: the idea to be successful, deliberation ought to take place in *cold* settings. According to the theory, *hot* settings are characterised by fierce controversy so that deliberation only contributes to foster enclave deliberation (Sunstein 2002). When the debate is heated, positional politics takes the lead, and confrontation is exacerbated. Nevertheless, as Fung himself noticed, there is no clear evidence that this hypothesis holds in empirical terms.

In this case, the stakes were high. An example of the challenge in this kind of context represents an initiative aimed at getting citizens to listen to each other, is the fact that elements of Basque society was openly invited not to participate. Indeed, both unionist parties openly rejected the initiative itself in Parliament. For example, two parliamentary questions were tabled questioning the scope of the initiative and its funding (VIII/102/20081010; VIII/103/20081017). Something similar happened in the public sphere. For example, one of the events that took place to promote the initiative was an encounter held on 12th May 2008, between cross party politicians and people taking part in different municipal forums. Different political parties were invited to take part. However, PP and PSE rejected the invitation arguing it was nothing more than "staging to the mayor glory of the Lehendakari" with the objective of "justifying" its political pretensions (*ElCorreo*, 2008/05/09).

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[105] Source: http://elpais.com/diario/2008/09/12/espana/1221170407_850215.html (Consulted: 2017-08-13).

Therefore, even minor examples illustrate that the stakes were high, and high stakes represent a challenge for any initiative of this kind. In this case, high stakes did not intimidate thousands of citizens' who mobilised to participate despite the charged atmosphere. However, as already noted, whether the initiative was ideologically plural is questionable. On grounds of sustainability, it is plausible to suggest that voters of either unionist party followed the example of their party leaders, and rejected the initiative completely. In this case, closeness to institutional making in combination with high-stakes have negative consequences in terms of inclusiveness

3.7   *Empowerment and Monitoring*

The final two aspects refer to empowerment and monitoring, and both are directly related to the role played by institutions play, and the extent they in turn allow mini-publics to operate. Empowerment needs no long explanation. It plainly refers to the influence that decisions taken in mini-publics have over actual decision making. *Strong* mini publics exercise authority while *weak* ones not (Bohman 2012, 86). However, this point should not be taken lightly insofar as empowering mini-publics is not free from contestation. A usual reservation about empowering mini-publics is that they are not representative.

In this case, empowerment was intended, but the direction of travel is not clear: did the initiative empower citizens to take part in the political process? Or, conversely, were citizens directed to empower institutions in the political battle field? Indeed, given the relevant context for the initiative, it seemed to be more general than the context of each forum, it is difficult to figure out how citizens participating in insulated forums, taking place in different municipalities, may have had any option to influence the wider political debate.

Regarding direct influence in policy-making, it cannot be known how far citizen influence extended as the initiative came from government. The fact that it died with the government indicates it had not much influence on other sensibilities. However, if we open the scope of the political to phenomenon outside of formal institutions and political parties the opposite may also be true.

According to Fung (2003), monitoring also refers to the mini-publics being taken into consideration, but in a different manner. Deliberation among citizens may also have the aim of influencing decision making by raising the interest of the public and influencing the debate by gaining attention. The problems attached to unpicking these kinds of long term and/or indirect effects in policy-making, have already been reviewed in previous chapters. Suffice to say, there is a strongly held view that there is no reliable way to identify them empirically. On the contrary, on the matters under discussion here, it has already been seen, that over the long term, several civil society organisations that took part in the initiative sustained their commitment and succeeded.

Thus, at least in how far The Konpondu Initiative affected the facilitators and organisations involved, it appeared that these kind of participatory and deliberative exercises, were capable of empowering actors and events beyond the boundaries of initiative itself.

3.8   Summary: Design-Choices and Outcomes

The description of design choices, and outcomes, were aimed at grounding the assessment on how far the initiative came close to, or deviated from, ideal conditions. It is important for later stages in this investigation because regarding citizens participation "deviations from deliberative norms can be justified in terms of the deliberative democratic ideal given current non-ideal conditions" (Owen and Smith 2015, 226). In this sense, I have characterised The Konpondu Initiative in the light of different aspects relevant to understand the relation between the wider context and design choices of its different communicative activity types. In the table (2) below are summarised the main findings of this descriptive approximation to The Konpondu Initiative.

Design Choices	
A. Vision	Simulate Ideal Conditions for Paradigm Change
B. Recruitment	Self-selection and Targeted
C. Subject	Fixed, focused on Political Institutional Agenda
D. Mode	Listening, No-Consensus
E. Recurrence	Iterative (Society), One-shot (Municipality)
F. Stakes	High
G. Empowerment	Low
H. Monitoring	Long-Term or Absent

Table 2: Design-Choices of The Konpondu Initiative based on Fung (2003)

Table 6 summarises the main outcomes of the initiative in the context of the different layers, identified by Fung as relevant for the institutional, or general purpose, to which any deliberative initiative intends to contribute. According to Fung, mini-public design choices do have an effect. In particular, design choices are intrinsically related to the character of participation and deliberation, information pooling and individual transformation, popular control and state capacity, as well as its political effects (Fung 2003, 353). Each layer is more or less closely related to specific design choices (see Table 4), and permits a compound assessment of design choices and outcomes in the light of which an empirically grounded definition of the purpose of the initiative, and the adequacy of design choices can be advanced.

Outcomes			
Character of Participation and Deliberation		**Democratic Skills**	Moderate
Quantity	High	**Popular Control and State Capacity**	
Bias	High	**Accountability**	Low
Deliberative Quality	?	**Justice in Policy**	Low
Information Pooling and Individual Transformation		**Efficacy in Policy**	Low
Informing Officials	Moderate	**Political Effects**	
Informing Citizens	Moderate	**Popular Mobilization**	High

Table 3: Deliberative Outcomes of The Konpondu Initiative based on Fung (2003)

The nature of the participation and deliberation in The Konpondu Initiative, contributed to the inclusiveness of the political process, by moving thousands of citizens to deliberate. With regard to design choices, this contribution is relevant given that the high stakes (F), and the subject of discussion (C), was highly controversial. Nevertheless, although an effort was made regarding recruitment (B), to enhance the diversity of perspectives involved, the participants' profile was biased presumably towards Basque nationalist positions.

This bias renders the notion of choice questionable with regard to deliberative mode (D), the latter being closely related, according to Fung, to the overall deliberative quality of the initiative. In short, the deliberate choice to avoid critical interactions was justified by the paradigm change inspiring the initiative: namely from talking to listening. However, this choice makes little sense if participants share a basic normative premise. Indeed, it was clear in the second phase, that the more demanding rules of discussion led to more debate; although experts noted, that more talk came at the cost of more frustration, resulting in a trade-off regarding the combination of participation and bias in deliberative mode.

Fung interpreted this trade-off as the enhancement of rational deliberation when the discussion is aimed at "fostering and clarifying individual preferences, for example, by arising conflicts and advocating conflicting principles" while "rendering participants less flexible and more self-interested" (Fung 2003, 348). The comparison between phases seems to confirm this trade-off between rationality and reasonableness so far as the second phase is concerned: the advocacy of more conflicting principles resulted in less reasonable positions and more frustration. The questions of whether the debate became more rational or not, cannot be responded at this point. Fung suggests that it is possible to balance reasonableness and rationality if collective action depends on agreement and consent but in either phase of the initiative, this aim was promoted.

A further aspect, which mini-publics are expected to contribute to, is information pooling and the promotion of democratic skills and socialisation. Regarding the former, it can run in two directions. When recurrence is high (E), and monitoring by public officials intensive (H), the initiative provides the means of informing officials, who as responsible agents for the public, have information on citizens' preferences, values and beliefs that may be crucial. I consider outcomes in this respect moderate in The Konpondu Initiative, because although recurrence was high at the relevant context for the political process, the fact that at least a half of the political spectrum rejected it, challenges the idea that responsible agents had taken it as a valuable source of information for public policy design.

Alternatively, if we take the literality of the initiative seriously, we have to conclude that informing citizens was not the central aim. Rather, the initiative was geared to giving a voice to citizens in the policy making process. Indeed, citizen's knowledge was considered relevant to overcome a deadlocked situation, and the deliberative mode (B) chosen to make different perspectives visible. Nevertheless, the fact that citizens were able to get access to politicians, for example on the website, question them as often as they liked (E), over an issue in which they had a high stake (F), suggests the initiative provided citizens with a valuable source of information.

Finally, whether it contributed to the development of democratic aptitudes and socialisation skills, remains questionable. For instance, although the subject was of interest (B), and stakes high for them (F), "citizens are more likely to gain democratic skills and disposition where deliberations have tangible consequences for them" (Fung 2003, 350). In this regard, recurrence seems a crucial design choice but although at the level of the initiative as a whole, iteration was high, empowerment was low, and the impact of the outcome questionable. Conversely, at the level of municipalities, where another type of indirect effects may have played a positive role regarding tangible consequences in the lives of participants, most of the mini-publics were one-shot exercises

The third layer of interest refers popular control and state capacity. The subject of deliberation (C), as well as the level of empowerment (G), are crucial features for contribution to either the accountability, justice, or efficacy of policy. In short, mini-publics that focus on subjects with an accountability deficit, results in, "public opinion [that] differs substantially from official practice will be more likely to contribute to this function" (Fung 2003, 351). They contribute in terms of social justice by including those who are hitherto excluded, and can enhance efficiency, thus increasing the legitimacy of decisions taken, meaning that empowerment is a necessary consequence.

	II.B. Recruitment Selection	II.C. Subject of Deliberation	II.D. Deliberative Mode	II.E. Recurrence	II.F. Stakes	II.G. Empowerment	II.H. Monitoring
Character of Participation and Deliberation							
III.A. Quantity	X*	X*		X	X*	X*	
III.B. Bias	X*	X*			X*	X*	
III.C. Deliberative Quality		X*	X*	X	X*	X*	X
Information Pooling and Individual Transformation							
III.D. Informing Officials		X*		X*			X*
III.E. Informing Citizens		X*	X*	X	X	X	X
III.F. Democratic Skills and Socialization				X*	X*	X*	
Popular Control and State Capacity							
III.G. Official Accountability		X*				X*	X*
III.H. Justice of Policy	X*	X*	X*			X*	
III.I. Efficacy of Policy		X*	X*	X		X*	X*
Political Effects							
III.J. Popular Mobilization		X*	X		X*	X*	

X* = more important factors

Table 4: Institutional Design Choices x Deliberative Outcomes (Fung, 2003)

In the case of *Konpondu,* these three dimensions are controversial. The subject is clearly one in which citizens had an interest, but given it was a government initiative and, according to reports, participants overwhelmingly supported government proposals, it cannot be seen to have enhanced accountability. By the same token, the extent to which the initiative made visible a weak position is not clear. Regarding design choices, recruitment (B), and mode (D), are considered relevant to assess the level of inclusion, but in this case, it has already been noted that recruitment efforts failed, to a certain extent, to involve those in weaker positions regarding the debate on the consultation law.

If we look at this conclusion from the perspective of the efficacy of policy, the aim of gaining legitimacy makes sense with regard to companion to the subject chosen. The inclusion of a direct question, about a concrete political initiative of the Basque Government, could be understood as a means to enhance its legitimacy by making visible the popular support of an otherwise weak position; but not in the Basque political arena, a weak position in the Spanish political arena.

Finally, deliberation in mini-publics is considered to contribute to the mobilisation of citizens outside them "especially when they are related to the more encompassing agendas of secondary associations or political actors" (Fung 2003, 352). True, in sympathy with concerns about elite manipulation, The Konpondu Initiative mainly responded to a political agenda established by the Basque government, and even more concretely, an initiative that was closely tied to the impulses of Lehendakari. Indeed, the initiative was born and died with him; having difficulties to gain support even in his political party.[106]

However, the work of the deliberative activists and organisations in the backstage of The Konpondu Initiative remained. A straight line could almost be drawn following certain concrete names, beginning with *Lokarri* and ending in the *Basque Social Forum*. Thus, if we look to the process in the long term, it was successful regarding popular mobilisation, consequent upon the role that networks of civil society organisations, and international collaborators involved in the initiative, played.

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[106] For example, during the time when the initiative took place, the head of his party resigned due to irreconcilable differences regarding the consultation law promoted by Ibarretxe (*Elpaís*, 2007/09/13) and the newly elected president of PNV Iñigo Urkullu publicly acknowledged 'difficulties' in his relation to Ibarretxe with whom cohabitee in the same party required "acts of faith" (*Gara*, 2009/01/29). Sources: https://elpais.com/diario/2007/09/13/espana/1189634402_850215.html; http://gara.naiz.eus/paperezkoa/20090129/119014/es/Urkullu-Hay-dias-que-debo-hacer-actos-fe-para-seguir-unido-Ibarretxe (Consulted: 2017-08-13).

This effect is not measurable. It remains unknown on the basis that so far as it has proven impossible to establish these kinds of cause-effects relations. However, the sequence of events suggests, that at least The Konpondu Initiative was part of a wider and deeper turn that took place in the Basque Society, and was able to find an unexpectedly creative solution to a very complex problem.

In sum, regarding the purpose of The Konpondu Initiative, on the one hand, if we take in isolation, design choices, and outcomes, we would have to conclude that it accomplished its objective of providing citizens with the opportunity to participate in the peace process and contribute to progress and normalisation. Numbers speak for themselves, certainly in terms of participants, the number of activities, or the diversity of venues. However, difficulties related to the closeness of government, and the harsh confrontations at the societal level, outperformed the capacity of the initiative to open up space for different political perspectives. It should not be ignored that half of the political spectrum rejected the initiative on grounds that were concerned with diversity and inclusiveness. Moreover, without another perspective to listen to, several design-choices were revealed to be meaningless. Therefore, in this case, a certain distance towards institutional decision making may have played a positive role; for example, by letting civil society organisations lead the process.

On the other hand, it is questionable that the initiative fulfilled the requirement we have established for each site of the deliberative system, but at this point, this is a hypothesis. The *Deliberative Minimum* requires mutual respect, exchange of reasons, and disposition towards social integration. Inclusiveness holds the democratic dimension of the normative baseline, and diversity the epistemic dimension. However, both are related to the deliberative minimum so far as diversity and inclusion are necessary for argumentative deliberation. In other words, a constructive exchange of arguments requires different arguments. Nevertheless, I have already rejected the idea that conditions determine by themselves whether deliberation is practiced or not. Therefore, to determine whether a constructive exchange of argument took place, I need to analyse the argumentative exchange among participants.

4   Genre Analysis of Deliberative Argumentation

The previous section concluded that *The Konpondu Initiative* fits loosely with what is expected from a communication activity type instantiating deliberation genre. It was also explained how far it deviated from ideal conditions. The consequences of closeness to institutional decision making and implementation in a hot setting, revealed a certain bias in the composition of the groups. This deviation cast doubts over several design-choices. However, overall, I have concluded that the initiative somehow made its point to "offer regular citizens the opportunity to participate in constructing peace in the Basque region and for their participation to contribute to progress in the peace process and normalisation" (CICR 2009, 32).

Regarding the systemic approach, there is security in the suggestion, that in this case two wrongs, that is to say closeness to decision making and biased group composition, made one right; simply by moving thousands of citizens to discuss possible paths towards peace. Nevertheless, as noted at the beginning of this chapter, the systemic analysis of deliberative initiatives should provide the means to assess, not only whether institutions and the initiative itself fits with the deliberative minimum, but whether this deliberative stance was achieved by participants at each concrete site of the system.

My focus in this section, is the other side to the challenge: the analysis of deliberation in citizens' discourses. The discursive analysis presented here, will show whether participants reflected a disposition to consider others' arguments when establishing their own position regarding the issue at stake. In other words, whether the discourse structure of argumentation of participants in The Konpondu Initiative was approximate to the deliberative minimum. To respond to this adequately, the generic analysis of deliberation presented here involves three different tasks.

First, I introduce the analytical framework that will explain the connection between context and design, and its implications for the forthcoming discursive analysis of deliberation. This step is necessary, as it is the analysis of deliberation as a genre, that text and context could be assessed together in the light of the same normative standard of argumentation.

Second, on this basis, I will specify how generic stages of The Konpondu Initiative were structured in response to its institutional or shared purpose. It is the first task for any generic analysis so far as genre determines the stages of discussion. Their empirical description allows assessing how far discourse has structured the approximate deliberative minimum, but also to recognise reasonable deviations from the rule.

Third, I will proceed to the analysis of discourse using the relational discourse structure of texts in the corpus. I specify how the deliberative minimum is empirically assessed, the role it plays in the relational discourse structure of participants' interventions, and what it tells us regarding the deliberative behaviour of participants.

4.1   *Deliberation as Genre*

Deliberation entails at minimum 'mutual respect'; in this sense, argumentation theory and deliberative democracy underscore the central role played by counter-arguments. Nevertheless, instead of respect towards counter-arguments, argumentation theory underlines the *use* of counter-arguments to support or reject one's claims as expressed in the structure of argumentative discourse. To properly assess the discourse structure of argumentation we should consider argumentation overcomes the level of logic and represents a communicative practice. This definition means that argumentation proceeds through a sequence of stages, is aimed at a general purpose, and both are given to each communicative event by 'genre'. Therefore, the concept of genre becomes the crucial link connecting text or speech and context.

For example, linguistic, and more concretely, lexical choices, were used by Isabella Fairclough to highlight the linguistic characteristics of deliberative discourse (I. Fairclough In Press). However, Taboada (2004) for example, suggests that genre is realised at the level of text, and determines the structural organisation of communicative interactions; while lexical-grammatical choices are only indirectly influenced by genre.

Taboada provides a working definition of 'genre' as "primarily a structurally-determining characteristic of texts" (Taboada 2004, 25). A text pertains to a 'genre' because of staging, where staging is determined by the function of the text or speech in a situation. This function involves two different aspects: communicative purpose and social function. The communicative purpose defines the genre as goal oriented, and in line with the definition provided above, this goal is achieved through different steps or stages. Nonetheless, communicative interactions also have a social function, expressed by the fact that they are subjected to the satisfaction of social constraints.

To illustrate, we may say that the communicative purpose of speech when visiting the doctor may be to get a diagnosis. To achieve this goal, we need to establish some kind of relationship with the doctor, commonly we may use cheap talk about the weather to precede the stages associated with our purpose. This stage may be labelled as *Introduce*. Then, we need to inform the doctor of our medical records and the symptoms we are experiencing. Therefore, we could label a stage of this communicative interaction *Inform*. We need to get the diagnosis, so another necessary step would be *Request*.

According to Taboada, "[s]ocial and communicative purposes are woven together in the determination of the nature and order of the stages in any given text" (2004, 27). Therefore, following our example, an ideal template of conversations instantiating the genre of doctor-patient communication will include several stages: *Introduce* when patient and doctor get to know each other, *Inform* when the patient informs the doctor of her symptoms and a *Request* when the patient requests and receives her diagnosis.

Moreover, the structure of stages towards shared purpose of the genre is learned only through socialisation: it is more closely associated with the 'context of culture' than the 'context of situation'. For example, if we follow the example on the medical consultation, if I refer to *Us* the meaning of *Us* can be given by the specific context of situation where this utterance occurred. Thus, I will be referring to someone that came with me to the doctor. However, according to Taboada's operative definition, genre refers more closely to the context of culture. In the same example, If I am a foreigner I could mean to refer to certain differences regarding ways of doing things in the cultural context I belong (*Us)* in comparison to how things are done here.

Therefore, genre determines the stages of text or speech, "according to communicative and social purposes", but "its influence on the language used is only indirect, mediated through register" (Taboada 2004, 27). Register[107] refers to what happens (field), who talks (tenor), and the function of language (mode), in a specific communicative situation: the particular context in which the text or speech is being produced. The register is a level below genre, and influences lexico-grammatical choices. However, according to Taboada, the appropriate level of analysis of the linguistic characteristics of the genre is textual rather than lexico-grammatical. Genre analysis should focus on variations realised in the information structure (rhetorical relations), thematic structure (realisation and progression), and cohesive structure (chains), of text or speech within its social and communicative context.

In sum, the discourse structure of the text or speech, is realised in some stages which are genre dependent and purposeful. Both shared purpose and generic stages belong to discourse communities, and they are learned through socialisation. Moreover, genre-related stages and purpose, both influence linguistic choices. But, while lexico-grammatical choices are more closely related to the 'context of situation', and expressed through register; the 'context of culture' is featured in structural patterns of discourse related to the genre of the communicative event.

Therefore, in response to the research interest, this understanding of deliberation provides the means to analyse whether, for example, different linguistic communities share a common context of culture. If members of different linguistic communities conform, a discourse community, in the context of which a coherent expression of the shared purpose and stages of deliberation genre are enacted, their discourse structures will map similarly onto stages of the deliberative event. Similarly, if the hypothesis is right, and institutional design choices do affect the deliberative stance of participants more than their linguistic identity, then their discourse structures will map onto deliberative stages differently depending on design choices, for example, the composition of the group.

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[107] In short, register refers to what happens (field), who talks (tenor) and the function of language (mode). These three elements depend on the 'context of situation' where a text or utterance occurs and have realization through their corresponding meta-functions in language: ideational, interpersonal and textual (Taboada 2004, 10–12). Hence, lexical-grammatical features of texts and the realization of the three meta-functions in language are more closely related to register than they are to genre.

The methodological assumption follows Taboada, and states that mapping discursive features of texts through generic stages – text prediction; will deliver the capacity to recognise – contextual deduction – texts with similar characteristics, around the same genre. Therefore, with this baseline, variation in the discourse structure is a more significant factor, than the influence of different contextual and institutional variables to the deliberative stance participants take.

Finally, stages. Group composition and language introduce three relevant levels of context in the analysis of text: stages refer to the genre or the macro-context of text, design choices refer to the setting, or the meso-context of text, and language refers to the author or the micro-context text. By choosing an indicator for each of these layers, research questions could be further specified as follows:

a. Is the discourse structure related to generic stages of deliberative dialogue?
b. Is the discourse structure related to design choices of the communicative event?
c. Is the discourse structure related to the cultural community of the participant?

For empirical purposes, the general hypothesis could be further specified as follows: generic stages, as well as design choices linking text to context, affect the discourse structure of texts instantiating deliberation genre more than the linguistic identity of participants. Moreover, design-choices enacting more diverse groups will positively affect the capacity of participants to take a deliberative stance.

The discourse structure will be assessed in the light of a common normative standard: the deliberative minimum. This standard expresses the argumentation structure expected by citizens who take a deliberative stance; namely, the use of counter-arguments to support or reject their position on a claim. I will specify the discourse structural definition of the deliberative minimum later in this chapter. For now, I already account for a methodological sequence allowing a compound analysis of the text in context, in the light of a rule of argumentation, communicated using the discourse structure whereby citizens expressed their position to each other.

4.2   Shared Purpose and Stages

According to Taboada, genre analysis proceeds through several steps: i) Identification of segments or series of segments; ii) Definition of the social purpose and labelling of genre; iii) Functional labelling of stages; iv) Specification of obligatory and optional stages; v) Devise a structural formula; and vi) Analysis of the semantic and lexical-grammatical features for each stage (Taboada 2004, 32–33). For the sake of simplicity, the process could be summarised in two tasks: (i) finding a structural formula that will represent instances of a genre and (ii) analysing their linguistic characteristics.

In this section, I proceed to the first general task of genre analysis: the definition of the structural formula. I will begin with the second step in the sequence: the definition of the social purpose and labelling of the genre, because the description for this task has already been accomplished in the previous section. In this case, I account for an ideal model that defines the shared purpose of deliberation genre, but also its empirical counterpart for the specific case of The Konpondu Initiative.

As noted, deliberation genre accounts for the social purpose of preserving the democratic political culture of citizens (van Eemeren 2013, 19). In the case of The Konpondu Initiative, however, this general purpose was specified by means of a declared intent to "offer regular citizens the opportunity to participate in constructing peace in the Basque region and for their participation to make a contribution to progress in the peace process and normalisation" (CICR 2009, 32).

The impact of this shared purpose on the mini-publics was made clear in the previous section in the discussion on the paradigm change from 'talking' to 'listening'. The central question to which citizens were called to respond was: "Egoera honetan, zein ekimenek lagun dezakete bakerako aukera berri bat sortzen?"[108] The intention was about getting to know the opinion of participants about the peace process, their proposals to restore it, and moderators called to choose different perspectives to be expressed at the cost of critical interactions.

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[108] **English Translation**: In the current situation, which initiatives could contribute to create a new opportunity for peace?

The next task requires the identification of segments, or series'of segments, that conform to the macro structure of texts in the corpus, and their functional labelling. In this case, the model of critical discussion provides an ideal template, specifying different stages we should expect for a communication activity type aimed at fulfilling the shared purpose of deliberation.

There are different models. A four stage model suggests deliberation proceeds as follows: i) an initial disagreement (*Confrontation*), ii) process evolves through the definition of standpoints at issue (*Opening*) and iii) the challenge/defence interactions (*Argumentation*) towards iv) its final result (*Concluding*) (van Eemeren 2010, 2:10–11). A bit more comprehensive approach to the specific case of deliberative dialogue includes 7 stages (McBurney, Hitchcock, and Parsons 2007, 6). Deliberative dialogue begins with an open question (*Opening*), followed by discussion on goals, constraints, and perspectives (*Inform*), next proposals are placed (*Propose*), jointly considered (*Consider*), accepted or rejected (*Revise*) and an option is recommended (*Recommend*) before deliberation dialogue is closed (*Conclude*).

These ideal templates establish an analytical departure point, however van Eemeren suggests, that in the case of political deliberation, "communicative activity types are usually not fully conventionalized" (van Eemeren 2013, 18). Therefore, the analysis should be adapted using empirical description to their application in concrete cases. In the case of The Konpondu Initiative, rules structuring the event were stringently designed to implement the paradigm change suggested above, and this also affected the structure of the mini-public. Therefore, a first approximation to the macro structure of relevant stages structuring citizens' discourses, can be made by differentiating between different turns at each phase of the deliberative initiative.

The event was divided into three turns. After an introduction outlining the goals of the initiative and the content of the meeting (5 min), participants were called to introduce themselves in a short round (five min.). Next, the moderator posed the main question and gave participants ten minutes to think about their response, after which each participant, in turn presented her proposals to the plenary (sixty min). Following this turn, the participants had thirty minutes to talk, ask for further clarifications regarding other's proposals, and a final round to summarise those contributions they found most interesting (forty min).

Reports are made to inform over the presentation round and the summarization exercise. Constrained by this structural organisation, texts reporting the contribution of each participant, include an open question posed by the moderator in response to which, citizens inform on their goals, constraints, and perspectives, or make concrete proposals. They end with a revision of the most interesting ideas presented by other participants, or their own. Therefore, we could expect the macro-structural template to include an *Opening*, followed by an either *Inform* or *Propose* stage and ending with a *Revise* stage.

1ˢᵗ Phase

(Opening) ^ *Propose* ^ *Revise*
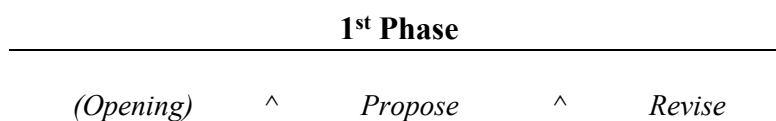
Figure 1: Stages Phase I

Nevertheless, the explicit denial of critical interactions in the first phase established in the methodological guide suggests we would expect texts to focus more closely on the *Propose* stage because participants were not invited to discuss their goals or constraints, but explicitly animated to present their position.

On the contrary, the second phase presents a much more complex structure. In this phase, the first question invited participants to reflect on the risks and opportunities for peace and political normalisation. A second question is included, through which citizens are required to assess a concrete proposal; namely, the consultation. Citizens were also called to reflect on risk and possibilities, as well as their hesitations regarding this concrete proposal. Finally, they were asked to reflect on the most interesting contributions they heard during the exercise.

Therefore, in addition to the identification of relevant series of segments and their labelling by means of turns, the macro-structural formula should be attentive to the question which they respond to.

In the second phase, along with an *Opening* stage, an *Inform* stage would be expected, because, unlike the first phase, citizens inform discussion by their perception of problems, and the possibilities that affect peace and political normalisation. Next, proposals are placed, but the *Propose* stage does not reflect citizens' contributions because the moderator places the proposal. In response, participants assess risks, potentialities, and their reservations regarding the consultation. Therefore, we could expect a *Consider* stage. Finally, both phases have in common, the requirement that participants will *Revise* contributions, and reflect on the most interesting ones from their perspective.

2nd Phase

(Opening) ^ *Inform* ^ *(Propose)* ^ *Consider* ^ *Revise*

Figure 2: Stages Phase II

In any phase, a Recommend or Concluding stage is expected in so far as participants were not required to agree on a proposal. All stages are considered necessary so far as deliberative dialogue in The Konpondu Initiative, as shown in the guides distributed among practitioners, was highly regulated giving no choice to participants to deviate from the predefined structure of discussion.

4.3   *Relational Discourse Structure*

Once the structural formula has been defined, the next step, according to Taboada, requires the analysis of discourse structure to see if the patterns associated with each stage could be identified and, in this case, tested against the deliberative minimum. As already noted, Taboada suggests generic analysis should focus on variations realised at three different levels: the information structure (rhetorical relations), thematic structure (realisation and progression) and cohesive structure (chains) in relation to social and communicative context (Taboada 2004, 32). For the purposes of this thesis, the focus is on a specific layer: the information structure of discourse.

This structure is analysed using the relational discourse structure, or rhetorical structure, which is composed of coherence relations and analysed here following *Rhetorical Structure Theory* (William C. Mann and Thompson 1988). The methodology chosen fits well with the type of data collected, because the analysis of discourse in *The Konpondu Initiative* is corpus based. In other words, the empirical baseline of this research are texts written by participants in the course of their participation in deliberative mini-publics.

4.3.1   Relational Discourse Structure and Argumentation

RST is an approach which allows an analyst to describe coherence between text fragments combining three main concepts: elementary discourse units, recursive coherence relations and nuclearity (W. C. Mann andTaboada 2010). On the one hand, elementary discourse units (henceforth, EDU) are independent or adverbial clauses forming the basic unit around which texts are segmented. Recursive coherent relations on the other hand, define relations between text fragments relating to the effects they could have on the reader: a pragmatic or presentational relation and a semantic or subject matter relation. As relations are recursive, a coherence relation can be a text fragment of either relation. Finally, nuclearity is the importance of a text fragment within the relation.

Guided by the text, the analyst can describe which fragments are more important in the coherence relation (nucleus or satellite function), and in relation to other fragments (central unit of the text). When fragments are equally important, the coherence relation is defined as multi nuclear or paratactic (LIST, CONTRAST, DISJUNCTION[109], etc.). When one fragment is related to another that is less-important in the relation it is defined as nuclear or hypotactic (ELABORATION, JUSTIFY, PREPARATION, CONCESSION, SOLUTION-HOOD, CAUSE, RESULT).

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[109] From now onwards RST relations will be Capitalized.

For example, the text below[110] (Example 2) is a part of a text written by a participant. The texts between brackets are segmented EDUs among which those in bold type represents the central unit of the text. The central unit is the main claim of the argument of the speaker or writer.

[Bakea lortzea bada asmoa]^{1A} [**lehenengo aitortu behar dena da ez dagoela.**]^{1B} [Eta euskal komunitate autonomoan ezin dugu lortu]^{1C} [ez dugulako eskubiderik erabakitzeko.]^{1D}

[If the aim is to reach peace]^{1A} [**we first need to acknoweldge there is not.**]^{1B} [And we cannot reach it in the Basque Autonomous Community]^{1C} [because we do not have the right to decide.]^{1D}

Example 2: Text extracted from FIL50-1-4-EUS

Next, RST defines hierarchically the relations whereby an author or speaker is supposed to have had organised text or speech coherently to make it understandable for a hearer or reader. Coherence relations structure text segments around the central unit in hierarchical trees as the one shown below:
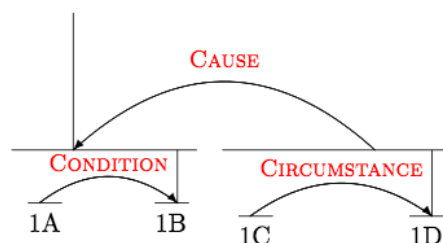
Figure 3: RS-Tree FIL50-1-4-EUS

In this example, the text was written in response to the first question in the first phase of the initiative. The participant was asked about the situation of the peace process and initiatives to restore peace. The RS-Tree informs about the hierarchical relationship between different segments and their relations by means of the writer aim to provide a coherent response to the question.

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[110] Figure 1 and 2 were created using rst package for Latex (Reitter 2006)

The participant replied enumerating different steps of which the first is that [**we first need to acknowledge there is not**.]¹ᴮ This segment is the central claim because it is the response to the question and it is the nucleus of a CONDITIONAL relation whose satellite establishes the conditioning situation [If the aim is to reach peace.]¹ᴬ This *span*, or unit of segments linked by a relation, is the nucleus of a CAUSE relation at a higher level in the hierarchy of the RS-Tree. Its satellite is also annotated as a span, formed by two segments linked by a CIRCUMSTANCE relation. In this span, the satellite informs over the relevant interpretive context [And we cannot have it in the Basque Autonomous Community]¹ᶜ to the situation expressed to explain why we do not have peace; [because we do not have the right to decide.]¹ᴰ

As this example shows, what RS-Trees provide, is information on the relational discourse structure of text from a pragmatic point of view. Analysis departs from text segments and builds up a hierarchical structure, or tree, interpreting how different segments relate to each other. It is a *relational* discourse structure because the baseline is relations between segments. Relations inform over the discourse structure of text assuming the text form a coherent unit. This coherence is intended to ensure that the message conveyed in the central unit is understandable for a listener or reader. However, they also have a rhetorical intent; in other words, the relation between units established through coherence relations, has an intended effect in the reader or listener.

As already mentioned above, several scholars have considered RST an appropriate theoretical framework for the analysis of argumentation (M. Azar 1999; Green 2010; Peldszus and Stede 2016; Biran and Rambow 2011). Azar (1999), for example, proposed RST as an alternative to the so-called 'Toulmin Model' (Toulmin 2003). The main reason given was "that argumentative text should be analysed first according to a general theory of text analysis" (M. Azar 1999, 114). He looked at RST relations and structures, aimed at distinguishing between persuasive and explanatory texts. He used the satellite-nucleus distinction to identify arguments and conclusions for five types of relations: EVIDENCE (persuader), JUSTIFICATION (justifier), MOTIVATION (incentive) and ANTITHESIS/CONCESSION (persuader).

More recently, Peldzus and Stede have double annotated a corpus of argumentative micro-texts to identify correspondences between discourse structures – SDRT and RST– and argumentation schemes (Peldszus and Stede 2016; Stede et al. 2016). The 'Postdam Corpus' is composed of 112 argumentative "micro texts" written in response to trigger questions, and aimed at getting argumentatively dense texts. Authors annotated the corpus in parallel seeking to test the translatability between different annotation schemes and formats. In this sense, their study is similar to that of Azar, although they took as a reference Freeman (2011) for the annotation of argumentation schemes, and following Green (2015), kept both annotation levels separate. They tested the complete set of RST relations and found remarkable parallelisms in argumentation schemes for REASON[111] (*Support*) and CONCESSION (*Undercut*).

Green (2010), on the contrary, followed Azar and selected Toulmin's model as a reference for the annotation of argumentation schemes, and outlined a proposal (ArgRST) where data, and the claim of an argument, are represented as the satellite and nucleus of an RS-tree respectively. She also, specified that the argumentative hypothesis holds for satellite and nucleus of an EVIDENCE relation. She suggested, also, that *Warrant* or *Backing* could translate into RST as the satellite of a BACKGROUND relation where the nucleus is an EVIDENCE relation linking data and claim of the argumentation scheme.

Another body of research suggests that a set of relations, instead of a concrete relation, could be used, for example, to differentiate between Argumentative/Explanatory and Descriptive relations in texts. Gruber and Huemer (2008), for example, identified a group of ten relations (CONCESSION, INTERPRETATION, RESULT, CONDITION, CONTRAST, JUSTIFY, CAUSE, PURPOSE and SOLUTIONHOOD[112]) that could be associated with more argumentative and explanatory texts in contrast to descriptive texts.

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[111] Their RST annotation follows Stede (2010) and relation names differ in some cases.
[112] They distinguish between volitional and non-volitional RESULT and CAUSE. I do not take this distinction into consideration following (Iruskieta et al. 2013).

On the other hand, Biran and Rambow (2011) suggest argumentative texts could be classified through the study of justification. Nonetheless, they consider justification to be wider than the JUSTIFICATION RST relation and suggest the appropriateness of using a set of RST relations (ANTITHESIS, CAUSE, CONCESSION, CONSEQUENCE, REASON, CONTRAST, EVIDENCE, PURPOSE, and RESULT). They chose indistinctively between subject-matter and presentational relations, suggesting the difference regarding the intended effect is not an appropriate criterion for distinguishing between argumentative and non-argumentative texts (2011, 371).

Similar attempts use RS-Trees for the study of argumentation in combination with linguistic markers[113] or evaluative expressions[114] as well as for the study of argumentation in legal texts[115] or political debates[116]. Thus, there is enough evidence to suggest RS-Trees and coherence relations can inform on the argumentativeness of texts. Although, in the light of the findings no straight parallelism could be established, neither between concrete RST relations and argumentative relations, nor between argumentation schemes and relational discourse structures. Finally, research suggests that RS-Trees in combination, for example, with linguistic clues could provide promising means to bridge the gap[117].

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[113] More in line with the suggested relation between argumentation and linguistic indicators or markers, several researchers have taken as model Marcu's automatic identification of RST relations using connectives such as 'but' or 'whereas' (Marcu 2000). The fact that almost a 70% of relations are, indeed, not signalled poses a severe challenge to this model (Taboada 2006). But, as suggested by (2002), considering signals as linguistic clues, rather than discourse markers, results remain sound, especially for intra-sentential rhetorical structure in the field of discourse analysis, though wider in scope of application in the field of argumentation analysis.

[114] Garcia Villalba and Saint-Dizier (2012) instead of focusing on those relations usually defined *a priori* as argumentative – EVIDENCE, CONCESSION or MOTIVATION–, suggest that relations extract their argumentative force from their combination with evaluative expressions. In particular, on the bases of analysis conducted in the <TextCoop> platform (Saint-Dizier 2012), they suggest that arguments are either composed by an evaluative expression (claim) combined with discourse structures such as JUSTIFICATION or ELABORATION or incorporated into the evaluative expression itself. Indeed, the combination of discourse structures and linguistic clues for the analysis of argumentation structures on the bases of discourse structures is widely supported for different genres (Feng and Hirst 2012; Teufel, Siddharthan, and Batchelor 2009).

[115] Moens and Palau (2007; 2009), for example, build RS-trees inspired on Marcu's model to detect argumentative structures in legal texts. Departing from a reduced version of Walton's (2008) argumentation schemes –only premises and conclusions–, they suggest argument structures –relations among different individual arguments– could be adequately represented as RST trees and detected using a manually generated context-free-grammar (CFC) involving, for example, lexical clues. And in a similar vein, (Cabrio, Tonelli, and Villata 2013) analysed how argumentation schemes fit into discourse relations, in this case, extracted from the Penn Discourse Treebank.

[116] Naderi and Hirst (2016) advocate for a more comprehensive framework for the analysis of argumentation in political speech combining discursive and argumentation structure analysis. They depart from previous work on the HILDA discourse parser (Hernault, Prendinger, and Ishizuka 2010) following basic tenets of RST, to segment text into EDUs improved using rich linguistic features. They apply their model to the detection of argumentative schemes by means of scheme specific features including keywords or conditional patters (Feng and Hirst 2012). On these bases, they propose to combine discourse structures with content analysis to get a better approximation to argumentation in political debates (Hirst et al. 2014; Naderi and Hirst 2016).

[117] Promising steps have been done for the automatic RST analysis of texts written in Basque and Spanish (da Cunha et al. 2012; Iruskieta and Zapirain 2015). And these tools could be very helpful to automatically detect certain argument components on the bases of the relational discourse structure of texts –for example, the central claim of argumentative texts (Iruskieta, Labaka, and Antonio 2016)–.

4.3.2 *The Corpus*

The collection of the reports that constitute the core of this dissertation took several months and invaluable contributions from several people, and organisations, that took part in the initiative[118]. The corpus under analysis in this dissertation are transcripts of 117 forums held in 66 municipalities with 1170 participants' comments. Transcripts are far from ideal for the analysis of deliberative discourse. Many texts contain literal transcriptions, written by participants to assist their oral presentations in response to each of the questions posed by the moderator. In other words, texts provide a fixed snapshot of each of the stages of the discussion process from the perspective of participants.

Once data gathering was concluded, the corpus was normalised following the usual guidelines to process text as data (Grimmer and Stewart 2013). First, twelve reports were excluded from the corpus, because they were not presented in the same structure as the remainder[119]. Secondly, I extracted texts from the original reports, separating each response to a question as a separate text unit. Finally, I gathered them in an Excel file and associated each text to its corresponding variables. The final data comprised a set of 4.187 plain texts, ordered by participants, questions, groups, language (group/participant), date, and town.

Language	Texts	Words	Average Word/Text (Means / Median)
Basque	1.195	35.545	29,744 / 24
Spanish	2.992	109.162	36,484 / 28
Total	**4.187**	**144.707**	**34,561 / 27**

Table 5: Complete Data Set Description

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[118] I want to thank Aitziber Blanco and Paul Rios from Lokarri, Igor Ahedo and Asier Blas from *Parte-Hartuz* (UPV/EHU), William Weinsberg and Andrea Bartoli (CICR) and, especially, to Gorka Espiau and the *Agirre Lehendakaria Center* (http://agirrecenter.eus/) for the assistance provided to recollect the documentation of The Konpondu Initiative.
[119] Llodio, Amurrio, Leioa, Abanto-Zierbena, Ibaeta, Lemoiz, Barrika, Ugao, Zamudio, Loiu, Gernika and University forums.

The table above provides a general overview of the main figures of the corpus. At first sight, it looked as if I was looking at getting discourse structures, I might need to select a sub-corpus composed of those that passed a critical threshold regarding length, because some of them did not present any discourse structure at all. Moreover, a balanced corpus needed to be built regarding those variables considered relevant for research questions; in this case, the composition of the group, the stages of discussion, and the language of the author. On these bases, a sub-corpus of 200 texts was built.

Language	Texts	Words	Average Word/Text (Mean / Median)
Basque	100	8.900	89 / 86
Spanish	100	11.166	112 / 112
Total	**200**	**20.066**	**100 / 101**

Table 6: Corpus Description

The final corpus analysed in the following sections, is composed of 200 texts with an average length of 112 (Spanish), and 89 (Basque), words from linguistically homogeneous and heterogeneous group discussions, made during different stages of the deliberative dialogue that took place in the two phases. The size of the corpus may seem to be small in comparison to the original set, but it is more than double the size of other corpuses in comparable studies, such as for example, the corpus in the RST Basque Treebank (Iruskieta et al. 2013). Finally, I was unable to take into consideration material from the web platform *Konpondu.net*, that would otherwise have been interesting, because all comments collected in the web platform, several reports of concrete forums, video recordings of some forums, the responses of politicians to citizens, were all irretrievably lost the day the *Konpondu.net* platform was abruptly closed[120].

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[120] All information was gathered in the web page until due change in government in 2009 the new government decided to close the web page. In the context of the wider research project this study is located we have contacted all the entities that collaborated in this initiative to recover all the information available but unfortunately part of the information –most notably all comments collected in the online platform and video recording of 6 citizen's forums – is lost for good. (http://www.diariovasco.com/20090609/mas-actualidad/politica/gobierno-vasco-clausura-pagina-200906091810.html (Consulted: 12-07-2016).

4.3.3   *Methodology*

Two main motivations foster the analysis of argumentation using discourse structure following RST. First, as already underlined, several contemporary contributions to the linguistic analysis of argumentative discourse suggest "[a]rgumentation structures are closely related to discourse structures such as defined by *Rhetorical Structure Theory* (RST)" (Stab and Gurevych in press, 1)[121]. The representation of discourse structures in text using their relational discourse structure is, allegedly, theory-independent. Thus, its application is open to interpretation using different theoretical frameworks (Taboada 2004, 106). It departs from a set of minimal assumptions to make possible a description of the structure of a text regarding coherence relations among text segments by the analyst interpretation (W. C. Mann and Taboada 2010).

Secondly, the decision for RST was also taken, because of the availability of already annotated relational discourse structures, in corpuses with texts and conversations of different genres and several languages, including Basque and Spanish (Iruskieta, Da Cunha, and Taboada 2015). In this case, the annotation, evaluation, and interpretation have been conducted in the context of the wider research project on the 'RST Basque Treebank' (Iruskieta et al. 2013), and in collaboration with the IXA research group of the University of the Basque Country (EHU). Indeed, the 'Multilingual RST Treebank' (Iruskieta, Da Cunha, and Taboada 2015) has already been used to show that the nucleus of a rhetorical tree, can be seen as the central claim of an argumentation scheme (Iruskieta, Labaka, and Antonio 2016).

In what follows, I will describe on a step-by-step basis the path that was followed in the research process. The annotation of this Argumentative Basque-Spanish Treebank was performed following the standard methodology in RST (William C. Mann and Thompson 1988; W. C. Mann and Taboada 2010) and the reliability of the corpus was evaluated following a qualitative evaluation method in two steps.

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[121] Indeed, along with *Rhetorical Structure Theory* (RST) (William C. Mann and Thompson 1988), *Penn Discourse Treebank* (PDTB) (Miltsakaki et al. 2004) or *Segmented Discourse Representation Theory* (SDRT) (Lascarides and Asher 2007) are referred as possible venues for the analysis of the discourse structure of argumentation (M. Azar 1999; Biran and Rambow 2011; Cabrio, Tonelli, and Villata 2013; Green 2010; Gruber and Huemer 2008; Peldszus and Stede 2016).

4.3.3.1 Research Process

Firstly, a novel annotator (A1) annotated part of the corpus in both languages with the RSTTool (O'Donnell 2000), following the standard way to annotate in RST: segmenting the text, and then building the RS-tree modularly and incrementally (Pardo, das Graças Volpe Nunes, and Rino 2004).

Secondly, 20 texts (10 in Spanish and 10 in Basque) were annotated by an RST analyst (A2), following the same methodology.

Thirdly, the RS-trees of A1 and A2 were compared in two ways, following a qualitative evaluation method proposed by Iruskieta *et al*. (2015) with the extended RST relations and comparing a set of collapsed RST relations.

Fourthly, genre stages were further specified by means of relational discourse macro-structures, reviewing the corpus on a case by case basis, and ideal templates or macro-structures agreed for each stage by the two annotators. On that basis, the annotation of the corpus was recomposed and based on harmonised RS-trees. The annotation of relations was validated using RSTeval (Maziero and Pardo 2009)[122].

Fifthly, all the annotation data was automatically enriched morphosyntactically (lemmatized and POS-tagged) with Eustagger (Ezeiza *et al*. 1998) for Basque, and with FreeLing (Carreras *et al*. 2004) for Spanish. Annotation data was exported to a database and showed in a web-service[123] environment using tools developed by (Iruskieta *et al*. 2013).

Finally, coherence relations were clustered in classes following (Benamara and Taboada 2015), texts classified by their relational discourse structure and data format for statistical analysis.

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[122] RSTeval can be tested at http://www.nilc.icmc.usp.br/rsteval/ (Consulted: 2017-08-13).
[123] Database can be consulted here: http://ixa2.si.ehu.es/diskurtsoa/rstfilo/ (Consulted: 2017-08-13).
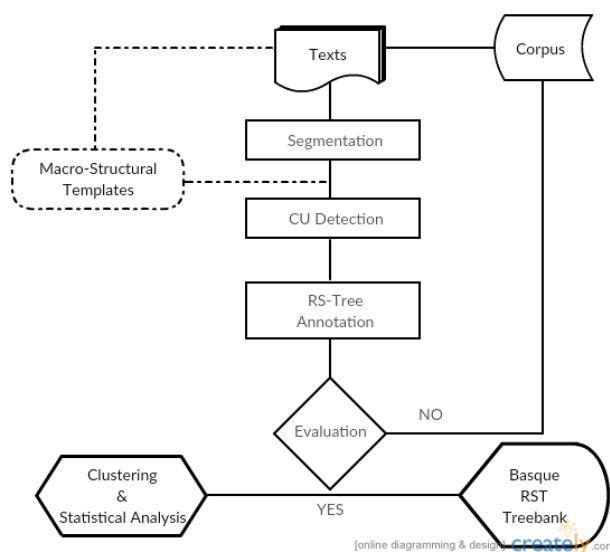
Figure 4: Process Diagram

4.3.3.2 Discourse segmentation

To explain the segmentation task, I use the text below (Example 3). This is a text from the Basque set of the corpus:

a. **<u>Original text</u>**: Espainiako alderdi nagusiek ez dute nahi ikusi geu geure artean ondo konpontzea. Elkarrizketa edukitzerakoan, norberaren "pretentsioak" apur bat bajatu behar dira, akordio txikiak lortzeko, eta gero akordio handietara heltzeko. Ondo dago herritarren artean foroak eta hitz egitea, baina politikoek (euskaldunak barne) ahalegin guztiak egiten dute, elkarrizketa erreal bat edukitzeko?[124]

b. **<u>English Translation</u>**: Main Spanish political parties don't want to see us make do well among ourselves. When having dialogue, each should lower her "ambitions", to reach small agreements and, then, arrive at major ones. It is ok that citizens to talk to each other and forums, but politicians (including Basques) do everything they can to have a real dialogue?

Example 3: FIL965-2-83-EUS

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[124] Each text has assigned an identification number informing over the ID number – language – group – question to which it responds to. In this manner, the online database will allow searching texts or groups of texts following each or a specific combination of these criteria to facilitate further analysis to potential users.
See the segmentation in our database:
http://ixa2.si.ehu.es/diskurtsoa/rstfilo/fitxategiko.php?kont=196&bilatzekoa=FIL965-2-83-EUS-A2.rs3 (Consulted: 2017-08-20).

We manually segment the text into the Elementary Discourse Units (EDUs) which are independent sentences and adverbial clauses following (Iruskieta, Diaz de Ilarraza, and Lersundi 2015). In short, the units segmented at intra-sentence level were clauses containing a finite verb without syntactic subordination (2015, 11).

EDU	Manual segmentation (Basque)	English translation
1	Espainiako alderdi nagusiek ez dute nahi ikusi geu geure artean ondo konpontzea.	Main Spanish political parties don't want to see us make do well among ourselves.
2	Elkarrizketa edukitzerakoan,	When having dialogue,
3	norberaren " pretentsioak " apur bat bajatu behar dira,	each should lower her "ambitions",
4	akordio txikiak lortzeko,	to reach small agreements
5	eta gero akordio handietara heltzeko.	and, then, arrive at major ones.
6	Ondo dago herritarren artean foroak eta hitz egitea,	It is ok that citizens to talk to each other and forums,
7	baina politikoek (euskaldunak barne) ahalegin guztiak egiten dute, elkarrizketa erreal bat edukitzeko?	but politicians (including basques) do everything they can to have a real dialogue?

Table 7: Manual Segmentation FIL965-2-83-EUS

4.3.3.3   Central Unit Detection

Before, we have annotated the main topic of the text or the most important idea of the citizen. This EDU will be the central unit of the RS-tree in the following annotation task. In this case, we think that the most important sentence of the three that constitutes the Example 3 [1*B*] and if we put off all the adverbial clauses of this example, the main EDU is the one which is in bold type (Example 4).

[Elkarrizketa edukitzerakoan]$^{1.A}$ [**norberaren 'pretentsioak' apur bat bajatu be-har dira**]^{1B} [akordio txikiak lortzeko]^{1C} [eta gero akordio handietara heltzeko.]^{1D}

[When having dialogue]^{1A} [**each should lower her 'ambitions'**]^{1B} [to reach small agreements]^{1C} [and, then arrive at major ones.]^{1D}

Example 4: Segmentation and CU annotation of FIL965-2-83-EUS

In this study, the Central Unit is important, because it represents the central claim of the participant in response to the corresponding question. The central unit has been considered to represent the Central Claim of the argumentation scheme in argumentative texts (Peldszus and Stede 2016).

4.3.3.4 Annotation of RS-Trees

Following basic conventions, I proceeded to the annotation of the RST-Tree. This included, first, linking segments with blind relations, in order to define the macro structure of the text; namely the relationship of segment groups about the CU. Second, to link up segments beginning from the lower level of the tree, following a bottom-up process (intra-sentential clauses, sentences, paragraphs, text). Third, and finally, labelling links with the specific coherence relation for each segment.

The set of RST relations used for the annotation of the corpus follows the extended model proposed by (W. C. Mann and Taboada 2010) as implemented in the 'RST Basque TreeBank" (Iruskieta *et al*. 2013). In Table (9-10) for uni-nuclear relations, and Table (8) for paratactic relations, I provide an abbreviated description of the set of relations used to label coherence relations conforming to the relational discourse structure[125].

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[125] A complete description could be consulted here: http://www.sfu.ca/rst/01intro/definitions.html (Consulted: 2017-07-10).

MULTINUCLEAR RELATIONS

	Span	**Other Span**
CONTRAST	one alternate	the other alternate
JOINT	(unconstrained)	(unconstrained)
CONJUNCTION	an item	a comparable item
DISJUNCTION	one alternative	another alternative (not necessarily exclusive)
LIST	an item	a next item
SEQUENCE	an item	a next item
RESTATEMENT (N-N)	an item	reformulation of the same item at same level

Table 8: Multinuclear relations adapted from (W. C. Mann andTaboada 2010) following (Iruskieta 2013)

The critical assumption for annotation is that texts are *coherent* units. This means that, "for every part of a coherent text, there is some function, some plausible reason for its presence, evident to readers" (W. C. Mann and Taboada 2010). This function is established considering that between two text spans, one of them has a specific role which is relative to the other, and coherence relations label the functions.

Coherence relations are defined in the light of constraints, either for Nucleus, Satellite, or both. Equally, they also define the intended effect of the writer (or speaker) on the reader (or hearer) (Iruskieta 2013, 19–22). For example, consider the example above (Example 4), the text has already been segmented and annotated to the Central Unit. Proceeding always from the bottom to the top of the RS-Tree linking segments through relations to later link spans to the Central Unit.

This example, begins with [1C] and [1D], and both interpreted segments were linked by a multi-nuclear SEQUENCE relation where the first span refers an item followed 'then'[126] by another item. This span was the satellite of a PURPOSE relation, and defines the intent behind the intended situation expressed in the nucleus [1B]. Finally, I annotated the span composed of [1B], [1C], [1D] as the nucleus of a CIRCUMSTANCE relation the satellite of which [1A] describes the interpretive situation for the Nucleus. The resulting RS-Tree is formalised as follows:

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[126] The use of discourse markers or signals is also common but considered complementary to relation labelling so far as between 60 and 70% of relations are not signalled by markers like 'then' (Taboada 2006).

[Elkarrizketa edukitzerakoan]^{1A} [**norberaren 'pretentsioak' apur bat bajatu be-har dira**]^{1B} [akordio txikiak lortzeko]^{1C} [eta gero akordio handietara heltzeko.]^{1D}

[When having dialogue]^{1A} [**each should lower her 'ambitions'**]^{1B} [to reach small agreements]^{1C} [and, then arrive at major ones.]^{1D}
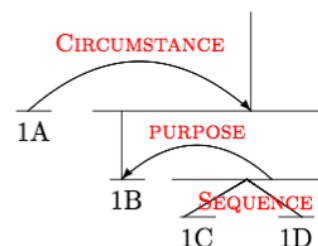
Example 5: RS-Tree of central span of FIL965-2-83-EUS

As noted before, relations are differentiated into uni-nuclear or multi-nuclear, depending on the relative importance of one segment or span towards the other, which it is linked to by coherence relations. Also, coherence relations are distinguished as Presentational Relations and Subject-matter Relations. This distinction is because, in addition to constraints on the nucleus and satellite, each relation is distinguished by the effect a relation has on the reader (William C. Mann and Thompson 1988, 257). 'Subject-matter relations' are "those whose intended effect is that the reader *recognises* the relation in question". 'Presentational relations' "are those whose intended effect is to *increase some inclination* in the reader, such as the desire to act or the degree of positive regard for, belief in, or acceptance of the nucleus" (William C. Mann and Thompson 1988, 257).

This distinction will not be followed for the analysis of the Deliberative *Minimum*, because the interest here resides in the contraposition between argumentative and non-argumentative relational discourse structures, and I find the typology introduced by Benamara and Taboada (2015), more appropriate for that end. However, it is necessary to notice this rhetorical dimension of coherence relations, because the intended effect is taken into consideration in the annotation process.

PRESENTATIONAL RELATIONS

	Nucleus	Satellite
PREPARATION	text to be presented	text which prepares the reader to expect and interpret the text to be presented
BACKGROUND	text whose understanding is being facilitated	text for facilitating understanding
Enablement and Motivation		
ENABLEMENT	an action	information intended to aid the reader in performing an action
MOTIVATION	an action	information intended to increase the reader's desire to perform the action
Evidence and Justify		
EVIDENCE	a claim	information intended to increase the reader's belief in the claim
JUSTIFY	text	information supporting the writer's right to express the text
Antithesis and Concession		
ANTITHESIS	ideas favoured by the author	ideas disfavoured by the author
CONCESSION	situation affirmed by author	situation which is apparently inconsistent but also affirmed by author
Restatement and Summary		
RESTATEMENT	a situation	a re-expression of the situation
SUMMARY	text	a short summary of that text

Table 9: Uni-nuclear presentational relations adapted from (W. C. Mann and Taboada 2010) following (Iruskieta 2013)

SUBJECT MATTER RELATIONS

	Nucleus	Satellite
ELABORATION	basic information	additional information
MEANS	an activity	a method or instrument
CIRCUMSTANCE	text expressing the events or ideas occurring in the interpretive context	an interpretive context of situation or time
SOLUTION-HOOD	a situation or method supporting full or partial satisfaction of the need	a question, request, problem, or other expressed need
Conditional Subgroup		
CONDITION	action or situation whose occurrence results from the occurrence of the conditioning situation	conditioning situation
UNCONDITIONAL	does not depend on S	could affect N
UNLESS	none	none
OTHERWISE	action or situation whose occurrence results from the lack of occurrence of the conditioning situation	conditioning situation
Evaluation and Interpretation		
EVALUATION	a situation	an evaluative comment about the situation
INTERPRETATION	a situation	an interpretation of the situation
Cause Subgroup		
CAUSE	a situation	another situation which causes that one
RESULT	a situation	another situation which is caused by that one
PURPOSE	an intended situation	the intent behind the situation

Table 10: Uni-nuclear subject matter relations adapted from (W. C. Mann and Taboada 2010) following (Iruskieta 2013)

For example, following the original proposal by Mann and Thompson (1988) means CONCESSION relations are defined as follows with regard to constraints in Nucleus and Satellite as well as the intended effect on the reader:

Relation name: CONCESSION

Constraints on Nucleus: Writer has positive regard for the situation presented in N

Constraints on Satellite: Writer is not claiming that the situation presented in S does not hold

Constraints on N + S: Writer acknowledges a potential or apparent incompatibility between the situation presented in N and S; writer regards the situation presented in N and S compatible; recognising that the compatibility between the situation presented in N and S increases Reader's positive regard for the situation in N

Effect: Reader's positive regard for the situation presented in N is increased.

Example 6: Source (William C. Mann and Thompson 1988, 254–55)

Now let me take another example from my corpus. The following text segment is part of a response given by a participant to the first question in the second phase. Therefore, the participant was asked about the problems and opportunities for peace and political normalisation[127]. The relational discourse structure of his reply is composed by a SOLUTIONHOOD relation whose satellite links to text spans with a Multinuclear LIST relation. The text below is Span 2.

[ETAren borroka armatuak ez du bakea ekarriko.]^{1A} [**Ostera, ETAri eta berau os-atzen duten gizon emakumeei ez zaie ezelango bermerik ematen**]^{1B} [borroka armatua utzi]^{1C} [eta bide politikoetatik soilik euren helburu politikoak lortzeko.]^{1D} [Adibide garbiena alderdi politiko eta eragile sozialen legez konporatze eta kartze-latzeak dira.]^{1E}

[ETA's armed struggle will not bring peace.]^{1A} [**But, to ETA and to its men and women, no guarantee is given**]^{1B} [to give up armed struggle]^{1C} [and to achieve their political objectives by only political means.]^{1D} [The most clear example is the banning and imprisonment of political parties and social activists.]^{1E}

Example 7: Segmented text extracted from FIL1597_34_63_EUS

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[127] In nowadays situation what problems and opportunities do you see to reach peace and political normalization?

Following the stepwise methodology, first I segment the text into EDUs, and identify the Central Unit of this Span. This step should take into consideration the macro structure of the RS-Tree, as well as the question to which it responds. Indeed, if we take the text in isolation, the interpretation of the relations linking different EDUs might differ. For example, we could interpret that segments [1A] and [1B] are both a nucleus of a CONTRAST relation where both are given the same importance.

However, if we look at the wider picture, as shown in Figure (2) below, this text is the nucleus of a multi nuclear LIST relation that, in the higher level of the hierarchy of the RS-Tree, is the satellite of a SOLUTIONHOOD relation. The text responds to a question on the problems and opportunities for peace and normalisation, and the participant first enumerates the problems, and then suggests a scenario in which those problems could be solved. Therefore, the participant lists the problems, or relevant situations, and on that basis, I interpreted that the function of [1A] was not at the same level to [1B] because it was [1B] the text segment expressing the problem.
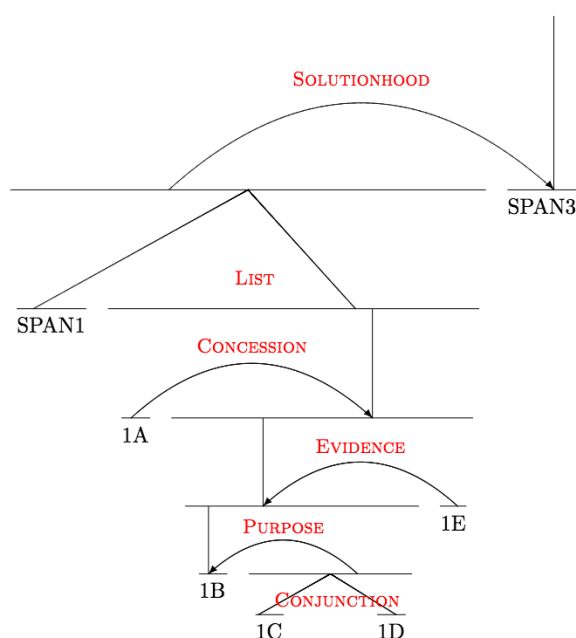
Example 8: Reduced RS-Tree of FIL1597_34_63_EUS

Moreover, the participant, in my interpretation, conceded the compatibility of acknowledging that 'ETA's armed struggle will not bring peace.'[1A] with the fact that 'however, to ETA and to its men and its women, no guarantee is given'[1B] in order to *increase the reader's positive regard for the situation presented in N*, in this case [1B], which in the RS-Tree was the expression of a problem for peace and normalization. In other words, we interpreted [1A] as the satellite of a CONCESSION relation whose nucleus is [1B]. Indeed, the internal relational discourse structure of this span, enhanced this interpretation insofar as the participant refers to the PURPOSE of giving guarantees is to move ETA to give up armed struggle [1C] and achieve its political objectives by political means only [1D] and provide EVIDENCE with information intended to increase the reader's belief in that claim [1E].

Two further remarks of note. First, it is considered that coherence relations express implicit communication. What I mean by this is that, relations carry communicative content and allow implicit communication to be revealed, thus contributing to the possibility of "reading between the lines" (W. C. Mann and Taboada 2010). The example above, illustrates the central claim of the writer that ETA has no guarantees it will achieve its political ends by only political means. The implicit assumption of this assertion is that ETAs purpose is political, but what is debatable, reveals an implicit idea conveyed by the writer in this communication to the reader.

Secondly, interpretation should be made carefully, insofar as the definition of relations, is grounded entirely on the interpretation of the analyst. Each definition in RST is embedded in a constraint formula as follows "It is plausible to the analyst that it was plausible to the author that…" (W. C. Mann and Taboada 2010). In short, analysis presumes that what it is plausible to the analyst as an observer, shall equally be plausible to the observer as a reader, consequently, it is plausible to think that this was the intent of the writer.

4.3.3.5 *Evaluation*

To evaluate the reliability of the annotation process, a part of the corpus was double annotated (A1 and A2) to measure the inter-annotator agreement of the RS-trees. Indeed, for this project has been evaluated the most difficult task of the rhetorical annotation, relation labelling.

To assess the reliability, the annotation of relations was evaluated following Iruskieta, Da Cunha, and Taboada (2015). First, the agreement for the labelling of relations in the complete set of twenty texts, was evaluated by comparing relations labelled by the two annotators. As shown in the contingency table below (Table 14), the level of disagreement was high. Only in 30% of the cases, did both annotators label the same relation. At first sight, it seemed disagreement could only have been explained due to the ambiguity of the interpretation of several relations. Therefore some, whose differentiation was considered to give ambivalent results, but nevertheless pertained to the same subgroup of coherence relations were collapsed. For example, EVALUATION and INTERPRETATION or different relations within the CONDITIONAL subgroup.

Nonetheless, even with a collapsed set of coherence relations, results remained low with an overall inter-annotator agreement of 46%. Lower rates of agreement were expected, given that the raw data was not from a scientific abstracts or journal articles; the kinds of texts that are well structured in comparison to those written by diverse groups of normal citizens. Nonetheless, results were far below what was expected, so a finer-grained analysis of the causes of disagreement were conducted.

A1	A2	Agreem. RST extended	Agreem. collapsed RST
CIRCUMSTANCE	CIRCUMSTANCE	1	1
ANTITHESIS	CONTRAST	0	1
PURPOSE	PURPOSE	1	1
SEQUENCE	SEQUENCE	1	1
CONCESSION	CONCESSION	1	1
PURPOSE	PURPOSE	1	1
SOLUTION HOOD	-	0	0
TOTAL		5/7 (%71.42)	6/7 (%85.71)

Table 11: Inter annotator agreement description of A1 and A2 on FIL965-EUS-083-2

Table 12: Contingency Table Interannotator Agreement

RELATION	1	2	3	4	5	6	7	8	10	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	28	Total general
1								1		1																**2**
2			1							1		1														**3**
3			1											2								1				**4**
4		3		3									1	1	1									1		**10**
5				1	5			1		2																**9**
6				1	1	2	1					1														**6**
8	1									1							1									**3**
9										1																**1**
10	1	1		1			2		2		1		1	1	2					1						**13**
11										1																**1**
12					1	1							1				1	1			1	1				**7**
13										1																**1**
14						1		1				2		1	1		1									**7**
15							1																			**1**
16										1																**1**
17			1		1		4	2	1						9		1			2						**21**
18						1	1		1						1		1									**5**
19										1																**1**
21									2										1	1						**4**
22						1						1							1	6						**9**
23									4					1		1			1		2					**9**
24								1											1			4				**6**
25							3					1											1			**5**
26									3	2		1			1						1	1		6		**15**
27							1																		2	**3**
28							1					1		1											1	**4**
Total general	**2**	**4**	**2**	**8**	**9**	**4**	**13**	**7**	**15**	**10**	**1**	**8**	**1**	**7**	**15**	**3**	**6**	**3**	**1**	**11**	**4**	**6**	**1**	**7**	**3**	**151**

Relation labels: 1= Antithesis; 2= Background; 3= Cause; 4= Circumstance; 5= Concession; 6= Condition; 7= Conjunction; 8= Contrast; 9= Disjunction; 10= Elaboration; 11= Enablement; 12= Evaluation; 13= Evidence; 14= Interpretation; 15= Joint; 16= Justify; 17= List; 18= Means; 19= Motivation; 20= Otherwise; 21= Preparation; 22= Purpose; 23= Restatement; 24= Result; 25= Sequence; 26= Solution-hood; 27= Unconditional; 28= Unless

The analysis proceeded by reviewing each pair of RS-Trees (Figure 5) relation by relation for [FIL965-EUS-083-2], and annotating differences of interpretation by annotators A1 and A2 as shown in Table (15). In this case, although the two RS-Tree looks different, there is a similar interpretation of the text, but here the annotators are formalised in different ways to the trees. We explain *grosso modo* the different interpretations of both RS-trees from the top and left to the bottom and right below.

A1	A2	Explanation
ANTITHESIS AND SOLUTION-HOOD	CONTRAST	Agree in the discourse relation of a certain "opposition", but disagree in segmentation, central unit and RST relation.
CIRCUMSTANCE	CIRCUMSTANCE	A2 do not segment the adverbial clause of circumstance "elkarrizketa edukitzerakoan"
PURPOSE	PURPOSE	Agree
SEQUENCE	SEQUENCE	Agree
CONCESSION	CONCESSION	Agree in the relation, but disagree in the nuclearity
PURPOSE	PURPOSE	Agree

Table 13: Explanation of different interpretation by A1 and A2 of FIL965-EUS-083-2

The level of agreement regarding nuclearity was high within text spans, but low regarding the macro structure of texts, and both annotators understood relations differently. Different interpretations were understandable in some cases due to the type of text under analysis. However, the level of agreement was too low. Therefore, regarding nuclearity at the higher level of the hierarchy of the RS-Tree, or macro structure of the text, I tried to identify common patterns for texts at the same stage; responding to the same question. Additionally, the novel annotator completed a training session with the expert annotator to harmonise their interpretation of coherence relations.
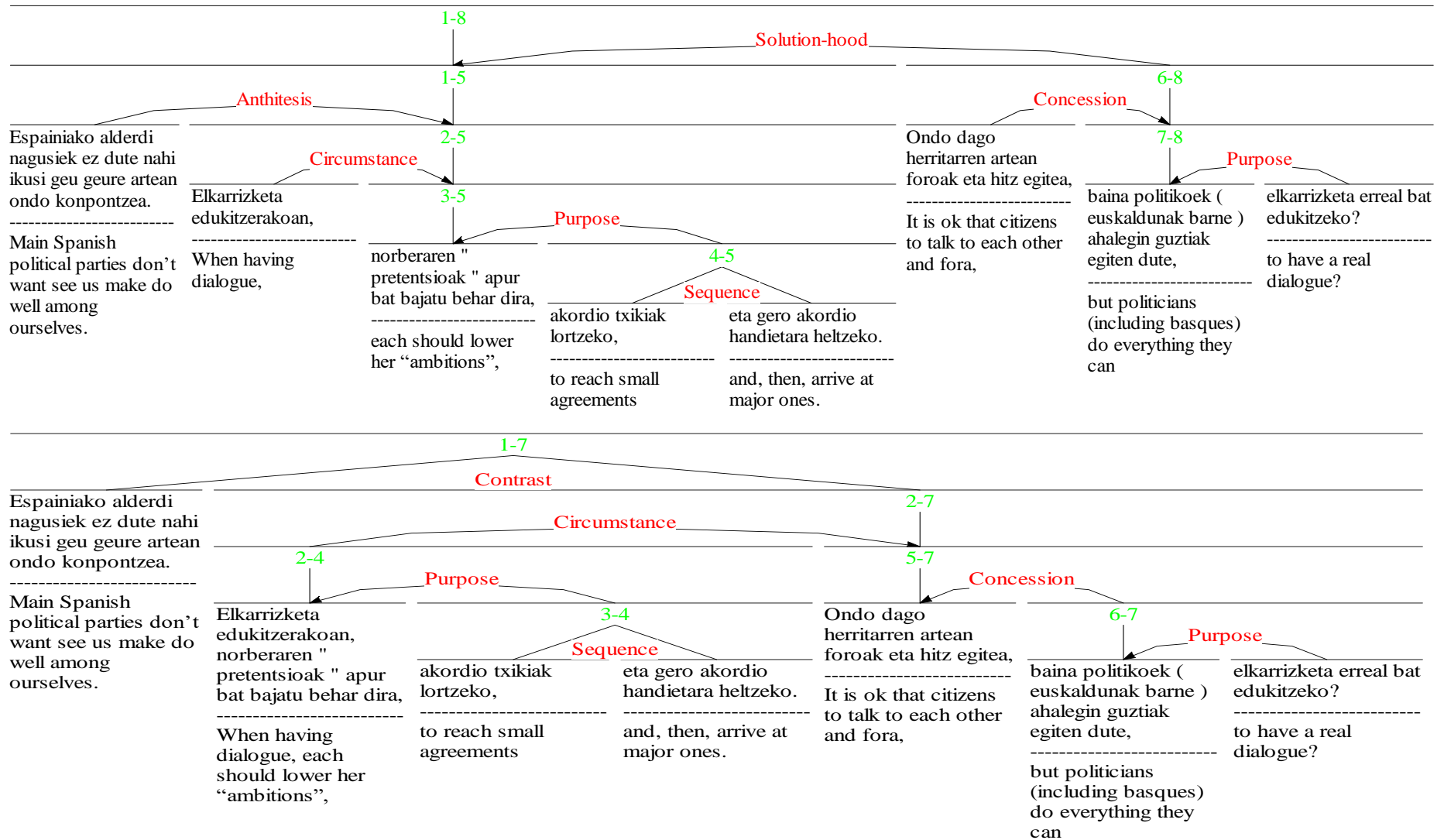
Figure 5: Annotation of FIL965-EUS-083-2 by A1 (above) and A2 (below).

4.3.3.6   Macro-Structure and Stages

Regarding macro-structures, it was found that there was a problem with some decisions taken to build the corpus. At the beginning, a decision was taken to differentiate different aspects of responses to the same question as different text units. For example, in the first stage of the second phase, participants were required to underline opportunities and difficulties for peace and normalisation. Reports were collated separately for both responses. Therefore, each text fragment was taken as a separate text unit. However, reviewing the annotation process, it was realised that, taken together, the Central Unit and structural organisation of the RS-Tree were identified more easily.

In short, the question itself was constraining the structural organisation of responses by participants, but it was difficult to identify this structure, because responses had been divided into different text units. Therefore, both annotators agreed on a set of macro-structural templates for each stage of discussion, based mainly on what was expected from participants when attending to the question posed by the moderator. This procedure is usual in RST studies, for example, to harmonise the annotation of the Central Unit (Iruskieta 2013, 61–61).

Propose **Stage (Phase I)**

At the *Propose* stage of the first phase, we found that in response to the question *Egoera honetan, **zein ekimenek** lagun dezakete bakerako aukera berri bat sortzen?*[128] proposals represented the central unit of texts that used to be preceded by elaboration relations like BACKGROUND and CIRCUMSTANCE and followed by either SUMMARY or RESTATEMENT relations or MEANS. In other words, participants framed their proposals and either explained how to advance towards them or summarised their contributions.
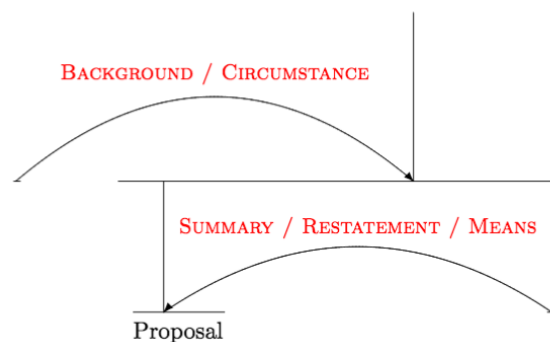
Figure 6: Macro structure Propose (Phase I)

Revise **Stage (Phase I-II)**

At the *Revise* stage, there was any explicit question in any of both phases. Participants were called to express those ideas they found more interesting from other participants. Indeed, if we look at the results table we will see it is precisely at this stage were less quantity of relations were annotated. The most common structure in this stage was, therefore, a multinuclear relation either preceded by BACKGROUND or PREPARATION relation or followed by a SUMMARY or RESTATEMENT relation.
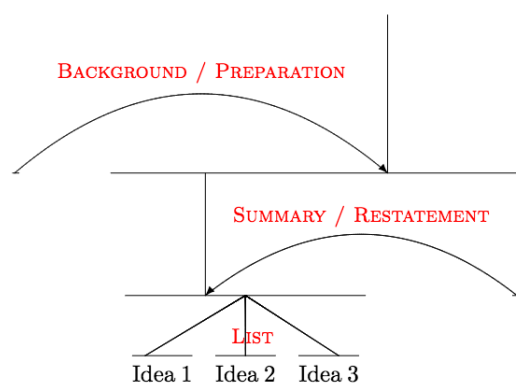
Figure 7: Macro Structure Revise (Phase I-II)

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[128] **English Translation**: In the current situation, which initiatives could contribute to create a new opportunity for peace?

Inform Stage (Phase II)
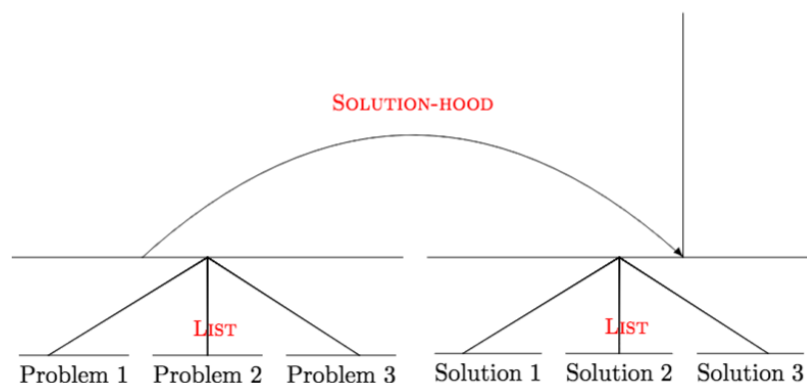
Figure 8: Macro Structure Inform (Phase II)

In the second phase, overall macro structures were more complex and varied. In the *Inform* stage participants were required to respond first to the following question: *Gaur egun bizi dugun egoeran **zein arazo eta zein aukera** ikusten dituzu bakea eta normalizazio politikoa lortzeko?*[129] As noted the question involved two aspects of the same question (problems and opportunities). According to our interpretation, participants mainly responded structuring their discourse around a SOLUTION-HOOD relation in which the satellite and the nucleus are multi nuclear LIST relations.

Consider Stage (Phase II)

The most difficult one to elucidate was the question in the *Consider* stage: ***Ados zaude herritarrak kontsultatuak izan daitezen bizi dugun egoera desblokeatzen laguntzeko?***[130] The question involves different mandates to respondents. On the one hand, the central unit of the macro structure is expected to be either a positive or negative response to the direct question posed on the consultation. On the other, there is a direct reference to the purpose of the consultation, and an invitation to differentiate between risks, possibilities, and doubts. Therefore, the same question poses three different tasks to the respondent.

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[129] **English Translation**: *In nowadays situation what problems and opportunities do you see to reach peace and political normalization?*

[130] **English Translation**: *Do you agree that citizens are consulted to unlock the current situation?*

In response, participants tended to present risks that could have been overcome if the consultation was held. Next, they expressed their agreement or disagreement with the consultation, only to either concede some counter-arguments expressing their doubts or provide further information to support the appropriateness of their central claim.
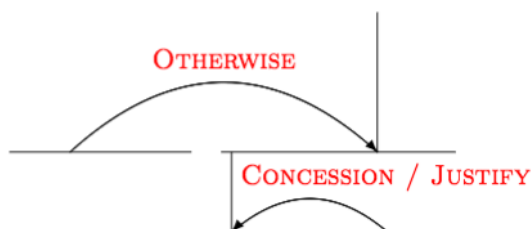
Figure 9: Macro Structure Consider (Phase II)

Therefore, this structure was formalised, using an OTHERWISE relation for which the Central Unit of the text is the Nucleus followed by either a JUSTIFICATION relations or CONCESSION relations. Nonetheless, it is interesting that here, this template matches with texts that respond positively to the main question posed, but not for those that respond negatively. Finally, the same macro structural templates were used to guide the annotation of texts written in both languages, so far as the questions were the same.

4.3.3.7 Validity

Finally, taking harmonised RS-trees as a departure point and after a training period for the novel annotator, both annotators (A1 and A2) re-annotated a sample set of six texts, which were measured with inter-coder agreement for the second task: the annotation of relations. The evaluation was made using the freely available online tool RSTeval (Maziero and Pardo 2009).

Text	Nuclearity		Relation	
ID	Matches	Precision	Matches	Precision
FIL102	47 of 49	0.959	43 of 49	0.877
FIL196	51 of 51	1	50 of 51	0.980
FIL1264	32 of 35	0.914	29 of 35	0.828
FIL1713	61 of 61	1	56 of 61	0.918
FIL2480	41 of 43	0.953	36 of 43	0.837
FIL2517	35 of 41	0.853	31 of 41	0.756

Table 14: Inter-coder agreement for relation labelling based on blind harmonised RS-Trees

Results, in this case, are unexpectedly high, but it should be taken into consideration that first, they result from several months intensive work on the corpus by both annotators and secondly, that relation labelling was conducted on the basis of previously harmonised RS-trees. Therefore, these results reflect that at the end of the validation process, both annotators understand almost equally, that coherence relations where the critical point in validating this annotation as a baseline for further steps in the research process.

4.3.3.8   Delivery

All the annotation data presented in the previous section was automatically enriched morphosyntactically (lemmatized and POS-tagged) with Eustagger (Ezeiza *et al*. 1998) for Basque, and with FreeLing (Carreras *et al*. 2004) for Spanish as it is freely available for research purposes. To that end, all the annotation data was exported to a database and showed in a web-service[131] using tools developed in Iruskieta *et al* (2013).[132]

4.3.3.9   Results

Finally, I recomposed the corpus following criteria specified above, and re-annotated the set of 200 texts. A summary of results is shown in Table (17) in comparison to the three other corpuses in the RST Basque TreeBank (Iruskieta et al. 2013). The main Corpus of the 'RST Basque TreeBank' (RBT, hereafter) is composed of 60 abstracts of three specialised domains: medicine (GMB), terminology (TERM) and science (ZTF). Two expert linguists annotated it, and it defines the gold standard for RST in the Basque language with 1355 EDUS's and 1292 annotated relations.

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[131] Database can be consulted here: http://ixa2.si.ehu.es/diskurtsoa/rstfilo/ (Consulted: 2017-08-20).

[132] A paper with preliminary results on this corpus has been accepted for presentation and publishing in proceeding of the 6th Workshop "Recent advances in RST and Related Formalisms" to be held in Santiago de Compostela September 2017 titled, Imaz, O. and Iruskieta M., 'Deliberation as genre: Mapping Argumentation Through Relational Discourse Structure.'

The first difference in comparison to this corpus (hereafter, DELIB[133]) is that the texts are lengthier than the others. The RBT is composed of 60 texts that contain 15.566 words, while DELIB is composed of 200 texts that contain 20.066 words. by contrast, the RBT contains 1.292 annotated relations and DELIB 2.524. Thus, texts in DELIB employ fewer words than texts in RBT for the same amount of coherence relations.

looking at the typology of relations employed, there are no big differences between corpuses. Overall, more than a half of the annotated relations are Subject-Matter (DEU 54%, DSP 53%, TERM 52%, GMB 53%, ZTF 60%) and a quarter are Presentational-Relations (DEU 26%, DSP 26%, TERM 24%, GMB 23%, ZTF 18%) and the other quarter Multinuclear relations (DEU 20%, DSP 21%, TERM 25%, GMB 24%, ZTF 21%). It is interesting to note that not only are texts from different genres similar at this level, but also that texts from the same genre in different languages (DEU and DSP) are also similar.

In the case of Subject Matter relations (Graph 4) different corpuses share ELABORATION as the most common coherence relation in this group and the corpus (ZTF 23%, TERM 21%, GMB 20%) although less prominently in DEU (13%) and DSP (10%). In the Graph below it can also be seen that CONDITIONAL subgroup relations are present in a smaller percentage than those in the CAUSAL subgroup, among which PURPOSE, is the one most represented (DEU 8%, DSP 8%, ZTF 10%, TERM 9%) excepting in TERM (2%).

DEU and DSP slightly differ from the rest regarding INTERPRETATION (DEU 5%, DSP 4%) and EVALUATION (DEU 3%, DSP 3%) insofar as there are more coherence relations in this subgroup compared to others; except for INTERPRETATION relations in GMB (6%). On the contrary, DEU and DSP account for less MEANS relations (DEU 4%, DSP 3%) than GMB (9%) and ZTF (10%) but similar to TERM (3%). Finally, there is the considerably higher amount of CIRCUMSTANCE relations in DSP (10%) in comparison to the rest. Indeed, this is the most remarkable difference between the Spanish and Basque sets in DELIB.

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[133] Hereafter the entire corpus will be named DELIB, the Basque set DEU and the Spanish set DSP.

Subject Matter Relations
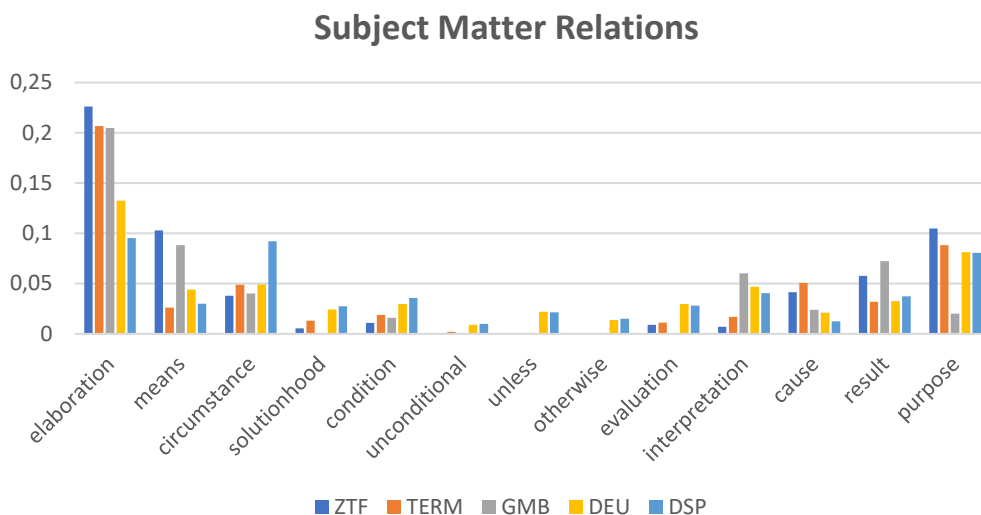
Graph 4: Subject-Matter relations in the RBT

In the case of Presentational Relations, MOTIVATION, ENABLEMENT, EVIDENCE, RESTATEMENT, and SUMMARY are the least represented relations. However, there are differences regarding the most represented coherence relations if the DELIB corpus is compared to the rest.

Presentational Relations
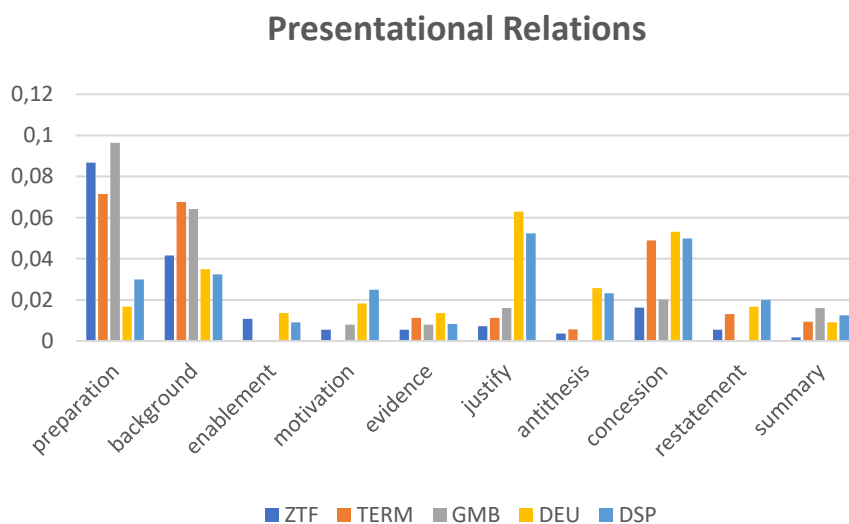
Graph 5: Presentational relations in the RBT

The most represented relation in DELIB is JUSTIFY (DEU 6%, DSP 5%), but PREPARATION is the most represented in ZTF (9%), TERM (7%), and GMB (10%). This presence of PREPARATION relations in ZTF, TERM, and GMB may be explained by the annotation of this corpuses which included the entire body of the documents with, for example, titles (Iruskieta, Diaz de Ilarraza, and Lersundi 2015, 6). However, something similar occurs, when looking at the second most represented relation that is BACKGROUND in ZTF (4%), TERM (7%), and GMB (6%) but CONCESSION in DEU (5%) and DSP (5%).

Finally, in the case of multi nuclear relations, the most repeated overall relation is LIST (DEU 12%, DSP 12%, ZTF 8%, TERM 6%, GMB 11%). Unlike in DELIB, the second most represented relation in the rest is SAME-UNIT (ZTF 7%, TERM 8%, GMB 4%). SAME-UNIT is a special kind of relation used to annotate a relation between two text segments, that conform one EDU, but has another EDU embedded in between and it sometimes considered as a *non-relation* (Iruskieta, Da Cunha, and Taboada 2015, 40).
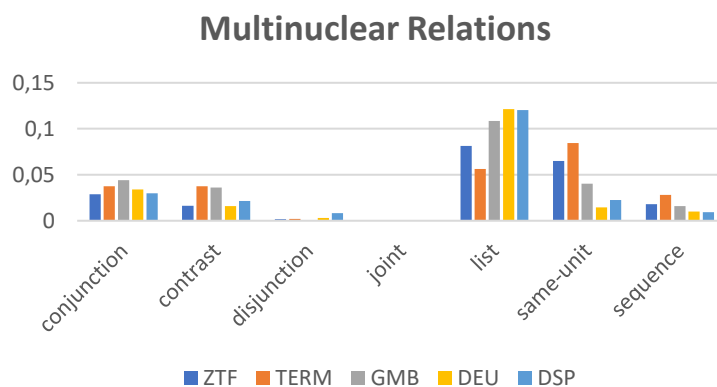
Graph 6: Multinuclear relations in RBT

RBT	DEU	%	DSP	%	ZTF	%	TER	%	GMB	%
Presentational	**349**	**26%**	**316**	**26%**	**102**	**18%**	**127**	**24%**	**57**	**23%**
Preparation	22	2%	36	3%	48	9%	38	7%	24	10%
Background	46	3%	39	3%	23	4%	36	7%	16	6%
Enablement	18	1%	11	1%	6	1%	0	0%	0	0%
Motivation	24	2%	30	2%	3	1%	0	0%	2	1%
Evidence	18	1%	10	1%	3	1%	6	1%	2	1%
Justify	83	6%	63	5%	4	1%	6	1%	4	2%
Antithesis	34	3%	28	2%	2	0%	3	1%	0	0%
Concession	70	5%	60	5%	9	2%	26	5%	5	2%
Restatement	22	2%	24	2%	3	1%	7	1%	0	0%
Summary	12	1%	15	1%	1	0%	5	1%	4	2%
Subject matter	**707**	**54%**	**634**	**53%**	**334**	**60%**	**274**	**52%**	**131**	**53%**
Elaboration	175	13%	115	10%	125	23%	110	21%	51	20%
Means	58	4%	36	3%	57	10%	14	3%	22	9%
Circumstance	65	5%	111	9%	21	4%	26	5%	10	4%
Solution-hood	32	2%	33	3%	3	1%	7	1%	0	0%
Condition	39	3%	43	4%	6	1%	10	2%	4	2%
Unconditional	12	1%	12	1%	0	0%	1	0%	0	0%
Unless	29	2%	26	2%	0	0%	0	0%	0	0%
Otherwise	18	1%	18	1%	0	0%	0	0%	0	0%
Evaluation	39	3%	34	3%	5	1%	6	1%	0	0%
Interpretation	62	5%	49	4%	4	1%	9	2%	15	6%
Cause	28	2%	15	1%	23	4%	27	5%	6	2%
Result	43	3%	45	4%	32	6%	17	3%	18	7%
Purpose	107	8%	97	8%	58	10%	47	9%	5	2%
Multinuclear	**263**	**20%**	**255**	**21%**	**117**	**21%**	**131**	**25%**	**61**	**24%**
Conjunction	45	3%	36	3%	16	3%	20	4%	11	4%
Contrast	21	2%	26	2%	9	2%	20	4%	9	4%
Disjunction	4	0%	10	1%	1	0%	1	0%	0	0%
Joint	1	0%	0	0%	0	0%	0	0%	0	0%
List	160	12%	145	12%	45	8%	30	6%	27	11%
Same-unit	19	1%	27	2%	36	7%	45	8%	10	4%
Sequence	13	1%	11	1%	10	2%	15	3%	4	2%
TOTAL	**1319**	**100%**	**1205**	**100%**	**553**	**100%**	**532**	**100%**	**249**	**100%**

Table 15: Comparison of main figures at the RST Basque TreeBank

4.4   The Deliberative Minimum

As explained earlier, there are reliable grounds to consider the relational discourse structure useful for the analysis of argumentation (Stab and Gurevych in press). Nevertheless, no direct correlation could be established, either between concrete argumentation schemes and relational discourse structures, or between argumentative relations and coherence relations (Peldszus and Stede 2013). This fact poses a challenge insofar as the purpose here is to assess the argumentativeness, and more concretely, evaluate the extent to which the participants could be considered to have taken a deliberative stance, in the light of the deliberative minimum, using the relational discourse structure of texts in the corpus.

The methodological answer to this challenge is sustained in three steps. First, I follow Biran and Rambow (2011), and consider that rather than a particular RST coherence relation, it is a set of coherence relations that discloses the argumentativeness of the relational discourse structure of texts. Secondly, in order to differentiate argumentative and non-argumentative relations, I follow the classification model of Benamara and Taboada (2015), in which a specific class of relations differentiates argumentative coherence relations from non-argumentative coherence relations. Finally, following Gomez-Gonzalez and Taboada (2012), I take a concrete subclass of the *Argumentation* class relations to more accurately approximate the *deliberative minimum.*

From the perspective of argumentation theory, the main type of reasoning in deliberative discourse is practical reason, and the argumentative scheme for practical reason defines deliberation by means of "considering alternative practical arguments, supporting different claims and examining and weighing considerations that support these alternatives" (I. Fairclough and Fairclough 2013, 50). Moreover, at minimum, deliberation requires "balancing each argument against a counter-argument" (2013, 50). Indeed, it is the presence of argument and counter-argument which is the structural difference whereby practical reason can be considered to involve deliberation in a minimal sense (2013, 51).

From the perspective of deliberative democratic theory, the definition given by Owen and Smith, states that what is required to fulfil the deliberative minimum or deliberative stance is "a relation to others as equals engaged in the mutual exchange of reasons as if to reaching a shared practical judgment" (Owen and Smith 2015, 228). A central component of this minimum refers to a non-controversial normative standard in deliberative democratic theory; meaning, 'mutual respect'. Finally, 'mutual respect' is specified, for example, in the DQI in relation to different aspects among which "[i]n particular, respect towards counterarguments is a necessary condition for the weighing of alternatives, which some view as an essential element of deliberation" (Steenbergen et al. 2003, 26).

On this basis, the set of coherence relations I will use to differentiate argumentative, and non-argumentative relational discourse structures, could be further specified in relation to the *deliberative minimum*. This can be made significantly stronger, by focusing on those relations that signal the presence of an argument vs. counter-argument scheme. In this case, more generally the group of *Argumentative-Opposition* class relations are taken to indicate a more deliberative stance because, among other indicators (CONTRAST and ANTITHESIS) it includes CONCESSION relations that, according to Taboada and Gómez-González plays the role of a 'vernacular argumentation'; in other words, it "fulfils the role of the classical thesis-antithesis structure" (Taboada and Gómez-González 2012, 35).

First, I explain the clustering process of relations following the taxonomy suggested by Taboada and Gómez-González. Secondly, results are analysed in relation to the different relevant variables for the research questions. Thirdly, to assess the robustness of findings in the previous task, I statically analyse the data set for each research question. In the final section, I summarize the main findings.

4.4.1   Clustering: Relation Class

Benamara and Taboada suggest a taxonomy of coherence relations divided into four groups or classes: *Temporal*, *Thematic*, *Structuring* and *Argumentative* (Benamara and Taboada 2015, 149–50). The *Temporal* class includes relations which set events regarding time. The *Thematic* class includes relations that "structure and organise information in the discourse" either "connecting utterances describing the same state of affairs" or "provide the framework for understanding the content of the situation described in the discourse segment" (2015, 150). *Structuring* class includes relations that organise text linguistically. Finally, the *Argumentative* class includes relations "used to advance an argument" (2015, 151).

Thematic class and *Argumentative* class are further divided into several subclasses. On the one hand, the *Thematic* class includes *Framing* and *Elaboration* subclasses. Relations contained in the *Framing* subclass provide context to the content of the propositions that follow. The *Elaboration* sub class includes relations that connect utterances which describe the same state of affairs. Finally, the *Argumentative* class includes *Causal* and *Argumentative* subclasses. The *Causal* sub class includes causal and conditional relations, and the *Argumentative* sub class includes either justifications in *Support* of the central claim of the argument, or those contrasting it by *Opposition*.

The unified hierarchy of relation classes and coherence relations[134] at each class is specified as follows (Benamara and Taboada 2015, 151):

Class	RST RELATIONS
Temporal Class	SEQUENCE
Thematic Class	
Elaboration Subclass	ELABORATION, SUMMARY, RESTATEMENT, MEANS and *PREPARATION*[135]
Framing Subclass	BACKGROUND and CIRCUMSTANCE
Structuring Class	CONJUNCTION, DISJUNCTION, and LIST
Argumentative Subclass	
Causal Subclass	
Cause	CAUSE, RESULT, CONDITIONAL group, and *SOLUTION-HOOD*
Purpose	PURPOSE
Argumentative Subclass	
Support	MOTIVATION, EVIDENCE, JUSTIFY, EVALUATION, INTERPRETATION, and *ENABLEMENT*
Opposition	CONTRAST, CONCESSION, and ANTITHESIS

Table 16: Taxonomy of RST relations adapted from (Benamara and Taboada 2015)

I have decided to take this taxonomy as a reference to classify relations in classes because of two reasons. First, it allows for a more efficient way to isolate argumentative coherence relations in a concrete class, that is also further divided by differentiating *Opposition* coherence relations; crucial from research questions. I have included several relations, and excluded others, from the original taxonomy, because I have applied the taxonomy in order to cluster only RST relations as defined in the 'RST Basque Treebank' (Iruskieta *et al*. 2013). Secondly, this taxonomy is designed to provide a common reference point to different annotation levels, and it is appropriate for my purposes, because the next step to be previewed in the analysis of this corpus, will be the annotation of discourse markers (Taboada and Das 2013). Discourse markers signal coherence relations and are widely used as linguistic clues in, for example, the identification of argumentation profiles (van Eemeren, Houtlosser, and Henkemans 2007).

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[134] JOINT and UNION were excluded from clustering and, therefore, not considered for analysis and interpretation.
[135] Relations in *ITALICS* are those added by us to the original taxonomy.

Finally, results have been organized taking into consideration different layers relevant from the perspective of research questions. In short, I want to see how different variables linking text to context, affect the relational discourse structure of texts in the corpus. Therefore, results of clustering have been segmented according to the cultural background of the participant (language) the micro-context of text, institutional design choices (group composition) the meso-context of text and generic variables (stages), and the macro-context of text.

4.4.2   Results

In tables 23, 24, 25 and 26, the main results are summarized regarding count and percentage of relations by group composition, language, and stage of discussion. The use of argumentative or non-argumentative relation classes, in general, is skewed towards argumentative relation class in Spanish (578 non-arg. / 600 arg.) and in Basque (622 non-arg. / 677 arg.). Indeed, this difference is rather small regarding their relative weight in the total amount of relations. However, this balance is broken if their use in different phases of the initiative is accounted for. In the first phase, *Structuring*, *Elaboration,* and *Framing* class relations dominate in Basque (288/221), and Spanish (236/173) sets, while in the second phase the obverse happens in Basque (334/456) and Spanish (343/427).

DSP	Heterogeneous				Homogeneous			
Class	**Propose**		**Revise**		**Propose**		**Revise**	
Structuring	31	21.2%	15	20.0%	28	21.1%	14	25.9%
Elaboration	38	26.0%	24	32.0%	29	21.8%	11	20.4%
Framing	15	10.3%	5	6.7%	16	12.0%	9	16.7%
Causal	13	8.9%	8	10.7%	16	12.0%	6	11.1%
Purpose	11	7.5%	5	6.7%	11	8.3%	3	5.6%
Support	25	17.1%	8	10.7%	25	18.8%	4	7.4%
Opposition	13	8.9%	10	13.3%	8	6.0%	7	13.0%
TOTAL	**146**	**100%**	**75**	**100%**	**133**	**100%**	**54**	**100%**

Table 17: Relation Class per Group Composition and Stage in the Spanish set (Phase I)

DEU	Heterogeneous				Homogeneous			
Class	Propose		Revise		Propose		Revise	
Structuring	34	18.1%	15	17.2%	32	19.3%	19	27.9%
Elaboration	47	25.0%	21	24.1%	45	27.1%	23	33.8%
Framing	23	12.2%	11	12.6%	14	8.4%	4	5.9%
Causal	26	13.8%	5	5.7%	16	9.6%	4	5.9%
Purpose	12	6.4%	11	12.6%	19	11.4%	7	10.3%
Support	29	15.4%	14	16.1%	28	16.9%	4	5.9%
Opposition	17	9.0%	10	11.5%	12	7.2%	7	10.3%
TOTAL	188	100%	87	100%	166	100%	68	100%

Table 18: Relation Class per Group Composition and Stage in the Basque set (Phase I)

Regarding concrete relation classes, something similar occurs with the ordering from most to least used. In the first phase, there is a systematic pattern according to which, the most repeated class is *Elaboration* in both languages, followed by *Structuring* class relations and one of the argumentation class relations (*Support* or *Opposition*). In contrast, the second phase revealed that there are different orderings, not only if we compare both languages, but also between different stages or group compositions within each linguistic set.

Thus, the numbers suggest both languages make a similar use of relation classes at this level, although remarkable differences emerge if we compare different phases. Regarding argumentation and non-argumentation class relations, it seems the second phase motivated the use of argumentatively denser structures. In terms of relation classes, the first phase is more conventional insofar as a clear pattern structures discourses for both languages at any stage of discussion, while in the second phase discourse structures are more diverse; not only between languages, but even within each linguistic set at different stages of discussion.

A focus on stages, revealed that the difference between phases of The Konpondu Initiative regarding the use of argumentative and non-argumentative relations classes, is present in both languages: 173 argumentative relations versus 236 non-argumentative relations in the first phase for texts written in Spanish, and 231 argumentative relations and 289 non-argumentative relations in the texts written in Basque. While in the second phase the number of non-argumentative relations in the Spanish set (353) is lower than argumentative ones (426) and the same happens in the Basque set (334 non-arg. / 466 arg.). Although the difference is more pronounced in the Basque set than in the Spanish one.

Within the first phase, weight regarding the density of relational discourse structures, is focused on the *Propose* stage when given for any language and group composition the number of relations doubles that in the *Revise* stage. The main relation class among non-argumentative relation classes is *Elaboration,* while within the *Argumentation* class the most used one is *Support* followed by either of two relations in the *Causal* subclass (Causal or Purpose).

Within the second phase, the picture is much more complex. In any of the stages of the second phase, a clear pattern could be identified. If comparison is made stage by stage, the only common trend is that *Argumentation* class relations out number non-argumentative class relations. There is an exception in Spanish texts written by heterogeneous groups where the *Causal* relation class is the most used, but the same does not happen in the Basque set where a different relation class dominates each stage. Another exception is that in texts written in both languages, in heterogeneous groups the *Causal* relation class is the most used, but the same does not happen in the homogeneous groups.

Finally, regarding group composition in the second phase, it can be seen that in heterogeneous groups both in Spanish (240 arg. / 160 non-arg.) and Basque (287 arg. / 196 non-arg.) argumentative relations outnumber non-argumentative ones in homogeneous groups in both languages (Spanish, 187 arg. / 183 non-arg. and Basque, 178 arg. / 138 non-arg.). In addition, this difference is more pronounced in Basque texts than in Spanish ones. On the contrary, in the first phase, there is no remarkable difference. Non-argumentative class relations out number argumentative ones in heterogeneous as well as homogeneous groups in both languages.

In terms of different stages and group composition, the *Consider* stage provides the more pronounced difference in the comparison between argumentation and non-argumentative class relations; with the exception of Spanish texts produced in homogeneous groups. The *Consider* stage tends to be denser overall, except for texts in Basque produced in heterogeneous groups.

DSP	Heterogeneous						Homogenous					
Class	Inform		Consider		Revise		Inform		Consider		Revise	
Structuring	23	16.4%	26	14.5%	8	9.9%	24	16.9%	23	14.6%	10	14.3%
Elaboration	20	14.3%	24	13.4%	10	12.3%	22	15.5%	32	20.3%	16	22.9%
Framing	15	10.7%	19	10.6%	15	18.5%	19	13.4%	23	14.6%	14	20.0%
Causal	28	20.0%	39	21.8%	17	21.0%	29	20.4%	28	17.7%	8	11.4%
Purpose	17	12.1%	14	7.8%	8	9.9%	14	9.9%	7	4.4%	7	10.0%
Support	28	20.0%	30	16.8%	14	17.3%	25	17.6%	31	19.6%	7	10.0%
Opposition	9	6.4%	27	15.1%	9	11.1%	9	6.3%	14	8.9%	8	11.4%
TOTAL	140	100%	179	100%	81	100%	142	100%	158	100%	70	100%

Table 19: Relation Class per Stage and Group Composition in the Spanish Set (Phase II)

DEU	Heterogeneous						Homogenous					
Class	Inform		Consider		Revise		Inform		Consider		Revise	
Structuring	28	13.4%	28	16.8%	15	13.9%	22	17.9%	15	13.6%	14	19.2%
Elaboration	49	23.4%	20	12.0%	20	18.5%	28	22.8%	19	17.3%	17	23.3%
Framing	19	9.1%	12	7.2%	5	4.6%	10	8.1%	8	7.3%	5	6.8%
Causal	39	18.7%	45	26.9%	11	10.2%	22	17.9%	23	20.9%	10	13.7%
Purpose	15	7.2%	10	6.0%	7	6.5%	9	7.3%	13	11.8%	4	5.5%
Support	47	22.5%	34	20.4%	34	31.5%	22	17.9%	21	19.1%	11	15.1%
Opposition	12	5.7%	18	10.8%	16	14.8%	10	8.1%	11	10.0%	12	16.4%
TOTAL	209	100%	167	100%	108	100%	123	100%	110	100%	73	100%

Table 20: Relation Class per Stage and Group Composition in the Basque Set (Phase I)

4.4.3 Statistical Analysis

The general overview on raw numbers reveals first, that there is no remarkable difference between both languages, although differences emerge in the second phase. Nevertheless, it seems these effects are associated with strong differences regarding the relational discourse structure of texts between phases. This could be interpreted as meaning stages do have a strong effect on discourse relational structures of texts. However, this effect seems to diminish if differences between stages within the same phase are considered. Finally, group composition does influence the relational discourse structure, but it is more clearly reflected in the second phase than in the first one.

In the final section of this case study, I will show whether or not these provisional findingscan be considered statistically significant. The taxonomy of relations allows me to identify differences and similarities regarding relational discourse structure using the presence or absence of relations within the argumentative relation class. To make the classification more informative, I have reordered relation classes from less argumentative to more argumentative, based on previous studies of the relationship between the relational discourse structures and the argumentative discourse structures mentioned above.

The sequence begins with *Structuring* class relations[136]. These relations organise texts linguistically. Therefore, they are less informative in comparison to others regarding argumentation. Next, I have relocated the two subclasses of the *Thematic* class. Relations included in this class are taken to signal descriptive texts (Gruber and Huemer 2008, 344). Nonetheless, given that Green (2010), for example, included BACKGROUND for the analysis of argumentation schemes, I have ordered subclasses beginning with *Elaboration* subclass followed by *Framing* subclass.

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[136] I have included in this class SEQUENCE coherence relations because the number of relations annotated is very small in comparison to other relation classes.

Finally, the *Argumentation* class comes last, and its subclasses have been reordered beginning with the *Causal* subclass and ending with the *Argumentative-Opposition* subclass. *Purpose* has been considered more argumentative because *Causal* relations tend to be used with explanatory purposes. Finally, within the *Argumentation* subclass priority has been given to the *Opposition* subclass due to the central role the family of *Opposition* relations plays for argumentation and, more particularly, the special role of CONCESSION (Taboada and Gómez-González 2012, 20–22).

The assumption I justifiably make, is that the closer the relational discourse structure of the text is to the *Argumentative-Opposition* relation subclass, the closer the text is to the argumentative structure expected by texts in which participants took a deliberative stance. They are therefore, balanced arguments against counter-arguments to support their claims. This general assumption defines my dependent variable, and it is specified using an ordered sequence of relation classes.

I test the odds for each relation annotated in the corpus to fall under each class, against the odds for this relation to fall closer to the *Argumentative-Opposition* subclass in relation to each category of each independent variable: the language of the participant (Basque/Spanish), institutional design choices (Group Composition) and generic variables (Stages). I expect that macro-contextual variables (Stages) and meso-contextual variables (Group Composition) affect more the *Argumentativeness* of the relational discourse structure than the linguistic identity of participants (Language).

In other words, in line with the main hypothesis of this dissertation, I expect the deliberative stance of participants to be more influenced by conventions associated with the genre of the deliberative event, and the concrete design choices regarding the composition of the group in which they participated, than their linguistic identity. A positive response to this hypothesis demands that members of different linguistic communities are part of the same discourse community, and their behaviour as a member of this discourse community, depends on the concrete features of the deliberative event in which they participated. Moreover, if conditions are in place, the linguistic diversity of the group enhances the disposition of participants to take a deliberative stance.

The model to test the research question statistically is a logistic regression. A logistic regression is used to predict a dependent variable given one or more independent variables. It allows me to analyse whether independent variables have a statistically significant effect on the dependent variable, in this case, the relation class. Therefore, I will implement this procedure to test whether language, group composition and stage of discussion have a significant effect on the relational discourse structure of texts in the corpus.

4.4.4 Reliability

The first step in performing an ordinal logistic regression, is to test whether my data set fulfils its assumptions. The first two assumptions depend on research design and in this case, I have (i) an ordinal dependent variable and (ii) three categorical independent variables. Therefore, first, two assumptions are met. The third and fourth assumptions entail: (i) there should be no multicollinearity and (ii) we should have proportional odds.

First, multicollinearity entails two or more independent variables are highly correlated with each other which makes it difficult to establish which one contributes to the explanation of the dependent variable. In our case, Tolerance coefficients show independent variables are not affected by multicollinearity.

Collinerarity	Tolerance	VIF
Heterogeneous	0.995	1.005
Spanish	0.989	1.011
Propose I	0.462	2.165
Revise I	0.609	1.643
Inform II	0.467	2.143
Consider II	0.465	2.150

a Dependent Variable: class

Table 21: Tolerance Coefficients of Independent Variables

The second assumption regards proportional odds. It is assumed that each independent variable has an identical effect at each cumulative split of the ordinal variable. A full likelihood ratio test was performed, comparing the fit of the proportional odds to a model with varying location parameters, and the assumption was not met χ^2 (30) = 86.755, $p < 0.001$. Nevertheless, this test tends to flag violations of the assumption of proportional odds, especially with large data sets. Therefore, I compared odd ratios, and as the estimated parameters in Table (24) below suggests, odd ratios are similar for each dichotomized cumulative category of the dependent variable.

Exp (B)	CAT1	CAT2	CAT3	CAT4	CAT5	CAT6
Heterogeneous	0.865	0.829	0.811	0.865	0.820	0.868
Propose I	1.484	1.629	1.529	1.409	1.514	1.818
Revise I	1.730	2.022	1.863	1.516	1.729	1.153
Inform II	1.138	1.096	1.022	1.285	1.402	2.250
Consider II	1.066	0.892	0.831	1.163	1.143	1.217
Spanish	1.014	0.899	1.074	1.093	1.112	1.006
Constant	0.178	0.578	0.888	1.486	2.129	6.905

Table 22: Estimated parameters for each category of the dependent variable

Therefore, I can conclude assumptions are fulfilled to perform an ordinal logistic regression. The final model statistically significantly predicts the dependent variable over and above the intercept only model, x^2 (6) = 40.896, p<0.001. However, the size of the effect the model explains is small (Nagelkerke R^2 = 1,7%). The small number of independent variables could explain this result so far, since only the variation explained by group composition, language and stage of discussion is accounted for. It would be interesting to add other variables. But the data collected does not allow it. It was a real exercise in a challenging context, so any direct relation could be established at the level of participants between, for example, socio-demographic variables and texts.

4.4.5 Results

Overall results of the Tests of Model Effects suggest that the stage of discussion (Wald $\chi^2(4) =$ 34.887, $p < 0.001$) and the composition of the group (Wald $\chi^2(1) = 6.085$, $p = 0.014$) have a statistically significant effect on the prediction of whether participants use of argumentative relation class is thought to be higher. While language (Wald $\chi^2(1) = 0.174$, $p = 0.677$) does not suggest a statistically significant effect regarding the use of more argumentation relation class.

In other words, whether participants tend to behave more argumentatively, is related to the composition of the group, but not to the language of the participant. Therefore, it is more relevant whether participants meet the other linguistic group or not, rather than the language they speak. Having said that, the most significant aspect is the stage of discussion. Indeed, as stated in the beginning of this chapter, stages are genre related aspects of discourse, and in theory, they are related to the discourse structure of texts.

Looking a bit more in detail, the odds of finding more argumentative discourse relational structures in text depending on the stage of discussion, there are statistically significant effects identified for the probability of participants using less argumentative relation classes in the *Propose* stage, 0.639 (95% CI, 0.506 to 0.807) times that of *Revise* stage in the second phase (a statistically significant effect, Wald $\chi^2(1) = 14.105$, $p < 0.001$); and in the *Revise* stage in the first phase 0.558 (95% CI, 0.506 to 0.807) times that of *Revise* stage in the second phase (a statistically significant effect, Wald $\chi^2(1) = 16.739$, $p < 0.001$).

In other words, when regarding stages, significant results point to the difference between both phases rather than stages in the same phase. The reference category here is the concluding round at the second phase, and at any stage in the first phase, where results indicate almost a half lower probability for more argumentative relation classes.

Table 23: Parameter Estimates Ordinal Regression for Category of Independent Variables Group Composition, Stage and Language

Parameter	B	Std. Error	95% Wald Confidence Interval		Hypothesis Test			Exp(B)	95% Wald Confidence Interval for Exp(B)	
Threshold			Lower	Upper	Wald Chi-Square	df	Sig.		Lower	Upper
Threshold (Cl1)	**-1.751**	0.1180	-1.982	-1.520	220.157	1	**0.000**	**0.174**	0.138	0.219
Threshold (Cl2)	**-0.653**	0.1126	-0.873	-0.432	33.624	1	**0.000**	**0.521**	0.417	0.649
Threshold (Cl3)	**-0.213**	0.1119	-0.432	0.006	3.622	1	**0.057**	**0.808**	0.649	1.006
Threshold (Cl4)	**0.446**	0.1122	0.226	0.666	15.830	1	**0.000**	**1.563**	1.254	1.947
Threshold (Cl5)	**0.832**	0.1132	0.610	1.054	54.002	1	**0.000**	**2.297**	1.840	2.868
Threshold (Cl6)	**2.104**	0.1238	1.861	2.347	288.808	1	**0.000**	**8.200**	6.433	10.453
Heterogeneous	**0.176**	0.0713	0.036	0.316	6.085	1	**0.014**	**1.192**	1.037	1.371
Homogenous	**0a**	.	.	.	.	.	**.**	**1**	.	.
Propose I	**-0.448**	0.1193	-0.682	-0.214	14.105	1	**0.000**	**0.639**	0.506	0.807
Revise I	**-0.583**	0.1425	-0.862	-0.304	16.739	1	**0.000**	**0.558**	0.422	0.738
Inform II	**-0.211**	0.1196	-0.445	0.024	3.106	1	**0.078**	**0.810**	0.641	1.024
Consider II	**-0.023**	0.1197	-0.258	0.212	0.037	1	**0.847**	**0.977**	0.773	1.236
Revise II	**0a**	.	.	.	.	.	**.**	**1**	.	.
Spanish	**-0.030**	0.0711	-0.169	0.110	0.174	1	**0.677**	**0.971**	0.845	1.116
Basque	**0a**	.	.	.	.	.	**.**	**1**	.	.
(Scale)	**1b**									
Nagelkerke R^2 = 1.7%, χ^2 (6) = 40.896, p<.001										

Model: (Threshold), gcomp, question, lang
Dependent Variable: class
a Set to zero because this parameter is redundant.
b Fixed at the displayed value

Finally, the odds of participants in heterogeneous groups using more argumentative relation classes was 1.192 (95% CI, 1.037 to 1.371) times that of participants in homogeneous groups (a statistically significant effect, $\chi^2(1) = 6.085$, $p = 0.014$). While the odds of participants in the Spanish speaking community using more argumentative relation classes, was 0.677 (95% CI, 1.037 to 1.371), therefore lower than that of participants from the Basque speaking community; this result however, is not statistically significant ($\chi^2(1) = 0.174$, $p = 0.677$).

In other words, the composition of the group is a more reliable predictor of the argumentative behaviour of participants, than their membership of one, or the other, linguistic community. This result is coherent with previous research in the field of deliberative democratic theory (Caluwaerts 2012), and it is interesting in the context of this dissertation, because it confirms the main hypothesis. The diversity of the group, in this case the linguistic diversity of the group, has a positive effect on the disposition of citizens participating in a deliberative mini-public to take a deliberative stance.

Finally, results of the ordinal regression show the odds in relation to each independent variable to use *more* argumentative relation classes. In other words, if statistical significance points to the probability of the relational discourse structure of texts to score higher in relation to the ordinal scale of argumentativeness, then we have established among relations classes with *Argumentative-Opposition* at the higher level and *Structuring* at the lower level. But, based on this data it cannot be known where this effect occurs, so it could be that these significant effects point to more probability for *Framing* than *Elaboration*.

To specify the effect of the independent variables at each relation class, and concretely isolate the effect in relation to the relation class I have associated with a properly deliberative stance, meaning the *Argumentative-Opposition* subclass, I need to perform a different type of analysis.

A Multinomial Logistic Regression will inform whether each of the independent variables predicts, in our case, if a relation will be classified at each concrete category of our outcome or dependent variable. In other words, this kind of analysis permits me to assess to what extent the composition of the group predicts, in relation to the three predictors in the model (stage, group composition, and language), whether a relation will be classified under the class *Argumentative-Opposition* in contrast to a reference category of the dependent variable.

In this model, I chose the *Structuring* class relation as reference category because this relation class involves coherence relations used to structure the linguistic content and, therefore, they are not very informative to our research interest. In addition, the last category of each independent variable is chosen as reference category for each predictor.

Overall the model predicts, statistically significantly, the dependent variable over and above the intercept only model, χ^2 (36) = 127.787, p<0.001. Indeed, the size of the effect the model explains is considerably higher than in the logistic regression (Nagelkerke R^2 = 5,1%).

Looking class by class, in relation to the stages, the model confirms what we know from the logistic regression, but allows me to locate the effect in relation to concrete relation classes. The reference category of the independent variable is the final round in the second phase (*Revise II*). Overall, whether a relation class will be other than the reference category, is significantly predicted for *Argumentation* class relations in either stage at the first phase. In Table (26) I compare final stages at both phases. This comparison is interesting because the question was the same and, is therefore, the macro-structural template of the relational discourse structure.

Parameter Estimates						95% CI for Exp. (B)	
Class	**Stage**	**B(SE)**	**Std. Error**	**Sig.**	**Exp(B)**	**Lower B.**	**Upper B.**
Elaboration	Revise I	-0.067	0.256	0.794	0.935	0.566	1.546
	Revise II	0	.	.	.	.	.
Framing	Revise I	-0.590	0.312	0.059	0.555	0.301	1.023
	Revise II	0	.	.	.	.	.
Cause	Revise I	-0.989	0.320	0.002	0.372	0.199	0.697
	Revise II	0	.	.	.	.	.
Purpose	Revise I	-0.294	0.338	0.385	0.746	0.385	1.445
	Revise II	0	.	.	.	.	.
Support	Revise I	-1.084	0.293	0.000	0.338	0.190	0.600
	Revise II	0	.	.	.	.	.
Opposition	Revise I	-0.576	0.298	0.053	0.562	0.313	1.008
	Revise II	0	.	.	.	.	.
Nagelkerke R^2 = 5.1%, χ^2 (36) =127.79, p < .001							

Table 24: Parameter Estimates Multinomial Logistic Regression for each Category of Relation class per Stage

The odds ratio tells that participants are less likely use argumentative relations in the first phase, tangibly less than half time *Cause* relations (0.372 (95% CI, 0.199 to 0.697)) and *Support* relations (0.328 (95% CI, 0.190 to 0.600)). Nonetheless, this effect is not significantly predicted if we look at *Purpose* (b = -0.294, Wald χ^2 (1) = 0.755, p = 0.385) and *Opposition* (b = -0.576, Wald χ^2 (1) = 3.735, p = 0.053); although the latter is almost significant indicating the participants in the *Revise I* are also less likely use *Opposition* relations (0.562 (96% CI, 0.313 to 1.008).

Therefore, regarding stages, the structural organization of the mini-public has significant consequences for the disposition of participants to use arguments. Moreover, the more demanding the structure of the event, the more argumentative the discourses of participants. This effect is significant of *Support* and *Cause* relation classes that include coherence relations like CAUSE, RESULT or EVIDENCE and JUSTIFICATION, correspondingly. But, this result is not significant for the *Argumentative-Opposition* class. Although, in the latter case it is almost significant, and the odds are half that of the *Revise* stage in the first phase.

		Parameter Estimates				95% CI for Exp. (B)	
		B(SE)	Std. Error	Sig.	Exp(B)	Lower B	Upper B
Elaboration	Heterog.	0.010	0.132	0.937	1.010	0.781	1.308
	Homog.	0	.	.	.	.	.
Framing	Heterog.	0.047	0.158	0.768	1.048	0.768	1.429
	Homog.	0	.	.	.	.	.
Cause	Heterog.	0.244	0.143	0.087	1.277	0.965	1.689
	Homog.	0	.	.	.	.	.
Purpose	Heterog.	0.049	0.171	0.774	1.050	0.751	1.470
	Homog.	0	.	.	.	.	.
Support	Heterog.	0.277	0.138	0.045	1.319	1.006	1.730
	Homog.	0	.	.	.	.	.
Opposition	Heterog.	0.250	0.164	0.128	1.284	0.930	1.773
	Homog.	0	.	.	.	.	.
Nagelkerke R^2 = 5.1%, χ^2 (36) =127.79, p < .001							

Table 25: Parameter Estimates Multinomial Logistic Regression for each Category of Relation Class per Group Composition

Regarding group composition overall the odds ratios indicate heterogeneous groups are slightly more likely to use *Argumentation* class relations, while they are almost equal for *Elaboration* class relations. Results suggest, however, that the composition of the group only significantly predicts this effect for *Support* relations (b = 0.277, Wald χ^2 (1) = 4.005, p = 0.045) with a change in the odds ratio of more than a unit (1.315 (95% CI, 1.006 to 1.730). Nonetheless, the prediction is *more* significant of *Cause* (b = 0.244, Wald χ^2 (1) = 2.926, p = 0.087) and *Opposition* (b = 0.250, Wald χ^2 (1) = 2.314, p = 0.128), than any of the *Elaboration* relation classes.

Therefore, the discourse of participants in linguistically diverse groups, is more likely to be argumentative than those of participants in linguistically homogeneous groups. This suggests that facing the out-group does foster a more argumentative stance on behalf of participants. Nevertheless, as noted in relation to stages, this argumentative stance is not reflected in terms of the disposition of participants to use the thesis-antithesis structure of argumentation, insofar as results are not significant for this class.

Finally, the most interesting result affects the predictive capacity of the language of participants. IN this respect, it worth recalling that the logistic regression revealed the odds for a given relation to be *more* argumentative, depending on whether the text was written in Basque or Spanish. In this case, the language had no significant effect on the *argumentativeness* of the discourse of the participant. On the contrary, if we look for this effect category by category of the independent variable, we see that language significantly predicts the use of *Framing* relation class (b = 0.391, Wald χ^2 (1) = 5.999, p = 0.014). In Table (28) I summarize the Parameter Estimates for each category of dependent variable per the language of the participant.

Parameter Estimates					95% CI for Exp. (B)	
		B(SE)	**Std. Error**	**Sig.**	**Exp(B)**	**Lower B.**	**Upper B.**
Elaboration	Spanish	-0.139	0.132	0.295	1.099	0.671	1.128
	Basque	0	.	.	.	.	.
Framing	Spanish	0.391	0.159	0.014	1.478	1.081	2.020
	Basque	0	.	.	.	.	.
Cause	Spanish	0.009	0.142	0.951	1.009	0.763	1.333
	Basque	0	.	.	.	.	.
Purpose	Spanish	-0.004	0.172	0.983	0.996	0.712	1.394
	Basque	0	.	.	.	.	.
Support	Spanish	-0.125	0.138	0.364	0.882	0.673	1.156
	Basque	0	.	.	.	.	.
Opposition	Spanish	-0.016	0.163	0.920	0.984	0.010	1.355
	Basque	0	.	.	.	.	.
Nagelkerke R^2 = 5.1%, χ^2 (36) =127.79, p < .001							

Table 26: Parameter Estimates Multinomial Logistic Regression for each Category of Relation Class per Language of Participant

Results are almost equal, and non-statistically significant, at each category of the dependent variable, except for *Framing*. The odds that a Spanish speaking participant more likely uses *Framing* are 1.478 (95% CI, 1.081 to 2.020) times that of a Basque speaking participant. This relation class involves coherence relations BACKGROUND and CIRCUMSTANCE that indicates a more *narrative* stance of Spanish speaking participants' in comparison with Basque speaking ones.

4.5 Summary

The analysis in its different steps suggests that among the three variables introduced (Stages, Group Composition, and Language) the Stage of discussion has a more significant effect on the disposition of participants to take a deliberative stance. The significance of this result is enhanced by results in different steps of the analysis process. For example, it has been shown that the balance between *Argumentation* relation classes and non-argumentative relation classes shifts between phases. In the first phase, non-argumentative relations outnumber argumentative relations in both linguistic communities, and in heterogeneous as well as homogenous groups, while the opposite happens in the second phase. Moreover, I have already noted that in terms of relation classes and their ordering, the discourse structures in the second phase were less conventional than in the first, where clearer patterns seemed to structure citizens' discourses.

An obvious objection to this conclusion is likely to be that it is equally obvious that the questions were different at each stage, so it seems reasonable that responses had different relational discourse structures. However, the comparison between the two final stages in both phases clarifies this ambivalence of the model. In the *Revise* stage of either phase, the same question was made to participants, but the ordinal logistic regression shows that the odds for participants using more argumentative relation classes in the *Revise I*, was half that of participants in *Revise II*, and the result was statistically significant ($p < 0.001$). However, in the light of the *Deliberative Minimum*, the multinomial regression has shown that this effect was more significant for *Cause* and *Support* relation classes than for *Argumentative-Opposition*, so that relational discourse structure was indeed more argumentative, but not more deliberative.

Finally, the results are interesting because they indicate that the more demanding the structure of the event, the more argumentative the stance of participants is likely to be. This result is even more interesting, if the discussion on the appropriateness of the change in the methodology is taken into consideration. As noted before, *Columbia* experts reported that the mood and content of the transcripts shifted in the second phase, and their recommendation was on the appropriateness to roll back to the original methodology. But, in the light of these results my recommendation would be the opposite insofar as discourse structures were generally more argumentative and diverse in the second phase. Further, in the light of citizen's comments in the evaluation sheets, their level of satisfaction was very high, and significantly they reclaim more room for debate.

Regarding the composition of the group, overall results suggests facing the out-group fostered more argumentation than meeting the family. Linguistically heterogeneous groups used more *Argumentation* relation classes than homogeneous ones, and the odds were statistically significantly higher (p = 0.014). Moreover, raw numbers showed that this effect was focused on the second phase, so it seems that the effect of stage is enhanced by the composition of the group. However, the multinomial regression shows that in terms of group composition, the effect is also limited to coherence relations of the *Support* class.

In this class, we find RST coherence relations as MOTIVATION, EVIDENCE, JUSTIFY, EVALUATION, INTERPRETATION, or ENABLEMENT. Except for EVALUATION and INTERPRETATION all the rest are Presentational relations and therefore involve an intended effect on the hearer, linked to the main claim, and therefore entails action aimed at a response. From the perspective of Argumentation Theory, especially the use of EVIDENCE or MOTIVATION, this reflects practical reason is operating, but again they do not fulfil the requirement of involving a thesis-antithesis structure, therefore do not signal a deliberative stance in the light of our minimum.

Finally, according to the results, it seems that members of both linguistic communities indeed form part of the same discourse community, and share equally the context of culture. Therefore, the language of the speaker does not have an influence in the discourse structure of participants. We have seen common patterns for both languages regarding the effect of stages and group composition; except for the use of *Framing* class by Spanish speaking participants. The multinomial regression reveals that in this class, the language of the participant significantly predicts the outcome, and the odds are higher for Spanish speaking participants to use this class than for Basque speaking participants.

In this relation class, my taxonomy included BACKGROUND and CIRCUMSTANCE coherence relations. Indeed, BACKGROUND is considered by some of the papers reviewed as an indicator of argumentation. Although, in my taxonomy it was differentiated and classified as an *Elaboration* relation class, that indicated a *more narrative* stance on behalf of the participant. However, results of the first classification comparing DELIB to the other corpuses in the RBT, had already signalled an unusual presence of CIRCUMSTANCE coherence relations (Table 17) in the Spanish set. This may indicate that besides similarities in terms of general patterns, both linguistic communities differ in some respects.

A final note regarding group composition and language. I have assumed in both, that language is a good indicator of different discourse communities in the Basque Country. Either considering language to be relevant for the comparison between members of both linguistic groups, or considering language relevant as an element differentiating the composition of a group. Indeed, I will return to this point in the next chapter, but previous analysis conducted on the same corpus, albeit focusing on the semantic content of citizens' discourses, suggest that members of both linguistic communities frame their understanding of crucial concepts as 'violence' or 'democracy' differently (Otegi *et al*. 2017). This is interesting as it would indicate that having different worldviews does not necessarily indicate a difference in terms of the capacity, or the disposition of citizens, to take an argumentative stance.

5   Conclusions

Three questions have structured the analysis in this chapter. The first considered the influence of deliberative mini-publics, and of mini-publics generally, in the wider context of the deliberative system. The theoretical discussion underlined that both the location and function of the mini-public were problematic, and required a compound analysis of each site in its context. In the first section, it was shown that in the case of The Konpondu Initiative, closeness to decision-making acted in concert with a not very friendly environment, against its capacity to involve members of different political sensibilities. In this case, as noted by Dryzek and against my critique, closeness to decision-making had a negative effect that could have been easily overcome if civil society actors involved, had for example, taken the initiative. Indeed, as it transpired after the initiative with great success.

The second aspect of interest was concrete design choices and their relation to deliberative outcomes. In this case, as Fung suggested, the analysis showed that the compound analysis of design-choices and outcomes require each initiative to be locate in its specific context. It was thus necessary to assess the appropriateness of the deliberative mood, or understand the vision underlying the context. Moreover, I have identified several trade-offs. The intention to encourage a paradigm shift from talking to others, to listening to others, made sense considering the conditions for public debate in the Basque Country at that time. Indeed, it seems this intention explains most of the decisions taken for the implementation of the initiative, including the stringent rules to preclude discussion. However, they were revealed to be misplaced given the actual profile of participants in the initiative.

Finally, both layers met in the analysis of citizens' discourses, and in this case the central question was the effect of division lines, in relation to design choices, or features associated with genre and the more general context of culture. In this case, I have seen that members of both linguistic communities react in a similar manner to either design choices or generic stages in their discursive stance. In other words, to predict the argumentative behaviour of participant's, genre features and design choices are more significant than language.

With regard to design choices, participants understanding of their role in the event, as reflected in their disposition to engage in an argumentative exchange of reasons, do not depend on their language, but on the setting in which dialogue takes place. Indeed, contrary to what the theory predicts, the linguistic diversity of the group had a positive effect in the argumentative stance of citizens. On the other hand, with regard to stages, it is pertinent to recall that they reflect the structural design of the event with conventions that were aimed to fulfil the shared purpose of the initiative, and to learn in the context of a discourse community. In this case, the similarities between both linguistic communities, suggested they similarly understood their role on behalf of the shared purpose of the initiative. In other words, they did their job.

Therefore, the main conclusion is that the initiative was capable of responding to its purpose, namely that of opening up a space for citizens to express their opinion, and make a contribution to peace and normalization. On a more systemic level, it contributed to enhancing the diversity of perspectives involved in the peace process, in contrast, to the profoundly elitist designs of previous attempts at conflict resolution. Its close connection to the initiative of the *Lehendakari*, does however cast doubt over its capacity to fulfil the deliberative minimum established as a normative reference point for each site of the system. In short, to engage in mutual exchange of reasons with others over an issue of controversy, others are necessary. Thus, the initiative fulfilled its shared purpose, albeit without meeting the deliberative minimum.

Chapter VI

From Discourse Ethics to the Theory of Argumentation

In the preceding chapters, I have thoroughly reviewed the main conceptual knots in the field of deliberative democratic theory. Particular emphasis was placed on the role it is called to play in the controversial relationship between identity and democracy. The main virtue of the deliberative approach is that it seeks to take both seriously. What this means, in my view, is that there is an explicit intention to take citizens seriously. Moreover, the clear set of standards it demands has the added value of providing a structure for discussion, and reliable grounds for empirical research. The analysis of The Konpondu Initiative, applied the main conclusions that I drew from the conceptual debate, to a problematic and time limited case-study. As noted in the introduction, the initiative featured all ingredients that might be expected to lead to failure. However, this provided an invaluable perspective, to rigorously analyse the role that deliberation played in a society coping with a deep social and political divide - a society where division lines were structured along strongly opposing identities, and in the context of a modern constitutional liberal democracy.

However, the main virtue of combining conceptual thinking and empirical analysis, is that it keeps debate ongoing. One case does not settle the appropriateness of a theory, but provides relevant additional flavour to the discussion. In this case, the analysis of The Konpondu Initiative provided several interesting insights regarding the extant theoretical debates. Therefore, this concluding chapter, returns to the conceptual debate and reconsiders some of my positions in the light of what I have learnt from the case-study, and suggests possible ways forward for future research.

1   So, what?

The conceptual discussion concluded with a set of basic tenets, in the light of which, I designed the case-study. In short, the structure of the debate linked two relevant dimensions: normative standards and the sequence of deliberation as a process. In the former, the systemic approach retains basic democratic, ethic, and the epistemic normative standards of deliberative democracy. The democratic requirement is linked to inclusiveness, the epistemic to grounding reasons and opinions and the ethic, to mutual respect. With regard to the latter, I concluded that the sequential approach of the middle ground theory was the most appropriateness analytical dimension. I employed this sequential approach using the basic framework of the systemic turn. This framework assumes that the evaluation of deliberation takes place at the level of the system, ensuring that normative requirements are allowed to be fulfilled to different degrees, in different sites of the system.

Considering both dimensions of the systemic turn at once, I specified that inclusiveness should entail decisiveness, thus grounding reasons entails deliberation with others, and mutual respect demands the use of counter arguments to support one's claims.

I structured the approximation to the case-study, taking mini-publics as the main unit of analysis, and at this level, the normative framework is defined around a minimum requirement. Deliberation at minimum is thus defined as mutual respect, and the disposition to act as if to reach a shared practical judgment. This minimum applied to each site of the system, although the powerless end of the public sphere could deviate from this ideal, but not the powerful one. However, I detached mutual respect from its translation regarding discourse ethics, and moved one step back towards the theory of argumentation. The idea was that instead of measuring whether conditions were met for a mutual exchange of reasons, we should attend to the *use* of counter-arguments in the exchange of reasons. The normative ideal retains its function as empirical guidance for analysis, and provided a standard against which actual practices were critically assessed, but their evaluation regarding whether it was good or bad, is left for moral and democratic theories and, as I said, at this level, we can reasonably disagree.

In the case of The Konpondu Initiative, results showed that citizens' discourses met the deliberative minimum according to my definition. The comparison with other corpuses revealed differences that affected presentational relations and, more importantly, CONCESSION, JUSTIFICATION, and ANTITHESIS. These three are *Argumentative* relations according to the taxonomy, and in particular, ANTITHESIS and CONCESSION, are classified as *Argumentative-Opposition* class relations. In other words, they represent the materialisation of the thesis-antithesis structure, thus indicators of the *Deliberative Minimum.* Therefore, it could be concluded, that the corpus fits with what is expected from discourse in a communicative event instantiating the genre of deliberation.

Against this background, I analysed how different aspects, relevant to empirically grounding the ideal model do, or do not, affect the deliberative behaviour of citizens. In particular, stages, or the stepwise organisation of the communicative event, design, or the composition of the group in which deliberative dialogue took place, and finally, language, or the linguistic community of the participant. Indeed, I think the case-study grounds the appropriateness of the analysis of deliberation as a genre.

Genre entails discourse as a conventional communicative practice, learned in the context of a discourse community, and aimed at a purpose. It is a conventional communicative practice, because each genre carries with it conventions in the form of institutional conditions that structure the site and constraint debate. Conventions are learned in the context of a discourse community, so members of the same discourse community share their understanding of them, to follow or strive. Moreover, conventions and the structure of the debate, for example, stages, direct the progressive unfolding of deliberative dialogues towards its shared purpose. In the ideal model, deliberation aims at preserving the democratic political culture. Therefore, stages unfold with the intention of providing a viable path towards the resolution of controversies by a mutual exchange of arguments based on practical reason.

In this regard, the second conclusion is that the structure of the event, or stages of discussion, and the composition of the group, are more relevant than the languages of the speakers to predict the argumentativeness of discourses. Regarding stages, the comparison between both phases leads undoubtedly to this conclusions at every step of the analysis. In other words, the way the event was structured had a significant effect on citizen's discourses and the more demanding the structure of the event was, the more argumentative the discourse of participants became. On the composition of the groups, heterogeneous groups were more argumentative than homogenous groups. Moreover, the lack of remarkable differences between both linguistic sets, except for *Framing* in the Spanish set, suggests participants held a common understanding of the shared purpose and their duties. In other words, they belonged to the same discourse community.

Yet, on whether these variables influenced the disposition to the take a deliberative stance, the results are less clear. Results do show that stages, and the composition of the group, have an effect, but not in the disposition of participants to take a deliberative stance. Both have positive effects with regard to the argumentativeness of discourse, but not relative to the deliberative minimum. In the case of stages, this could be related to the fact that the event was indeed structured to avoid critical interactions. In other words, the empirical materialisation of conventions in the form of institutional constraints, was aimed at precluding discussion and to focus on listening to what others had to say. Conversely, with regard to group composition it could be related to the problematic definition of the 'other' in this case, in the sense that I have concluded that the identity of 'other', was at least questionable. Let me explain this bit more in detail.

Regarding the former, shared purposes, as well as stages, define an ideal model that should be grounded empirically at the level of each case. In *The Konpondu Initiative*, it was seen that the shared purpose was opening space for citizens to take part and contribute towards peace and normalisation, and the institutional conventions underlined the centrality of listening to others instead of talking to others. Stages and, more specifically, phases, had a positive impact on the prediction of relation classes like *Argumentative-Cause* and *Argumentative-Support*, but not *Argumentative Opposition*. Thus, institutional conventions fostered the argumentativeness of participants, but not their disposition to take a deliberative stance. Indeed, the fact that the corpus is defined by relations like, for example, CONCESSION suggests participants even strived against conventions to engage others by means of arguments and counterarguments.

Regarding the latter, the fact that the composition of the group had no direct impact on the deliberative stance of citizens, can be associated with the problematic status of the 'other' in *The Konpondu Initiative*. The choice of language as a relevant category of analysis for identity was a controversial one. Specifically, because language is not necessarily an adequate indicator to denote division lines in the Basque case, at least not if it was aimed at enacting conflict along those lines. Moreover, in the course of the case-study, I have underlined that it is plausible to conclude that the initiative *mainly* involved participants with a Basque nationalist sensibility. Therefore, with regard to the central issue at stake, it cannot be discerned that the relevant other, namely those who disagree with the consultation, were present, and in addition, the question of the relevant other to whom participants engaged in argumentation, remains an open question.

One possibility is that participants indeed played ideal roles. Another, more plausible suggestion, is that the language of the participant is relevant to the features of identity in the Basque Country, but different for identities within the nationalist sphere. It is a reasonable hypothesis so far as the phenomenon of Basque nationalism is complex and multidimensional (Zabalo 1998; Zabalo, Soto, and Mateos 2012). Nevertheless, results suggested a positive correlation between linguistic diversity and the argumentative stance of citizens. Groups involving participants belonging to different linguistic communities were more argumentative than linguistically homogeneous ones. This finding builds on previous research (Caluwaerts 2012; Luskin *et al*. 2014), against the idea that facing the outgroup enhances 'enclave deliberation', thus precluding efforts for a constructive exchange of reasons.

Moreover, results provide interesting insights regarding the epistemic normative baseline of the systemic turn. At this level, theoretical debate concluded with the suggestion that the appropriateness of the paradigm be changed from 'deliberation within' to 'deliberation with others'. The critical asset of the deliberative mode of argumentation is that the epistemic quality of decisions taken depends on an actual exchange of arguments with others. Moreover, the hypothesis suggests a positive correlation between cognitive diversity and epistemic quality. Results are coherent with the hypothesis, because the linguistic diversity of the group had a positive effect in the argumentativeness of participants. Therefore, if reasoning with others is the standard of democratic reasons, and cognitive diversity its main asset, we could conclude that the second half of the central hypothesis holds; namely, that the many are smarter than the few, *no matter how diverse are the many*.

Hélène Landemore, in her book Democratic Reason (2013), consistently sustained the plausibility of the first half of the hypothesis. Moreover, I sincerely doubt there is any way to provide empirical proof outside the burdens of theoretical speculation, about what is epistemically better. If the assumption holds, and the many are smarter than the few, linguistically diverse groups will outperform homogenous groups because their interactions are more argumentative than in homogenous groups; but we cannot go further. Though, in this case, the unfolding of events provides something of a commonsensical indicator that something like that indeed happened. The fact that several elite-driven attempts to conflict resolution failed, while the only one in which citizens took the lead and played an important role succeeded, suggests that, in this case, the many have been smarter than the few.

Nonetheless, the question of who is the other remains, and on the basis of the above, we cannot resolve the question over why the composition of the group does not reveal a similar impact on those structures that entail a thesis-antithesis scheme? One exploratory option is that the structure of the communicative event overruled the composition of the group. Indeed, the statistical significance of stages was greater than the statistical significance of group composition. However, at this point, this is a hypothesis. Nevertheless, on these bases, the epistemic layer is not compromised, so far as we could argue it would be *even* better to have the unionist side. Yet, the hypothesis of the linguistic other within the Basque nationalist sphere, does compromise the democratic normative baseline of the systemic turn in the case of *The Konpondu Initiative*.

At the level of participants, there is no point. As I noted in the concluding section, in the light of results, participants did their job. The appropriate level affects the location and function of the initiative in the wider political process from a systemic perspective. In this case, theoretical debate concluded with the suggestion that coupling with decision-making at the institutional level, instead of decoupling as a default position was preferred. However, we have seen that the initiative did not benefit from its closeness to decision making at the institutional level. The relationship of the initiative with the roadmap for peace by the *Lehendakari,* meant Ibarretxe may have had a positive effect regarding inclusiveness, by giving citizens a place to take part. However, it is not clear how participation impacted upon decision-making. In other words, location is close, but decisiveness is unclear, thus there is room left open to speculate over elite manipulation, or at least the use of the initiative to reinforce one's partisan position.

Now, the systemic turn allows deviations and trade-offs, and even antithetical practices. The rule is flexible, as the idea of 'stepped pluralism' suggests. Moreover, trade-offs are reasonable if unreasonable conditions require them. In this case, the lack of inclusiveness may serve the visualisation of hidden perspectives even at the cost of democratic requirements. In other words, democratic inclusiveness is sacrificed at the level of each site, to make visible hidden perspectives at the system level, so that what is lost at one level is gained at the other. Nevertheless, at the level of the initiative, this argument is questionable because it was a governmental initiative.

Konpondu was part of a wider road map ending in a consultation. Therefore, organisers supported the consultation. Moreover, this position was at that time, as it is nowadays largely a majoritarian one in Basque society. Therefore, the initiative did not make visible the weaker end, but the majoritarian one. Finally, this absence calls into question whether the initiative met the basic requirement for each site of the deliberative system: the deliberative minimum. In the final section of the case study, I concluded that participants did their job, notwithstanding that the initiative itself did not meet the deliberative minimum. In other words, the initiative entailed 'a mutual exchange of reasons' but it is not clear 'as if to reaching a shared practical judgment' and clearly not with those directly affected.

This conclusion is the outcome of critical analysis in the light of the normative ideal I have chosen. Now, does it say something about the actual contribution of *The Konpondu Initiative* in the Basque case? The question is tricky, and as I have already argued, argumentation theory does not respond. So, I asked an expert about it.

At the beginning of this research, I met several people that were directly implicated in the initiative to get a general idea. Among them, was Prof. Andrea Bartoli one of the *Columbia* experts that assisted the Basque Government in the organisation of the initiative, and wrote the reports that have I referred to in this dissertation. The original plan was to interview several personalities, but for several reasons, I did not follow this path either. It now lives in a small corner of my computer for future research. Thus, I recorded only one interview. However, I asked him specifically about this ambivalent aspect of the initiative, and this was his reply. The interview took place in Bilbo the 31st of May 2014. I transcribe the entire response:

"I think it was definitively… real dynamics. It is difficult to say if it was a loss or a gain. It was a loss in the sense that the original plan of having people representing the Partido Popular, the Socialist, you know… a much larger spectrum did not necessarily come out. So, you have this more, the stronger conversation among Basque nationalists. But, exactly because of this shift of responsibility from a blaming game, all is some else's responsibility, to this assumption of responsibilities, I found that was actually very promising. Because, as I said at the beginning, this is, I think, what explain ETA's decision not to continue on a violent campaign. That is to say, there is a shift of agency from we need to solve this problem because this problem is created by Madrid, this problem is created by the politicians, this problem is created by someone else… to we can do something about this problem that can actually change, independently of Madrid, independently of the politicians and so on. So curiously, I think that there is a reposition which is going to be interesting, again, you know for what is going to happen in the next 5-10 years, but it could be that what you saw actually, in those conversations is that there were citizens group that were actually deciding to be the advangarde of a new political arrangement, that could strengthen the nationalist coalition, as such, not against Madrid, not against the Partido Popular, not against the Socialist Party, but simply as a self-recognized, self-autonomous decision-making body in which they say ok, you do whatever you want to do, but we want to do whatever we want to do. So, there is a sort of [cooling] of responsibilities, or re-enacting political… agency… which I think is playing out in current… you know… voting trends and so on… so the interesting thing is that… you can't force anybody to participate and you cannot force anybody to feel threatened by political participation. So, if you believe that having a glass of wine is a sin you will have hard time convincing her or him to drink a glass of wine. So, if participating is the equivalent of betraying … or or… you know… or making a statement that… well political participation is the reverse of what you think it is… Because you know you are [throwing] a party as a way to have a good time and people look at you and think you are a drunker and a sinner and a terrible person because you are doing this terrible thing that you shouldn't do. So, there is a problem I think on mutual construction. So, what is happening when you have political participation… do you have intentional exclusionary policy of nationalist excluding the others, and making impossible for anybody else to really participate or you have a process of self-exclusion so that I

don´t even want to participate in this conversation because I am actually getting my legitimacy my authority from Madrid and from other sources of power… So, I don´t really want to go into those places because those places are treacherous, and difficult, and problematic and so on. And this is why you have the split. I think that this is why it is so important to actually maintain high level of institutional integrity of the Basque institutions and this is why political representation of any party is so crucial. Because, either you reduce dramatically the Basque society to only nationalist and then you say anybody else doesn't belong or you say, you know, this is irrelevant the only think that counts is what is really recognized and so on, and honestly neither of the two work. In the current status, what you need to have is a respectful public institutional space that is strong enough to say: well all these instances actually exist all these instances actually can talk and in a curious way because of political culture elsewhere I would imagine, but this is me, really being an observer, is that political participation will be much more consistent, familiar to, welcome by a Basque Nationalist experience than the entire Basque Country. The entire Basque Country in a way requires an institutional level where you have more formal ways of participating, more defined spaces that are less prone to this discursive, fluid, engaged, vibrant way of participating that many other finds threatening and problematic and no safe enough. That's my two sense you know that's why I still hope the king will go to Gernika" (Andrea Bartoli, 2014/05/31).

Professor Andrea Bartoli introduced several interesting points during our discussion. First, he confirms the impression that debate mainly took place within the Basque nationalist sphere. However, he hesitates whether this was a gain or a loss. The reason behind this, is that he found a positive shift in the agency in this sphere from a blaming game to one of taking responsibility towards a different end. Indeed, he links the path of what were then forthcoming events, to a more general trend of which the initiative may have been part, and in which Basque citizens decided to become the avant-garde. Second, he relocates the problem of the absence of the unionist side as not regarding exclusion but self-exclusion, suggesting this is related to the fact that in the Basque case, different sources and levels of authority interact. Finally, he suggests both should be compatible in the Basque public sphere, but each has its own way. The unionist sphere requires more informal tracks, and the King visiting Gernika while the 'Basque' sphere is more fluid, vibrant, and less formal or more familiar.

Regarding the previous discussion, Bartoli suggests that rather than a case of exclusion, absences in *The Konpondu Initiative* could be more likely taken as a case of self-exclusion. The ideal model entails exclusion is only acceptable if accepted by the excluded, but it says nothing about self-exclusion. Should we assume they accepted not to be part of? Indeed, this situation brings into light an interesting line of research: the role of those that do not take part. However, in our cases, does the absence of the unionist side outweigh the exercise of those that took part?

The second aspect underlined by Bartoli affects the risk of elite manipulation, because he renders questionable whether the position of the Basque Government at that time represented the powerful end of the public sphere. Indeed, I have criticised institutional coupling in this case, on the basis that the level of impact citizens' participation had in decision-making was questionable. The tricky point here, is that the impact that the Government's initiative had, is equally questionable. The consultation did not take place because the Constitutional Court outlawed it. This aspect at least brackets the democratic gap regarding inclusiveness. In the wider Spanish public sphere however, it was a way of making visible a hidden perspective, and to contribute to enriching the pool of perspectives.

Nonetheless, this does not change the evaluation regarding the democratic minimum. The initiative was part of a wider plan in which the consultation was included on the agenda in the case of agreement with State authorities, and *the case of disagreement,* with state authorities. Whatever the case may have been, it represented an attempt to *engage in the mutual exchange of reasons*, but not *as if to reach a shared practical judgment*. Therefore, in the light of the existing analysis, I think it is fair to conclude that the initiative did not fulfil the requirements to be labelled deliberation even at minimum, and is closer to the agonistic model. Yet, does it say nothing at all of its democratic character? Moreover, if not, what is the role of normative standards? The avid reader will have already realised that we are exactly at the point where this dissertation began: Should I be polite or not?

Attending to the second requirement of the deliberative minimum, what is at stake is the disposition of participants to reach a point where agreement is possible. In other words, the function of deliberation for social integration. In the case of *The Konpondu Initiative,* this possibility is not closed, but does not rule action. It is problematic from a deliberative perspective because the validity of a claim is sustained by the requirement that 'all possibly affected' could agree, as participants in rational discourses. This is the Discourse Principle and applies universally. Therefore, both sides should accomplish. The reason for this is that its justification is a rule of argumentation that it is a necessary presupposition of communicative action if aimed at mutual understanding. In other words, if we do not assume that all affected can accept the consequences, and side effects, of a controversial norm – Universalization Principle – there is no point of discussion over the rationality or the reasonableness of argumentation.

The problem in this case, and more generally in the case of complex diversity, is that this formal presupposition is *assumed* for the institutions of the law of a modern constitutional liberal democracy, while it regulates what all the rest, including the Basque Government, *actually ought to do.* Put in simple terms, whether the Basque government assumes, or not, the side effects and consequences of the controversial law that establishes the unity of the Spanish State, does not rule out the rationality and reasonableness of the position of the Spanish Government on this issue. While the Basque Government should regulate its actions *as if* this requirement was fulfilled by the system of rights in the core of the Spanish constitutionalism, and if it does not, its position is no longer justifiable.

This is the necessary condition for deliberative argumentation. It can be better or worse, and more successfully reached in particular sites of the system, but it is what deliberation is all about. What I hesitate to suggest, is not whether this criterion is used to differentiate deliberation from, for example, conversation, or agonistic controversy. I even do not question that deliberation provides the means for outcomes to be more legitimate. My point is that I find it questionable whether this requirement could be grounded on a formal presupposition. In other words, the critical appropriation of the decision-making process by citizens should reach the end of the justificatory chain, and this requires opening up the definition of (D), but this time from the perspective of the Theory of Argumentation.

2   Back to Habermas' Theory of Argumentation

Habermas explained his Theory of Argumentation in his introduction to the *Theory of Communicative Action* (1989c) and linked it to the definition of communicative reason (Habermas 1989c, 1:1–23). First and foremost, communicative reason is differentiated from practical reason, in that it is not able to provide a blueprint for a normative theory grounding action. Its habitat is the linguistic telos whereby citizens interact, and their forms of life are structured, but it is not a direct source of prescriptions on the rationality of actions. It provides a guide to reconstruct the network of discourses whereby action coordination is possible: the capacity of citizens to coordinate their actions by communication aimed at mutual understanding.

This theoretical approach rests on the idea that rationality does not refer as much to holding knowledge, as it does to the ways whereby acting, and speaking subjects, acquire and make use of it (1989c, 1:8–10). In this sense, either expressing a belief or performing a goal directed action, subjects make use of knowledge that is fallible, and therefore, is *open to criticism* by certain implicit assumptions. Those assumptions are not contingent, but conceptually necessary and subsequently involve, in the case of speaking and acting, *claims* that are open to criticism, and susceptible of being supported by *reasons*. Therefore, the rationality of an expression could be considered a function of the internal relation between the semantic content of expressions – conditions of validity – and the reasons for the truth of a statement or effectiveness of an action.

Indeed, Habermas' model of communicative reason intends to accommodate a truth oriented realist approach, within a hermeneutical appropriation of the world-making character of language through communication. According to him the problem with the compatibility of both views only stands when

> ... one tries, as usual in the empiricist research traditions, to *separate* the cognitive-instrumental rationality based on the monological employment of descriptive knowledge from communicative rationality (1989c, 1:14).

True, communication does reflect multiple forms of making worlds within each linguistic community, but also commonly means to open to other's worlds and reach a mutual understanding over something in the objective world.

On the one hand, Habermas claims that understanding entails that interlocutors can transcend the margins of their corresponding horizons of meaning and look to each other, as well as themselves. Therefore, a 'superior point of view' is made available as a 'formal anticipation' (2003a, 57). The language of this superior point of view results from each worldview opposing others, and progressively decentring its particular perspective on behalf individuals involved in dialogic interactions with others. With this decentring, the progressive expansion of each horizon of meaning occurs, resulting in different worldviews increasingly overlapping. Moreover, this cognitive dynamic, underpinned by the practice of reaching mutual understanding, sustains a sort of intercultural dialogue useful for correcting and overcoming prejudices through reciprocal learning. In other words, standard interpretations result from dialogical interactions and their rationality is justified on pragmatic grounds because, "[w]e learn from the world by learning from *each other*" (2003a, 59).

On the other hand,

> ... [t]hey have to take up this point of view, however, with regard to the same objects about which they want to reach a mutual understanding (2003a, 57).

Thus, not only is a language that overcomes the burdens of different linguistic communities are necessary, but also for its members to be capable of understanding *over something in the world*, the supposition that this world is for them, the same is also necessary. If the meaning, or relation to a world or state of affairs, of a sentence, is the expression of its truth conditions, then understanding it demands knowing the conditions for a sentence to be true. Knowledge of truth conditions entails knowledge on "the reasons that explain why they obtain if they do" (2003a, 70–71).

Finally, the outcome of taking mutual understanding over something in the world as the guiding thread for rationality, entails that the rationality of linguistic expressions and behaviour relies on social cooperation, meaning, the capacity of several subjects to coordinate their interventions in the world through communication (1989c, 1:10–14). Social cooperation is a dynamic process that evolves, and permits, on the basis of openness to criticism and grounding, learning from each other and the world. Thus, according to Habermas, along with openness to criticism, by claims to validity, and the capacity to support claims by reasons, another demarcation criteria for rational behaviour is *learning* (1989c, 1:18–22).

Indeed, this reflective attitude marks a crucial distinction in Habermas developmental conception of modern rationalisation, because it allows differentiating between a *normatively ascribed agreement*, conventionally grounded, tied to pre-modern worldviews, and a *communicatively achieved understanding*, proper of emancipated societies (1989c, 1:66–74).

Thus, a communicatively achieved understanding rests on agreement based on reasons and the rationality of participants determined by their obligation to provide reasons for their expressions; in other words, enter into rational argumentation. Although openness to criticism and grounding point to the *possibility* of argumentation learning processes *rely on* argumentation, they depend on the reflective attitude of a participant willing to learn from mistakes in the light of reasons raised by others[137]. Moreover, if learning constitutes demarcation criteria for rational behaviour, and it is based on citizen's capacity to support and react for and against claims with reasons, argumentation becomes a necessary means, and the study of argumentation becomes the study of the rationality of expressions and behaviour.

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[137] Communicative action is differentiated from action oriented to success in that the former entails participants adopt an attitude oriented to reaching understanding. Action oriented to success could be instrumental due course of following technical rules or aimed at efficiency or strategic when is considered under aspects of following rules of rational choice and intended to influence decision by a rational opponent (1989c, 1:285). On the contrary, communicative action speaks of participants holding pre-theoretical knowledge on the proper conduct of processes to reach an agreement with others communicatively that meet conditions of rationally motivated assent (1989c, 1:287). The latter entails shared *convictions*, not given *conventions*, by participants and disallow agreement by force so that speech acts succeed if others accepts the offer done by taking a 'yes or no' position on a validity claim that, being open to criticism, should base decisions on grounds or reasons. This distinction allows Habermas avoiding a dichotomy between rational action considered instrumental or strategic, but anyhow aimed at success, and traditions where no rationality operates rather than taken for granted conventions.

The relevance of a theory of argumentation is justified on the basis that, "it falls the task of reconstructing the formal-pragmatic presuppositions and conditions of an explicit rational behaviour" (1989c, 1:2). Moreover, Habermas claims that "rational reconstructions can claim to be describing universals" (Habermas 1990d, 32). Regarding his theory of language, he steps on the analytic tradition following the cognitive turn Michael Dummett gave to truth-conditional semantics[138] (Habermas 1989c, 1:276, 315–19). The underlying idea is that rational standards are neither universal in a context of tradition shared by author and interpreter, nor when determined by an external objectivity in the light of which, a final decision could be made. Their objectivity is asserted due to the process of argumentation itself: being true is distinguished from taking something to be true, using universal rules of argumentation giving warranty over a speaker being taken to be true by a hearer.

Moreover, following Karl-Otto Apel's transcendental pragmatics, he defends "the commensurability of different linguistic worldviews by means of pragmatic universals" (2003a, 73–76). These pragmatic universals do not constitute, *qua* Kant[139], conditions for possible objects of experience, but the *a priori* of argumentation; the infrastructure necessary for communication and interaction. It is different, because it is concerned by reflection on validity, using pragmatic conditions allowing discursive redemption. Indeed, those pragmatic conditions for the discursive redemption of claims to validity, represent the reference point, in the light of which *the better* could be identified on rational bases that remain impartial, and apply universally despite acknowledging the plurality of worldviews due to contemporary social complexity.

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[138] Dummett starts, according to Habermas, distinguishing the conditions a sentence should satisfy to be true and the knowledge a *speaker* has on them when asserting the truth of a sentence. And concludes acknowledging that in most cases knowing the truth conditions of sentences is problematic. The example, Habermas brings about, are sentences with reference, for example, to past events that are not directly verifiable by any speaker at present. On these bases, understanding the meaning of a statement cannot require the validation of a set of particular truth conditions but that "we are capable of recognizing *grounds* through which the *claim* that is truth conditions are satisfied *could be redeemed*" (1989c, 1:317). In other words, to understand an assertion means to know a speaker has good grounds to warrant that conditions for the truth of a statement are satisfied.

[139] According to Habermas, Immanuel Kant represents the central figure of this project and he defined the theory of justification underneath on the bases of certain transcendental conditions that, making experience possible, made available for philosophical thinking justified knowledge (Habermas 1990c). Modelled on success of modern science, his theory of knowledge was aimed at making compatible the emancipation of rationality from previous and comprehensive sources of normativity, as religious or metaphysical worldviews, and the desired project of rational unity. But, endowing philosophy with a privileged access to *a priori* transcendental conditions of possible objects of experience Kant located it "as the highest court of appeal vis-à-vis the sciences and culture as whole" (1990c, 3).

Moreover, Habermas defends those conditions as 'rationally testable'. However, while in the case of communicative action, this warranty that *conditions* for engagement hold is settled conventionally; but within the modern world there are cases in which the lifeworld cannot provide such warranties. Indeed, there is a special type of validity claims, where the question is not for example, whether an intersubjectively recognised norm of action holds for a particular claim. In the case of 'higher-level validity claims', the validity claim under dispute transcends local or professional boundaries, because it is the validity of the norm itself what is under dispute (1989c, 1:40). At this stage, I am moving from the realm of communicative action, to rational discourse and argumentation as the final court of appeal to rational behaviour and expression.

At this level, different value spheres and their forms of argumentation enter into play, but no conventional rule is available that is intersubjectively recognised from within all of them. In other words, *universal validity claims* cannot be settled conventionally using the binding force associated with intersubjectively recognised norms, because no such context is available from a universal point of view. Indeed, only the truth of a proposition, the rightness of a norm, and the well-formedness of an expression, are by their very nature universal validity claims. They apply to every claim to validity raised by a speaker, and are redeemed under the assumption certain conditions hold. But, in this case, hypothetically:

> ... participants have to start from the (often counterfactual) presupposition that the conditions for an ideal speech situation are satisfied [and] suppose that a rationally motivated agreement could in principle be achieved (1989c, 1:42).

Both, an ideal speech situation, and the possibility of the rationally motivated agreement, are necessary presuppositions for the discursive redemption of universal claims to validity. Their virtue, is that they provide a rationally testable set of conditions to demarcate rational discourses, in the light of pragmatic presuppositions independent from contextual or accidental factors. Indeed, Habermas found a suitable model of argumentation in Steven Toulmin's proposal on *The Uses of Argument* (Toulmin [1958]2003), but underlined that "his mistake lies in not clearly separating *conventional claims,* which are context dependent, from *universal validity claims*" (1989c, 1:36).

Toulmin departs from a logically oriented approximation to the study of validity conditions, to focus on the form of arguments whereby claims are supported. Accounting for practical arguments that do not fit within the logical scheme of premises, followed by conclusions he advanced in a basic model, known as the 'Toulmin Model'. Argumentation starts with a claim (conclusion), in support of which reasons (grounds), are provided based on evidence (backing), and linked by rules of inference, principles and the like (warrants) (Toulmin 2003, 87–135). This approximation to argumentation ensures that Toulmin departs from the level of abstraction of *logic* in connection with the construction of individual arguments and their relations.

In Toulmin's view, the logical structure, or form of argument, indeed does provide an analytical standard informing on the formal validity of arguments. Although,

> ... to call such an argument formally valid say only something about the manner in which it has been phrased, and it tells us nothing about the reasons for its validity (2003, 132) ...

...if working with substantive arguments to talk about their validity, or justification, refers to reasons mobilised in support of a claim that finds no reliable grounds regarding analytic adequacy. Reasons cannot be demarcated about their acceptability, justification, or validity without reference to the context in which an argument was raised. More concretely, standards for the evaluation of substantive arguments are field dependent, and the only measure that is not, is the force with which an argument approximates the standard of the field in which it was used (2003, 36–40).

Therefore, Toulmin provides a standard for argumentation. common in logical form to all its expressions, but rejects validity or justification can be demarcated in the light of it. Both are field-dependent standards that make no sense without reference to their particular contexts of action and associated rational enterprises. Indeed, as noted by Habermas, to account for the plurality of validity claims, Toulmin proceeds from the baseline of logic towards differentiation regarding *patterns of organisation*, and functionally differentiated *contexts of action* (Habermas 1989c, 1:33). The problem is, according to Habermas, that demarcating the differentiation between forms of argumentation in relation to different contexts and their internal logics, the binding force of discourse based on the redemption of universal claims to validity gets lost.

On the contrary, Habermas defends that *all* arguments share the same basic form of argumentation, subordinating differentiation to "the end of developing intersubjective convictions by the better argument" (Habermas 1989a, 1:33). Their commonality is no longer limited to the logical structure of the argument, nor is their differentiation associated to accidental or external factors. Different forms of argumentation depend on the universal claim to validity thematised[140] and they share in common that their rationality is assessed by the possibility that it may be redeemed. In this view, an appropriate model of argumentation requires overcoming the burdens of logic and pushing the logic of argument further into the domains of dialectic and rhetoric (Habermas 1989c, 1:35). Indeed, at no one of these analytical levels alone can "the very idea intrinsic to argumentative speech be adequately developed" (1989c, 1:26). Argumentation theory needs to account for all of them.

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[140] According to Habermas, from a universal pragmatic point of view the meaning of linguistic expressions can be 'categorically distinguished' depending on whether they serve "sentences that take a representational function", "serve to establish interpersonal relations or express intentions" or "the function of expression" (1979d, 50). But, the analysis of meaning in reference to the contribution different types of speech acts, performed at different levels of communication, make to pragmatic functions of language, nonetheless, requires a reconstruction of basic typologies of speech act theory and basic modes of language use. Regarding the latter, the division between illocutionary and locutionary acts does not hold for the differentiation between performative and constative modes of language. But, Habermas suggests its initial intend could remain reworking this differentiation in terms of the two levels of communication of language use. Although both modes of speech cohabit in every speech act one could be *thematised* over the other stressing the validity bases of its performative component while only mentioning its propositional content or the other way around. And these different ways of thematisation of speech acts reflect different modes of language use: the *interactive use of language* thematises relational aspects and the *cognitive use* propositional content.

Habermas, in line with the classical canon, distinguishes between three analytical aspects delimiting disciplinary burdens of rhetoric, dialectic and logic: *Rhetorics* is concerned with argumentation as a process, *Dialectics* with procedural aspects or rules and the focus of *Logic* is on the product, or the form of arguments and their relations. On the one hand, as a *process* argumentation builds on a form of communication that, although do not sufficiently approximate ideal conditions – stated as pragmatic presuppositions in the model of the 'ideal speech situation'– should still require symmetrical conditions whereby all force except that of the better argument is excluded. From this perspective, argumentation is considered a reflective continuation of communicative action by other means, the structure of which reflects an intent to convince a universal audience on behalf of the speaker. On the other hand, as a *procedure* argumentation demands certain rules whereby a cooperative division of labour is made with participants thematizing a problematic validity claim, taking a hypothetical attitude and testing with reason, and only with reason, whether their claims stand up to scrutiny or not. Therefore, argumentation as a procedure is shaped by special rules, and rules are aimed at promoting a ritualised competition for the better argument and rationally motivated agreement. Finally, as *product* argumentation is aimed at producing cogent arguments capable of motivating others to engage using a set of intrinsic properties reflecting the argument is not, for example, contradictory.

In short, we would say that rational argumentation requires the production of cogent arguments, respecting procedural rules of engagement, aimed at rational agreement, and overcoming conventional processes by taking into account all relevant points of view equally by intending to convince a universal audience. Logic, dialectic, and rhetoric then, provide a comprehensive analytic framework to approach the rationality of argumentation. However, validity, or justification, comes to hand only on behalf of a participant in rational discourses, not an external observer. Indeed, Habermas grounds his definition of the rationality operating in morality, law or democracy, on a reconstruction of the network of discourses whereby the validity of norms of action is recognised in the context of the public debate through which modern societies intended to understand themselves.

The problem, is that once settled, the outcomes of this reconstructive effort rule actual participants in the democratic decision-making process as counterfactual presuppositions demarcating what is reasonable and what is rational. On the contrary, we could retain the basic intuition that politics is about deliberation, and deliberation is basically about finding rational solutions to reasonable controversies through argumentation. Nonetheless, without having to constraint deliberators to act *as if* conditions were in place, and intending to convince a universal audience. At this point, I find it good enough if deliberations advance to the extent that actual conditions are in place, and taking into account those that sit just in front of us.

The case-study applies this basic criterion to the analysis of The Konpondu Initiative, but in practice, the implication of the suggested transition backwards from Discourse Ethics to the Theory of Argumentation, extends well beyond the particular case and empirical analysis. Moreover, although grounding Habermas' suggestion to take into consideration the three canonical levels of argumentation, in this case relations are to real conditions and audiences instead of counterfactual idealizations, which opens promising lines for future research.

3   Out of the Box (I): The Primacy of Dialectics

The idea that deliberation is an argumentation genre, draws on the theory of argumentation advanced by the pragma-dialectical school (van Eemeren 2010, 2013), and its appropriation by critical discourse analysis (N. Fairclough 1995; I. Fairclough and Fairclough 2012, 2013; I. Fairclough In Press). The original aim was to move from discussing how deliberation can be cooperative and conflictual, to the critical analysis and evaluation of deliberative practice. They provide an account of the genre of political deliberation

> ... which emphasises its adversarial character, but also show how it feeds into cooperative decision-making within institutional practices that are designed for this purpose (I. Fairclough and Fairclough 2013, 21).

Therefore, the evaluation mode is contextualised at each institutional setting, linked to its goals, and to the variety of constraints that affect the course of deliberative interactions.

First, the kind of questions in which they are interested, are the ones that connect reasoning to action in response to a question over what to do. In this sense, practical reason is different to theoretical reason, but not regarding its context (specialised domains versus lay persons) or its content (mundane versus technical knowledge). It is different regarding its purpose and nature of the conclusion (2013, 36). Practical reason functions to decide the right course of action, as opposed to truth, and its conclusion is normative, not descriptive. On the basis of this, the kind of arguments it mobilises are plausible ones (2013, 37). Equally, inductive arguments are sustained on the probability that conclusion follows from premises, and deductive arguments entail premises are necessary, and together are sufficient, to support the claim. Plausible arguments are appropriate "where a tentative conclusion needs to be drawn, in conditions of uncertainty and incomplete knowledge" (2013, 39). Therefore, its conclusions are *in principle* defensible, and so is the practical reason.

Second, the structure of practical arguments follows Walton (Walton, Reed, and Macagno 2008; Walton *et al.* 2010), but suggests a different interpretation of Goals and Circumstances relevant to take a decision over the course of action, and suggests that possible negative consequences also have their role (2013, 42).

In short, the basic structure of practical reason involves a motivational premise (what I want), a cognitive-instrumental premise (how can I get what I want), and the practical judgment as a conclusion (what I should do). This basic scheme is further specified, depending on whether it is merely instrumental, or involves normative values. According to Fairclough, if values are involved, it is misleading to consider goals what the agent desires, because human beings have goals they do not personally desire, they even act against current desires. Therefore, they redefine the goal premise as "*future, a possible state of affairs,* that the agent envisages, compatible with his *concerns* (as expressed in the value premise)" (2013, 42). These concerns can be his actual desires, or what he thinks he *ought* to do.

Moreover, agents operate because actions have multiple consequences, some intended and other unintended, and compromising goals at different degrees. The idea here is that agents act according to a *hierarchy* of values and goals, in the light of which some consequences might be acceptable, and others not. Indeed, different sources of normativity might operate at the same time. A claim can be made

> ... against the background of a moral order (informed by shared moral values or by universalizable rules of conduct), an institutional order (generated by laws or rules), against a background of other values (kindness, generosity) or simply in view of what your actual desires and preferences are (2013, 44).

Therefore, according to Fairclough and Fairclough, the *fact* that these reasons objectively exist in the social world, makes them also valid *reasons* from the perspective of practical reasons and they are included in the circumstantial premise as social or institutional facts.

The scheme differs considerably from Habermas baseline, insofar as in Toulmin's scheme we account basically for claims that need to be grounded on *reasons* and backed by *evidence,* leading towards conclusions warranted by *rules of inference*, *principles,* and the like. Recalling that according to him, the level logic entails non-contradiction, while the burden of proof falls into argumentation as procedure and process in which the better argument should rule. It rules as a consequence of presuppositions of the possibility of a rationally motivated agreement and under conditions for an ideal speech situation. In short, presuppositions warrant the possibility to redeem claims to validity, not their actual redemption.

On the contrary, according to the scheme suggested by Fairclough and Fairclough, we have already, in the structure of practical reason, actual states of affairs or relevant circumstances as social or institutional facts. In addition, plausible future states of affairs, and their possible negative consequences, in this case linked by a hierarchy of different normative concerns by which an agent *rationally* decides what he ought, or ought not do. Moreover, "agents do not move *from* premises *to* a claim for action that is allegedly *supported* or *justified* by those premises. There is always a *gap* (2013, 49). It is rational to provisionally accept the outcome of a practical argument "if it survives our critical attempts to refute it by imagining what considerations would count against it" (2013, 49). Indeed, this is what deliberation is about "considering *alternative practical arguments,* supporting *different claims* and examining and weighing considerations that support these alternative claims" (2013, 50). Minimally, "balancing each argument against a *counter-argument*" (2013, 50).

This is the theoretical context in which my definition of deliberation as a genre, and the identification of counter-arguments as what is expected from deliberators at minimum, was located. However, in the case study, I have described the argumentativeness and closeness to the deliberative minimum regarding relational discourse structures, and normatively assessed the initiative at the system level informed by deliberative democratic theory. In other words, both levels have been kept separate. The reasons for this decision was my methodological choice. The methodological approach, allowed a broad approximation to this structure, but as I noted RST is a reliable approximation to argumentation, despite previous research which suggests direct correlations between coherence relations and links between different parts of an argumentation scheme or between relational discourse structures and argumentation structures are not reliable.

However, I have also underlined the limits of this kind of normative evaluation to conclude whether the analysis was informative over the contribution of The Konpondu Initiative in democratic terms. Sequencing the stages of deliberation about the unfolding of argumentation schemes and moves, in other words, argumentative profiles (van Eemeren 2016), it is possible to assess the initiative critically. The ideal model of critical discussion provides a normative reference, but from the perspective of argumentation, not a theory of morality, democracy, or law.

To bridge the gap between relational discourse structures and argumentation structures, other empirical studies recommend double annotation of the same corpus (Green 2010; Peldszus and Stede 2013, 2016; Stede et al. 2016). Indeed, in the case of discourse analysis of argumentation, a more linguistically oriented annotation of *Discourse Relational Devices* (Taboada 2006; Taboada and Das 2013) meets halfway with the extensive work conducted on the use of *Argumentative Indicators* (van Eemeren, Houtlosser, and Henkemans 2007; Tseronis 2011) allowing the identification of relevant schemes, structures and moves.

According to van Eemeren and the Pragma-dialectical School, certain lexical indicators mark argumentation stages and schemes within them (van Eemeren, Houtlosser, and Henkemans 2007). They provide a very flexible definition so that indicators neither fall necessarily under a concrete category (names, verbs) nor could be considered in isolation, but in the context of the argumentative exchange among interlocutors (van Eemeren et al. 2007). By contrast, Assimakis Tseronis, suggested a more grounded approximation to indicators as *markers* (Tseronis 2011). *Markers* in this sense, are not narrowly conceived as connectives – *because, otherwise* and the like – but as a wide variety of signals, including connectives, but also lexical clues, characteristic expressions, and even syntactic structures and other linguistic formats.

Therefore, enriching the annotation of relational discourse structures in the DELIB corpus using *Discourse Relational Devices*, and analysing them as *Argumentation Markers* provides a viable route for bridging the gap between relational discourse structures and argumentation profiles; meaning schemes and moves. The benefits of this kind of analysis are that the evaluation of argumentation could cross the line from critical description to normative evaluation in the light of the ideal model of critical discussion.

The argumentation theory underneath retains Habermas' critique to Toulmin and suggests the three canonical levels argumentation are complementary for the analysis of argumentative deliberation (I. Fairclough and Fairclough 2013, 52), but endows the dialectical level with primacy in the normative evaluation of argumentative discourse (2013, 64). The analysis of argumentation attends, from a logical perspective to rational persuasiveness, from a dialectical perspective to dialectical reasonableness, and from a rhetorical perspective to effectiveness (2013, 52–59). The normative evaluation subordinates rhetorics to dialectics and, following the pragma-dialectical model, evaluates deliberation to the extent to which it represents "a reasonable resolution of a difference of opinion" (2013, 63); where reasonable means "following a dialectical procedure of systemic critical testing" (2013, 63).

Rational persuasiveness is an epistemic concept. It is weaker than truth and according to its logic, a good argument is acceptable, relevant, and sufficient. *Acceptable*, concerns the relationship between premises and the audience, and is weaker notion than truth; it does not aspire to be independent of peoples' beliefs. *Relevance* rejects arguments that are not relevant as *fallacious*, for example, *ad hominem* arguments. Finally, to reject the claim it is not *sufficient* that the argument is not good. Indeed, there is always the possibility for a bad argument to include a claim that is true. Therefore, to reject a conclusion, it is necessary to provide a rationally persuasive *counter-argument.*

Dialectical reasonableness refers to the procedure of argumentation whereby a critical rationalist conception of reasonableness critically tests the acceptability of a standpoint. In other words, "the function of argument is essentially critical, not concerned with justification" (2013, 53). However, the pragma-dialectical approach is a normative theory that takes an *external* analytical perspective. In short, as already explained, the ideal model of critical discussion entails a purpose in the search for which deliberative dialogues evolve in a series of steps or stages. Each stage is associated with certain dialectical moves so that unreasonable, or fallacious arguments, are those that obstruct the procedure to proceed towards its goal.

Nonetheless, this ideal should be empirically grounded at the level of each case so that what is reasonable partially depends on the institutional context, because it would be unreasonable to hold participants responsible "for failing to achieve outcomes that cannot be achieved" (2013, 54). Indeed, whether a reasonable resolution of differences might be achieved depends on conditions. Conditions concern participants and the socio-political context, insofar as the model requires,

> ... participants actually to solve disagreement they have appropriate attitudes and competencies, and the social, political context should enable participants to claim their rights and responsibilities, for instance, give them the power and freedom to question and challenge arguments (2013, 54).

Finally, Fairclough and Fairclough provide a *domain* based definition of rhetorical effectiveness. In their model, both dimensions, dialectical reasonableness and rhetorical effectiveness, account for the balance between the commitment of parties to solve a disagreement in a reasonable way, "but also, hopefully, in their favour" (2013, 57). It is domain specific, because rhetoric becomes free from negative consequences, if it is associated with deliberation and reasonable disagreement. The idea is that there might be the case when a reasonable solution is available, and rhetoric is used to obstruct that resolution. On the contrary, in the context of reasonable disagreement, rhetoric provides the means to follow the discussion when more than one opinion is *legitimately* possible. In this case adapting to the beliefs and opinions of the audience provides an advantage, for example, in mobilising support. But this advantage is not considered antithetical to the ends of deliberative argumentation.

Taken together, this analytical definition of the different levels of argumentation, leaves the normative evaluation of argumentation procedures in the hands of only one question. To rebut a claim, requires asking whether the action proposed will have *negative consequences* that will undermine the stated goal. They distinguish between defeating an argument "by which we understand that attempting to show the argument is invalid", and rebutting an argument. The former attends to the argument and different alternatives are available based on their goodness. I have already mentioned the possibility of defeating an argument as fallacious at the rhetorical level without compromising the validity of its conclusions. The latter, on the contrary, meaning to rebut the central premise of an argument, or its claim requires,

> ... showing that the argument's conclusion is false (unacceptable) by indicating the existence of a rationally persuasive argument (a *counter-argument*) whose claim is the denial of the original claim (i.e. the agent *should not do* the action) (2013, 64).

For example, imagine the argument of the *Lehendakari* Ibarretxe to organise The Konpondu Initiative is as follows. The central claim is that we ought to involve citizens in the peace process. The value premise is that citizens' participation is the core value of democratic regimes. The circumstantial premise is that elite-driven negotiations have failed, and there is no avenue to make their voice heard in the peace process. The goal premise is a future state of affairs in which the Basque conflict is resolved. The means ends premise here would be that political participation enhances democracy and counteracts conflict dynamics. The arguments premise could be defeated for example, by showing that there are other routes to make citizens voice heard. However, to rebut the claim, a counter-argument should be rationally persuasive in defending making peoples voice heard will compromise the goal, namely, the resolution of the Basque conflict.

The final step for this model is to explain how it is that good arguments ground actions, given that the function of arguments in this model is essentially critical. In this case, Fairclough and Fairclough look at the social ontology of Searle (Searle 2010). According to them, Searle describes a distinctive feature of social reality as our capacity to impose functions on peoples and objects that do not belong to them by their nature. To perform assigned functions, the status of the object or person to which a function has been assigned, needs to be collectively recognised. The institutional reality, for example, comes into being in the form of declarations, texts, or constitutions, that have deontic powers, meaning that they carry obligations and duties.

Moreover, "declarations are those speech acts that create the very reality they represent" (I. Fairclough and Fairclough 2013, 73). The status functions of these declarations carry deontic powers, that once recognised, provide us with reasons for action that are independent of our inclinations and desires. Therefore, it is the recognition of such reasons that may lead to the formation of a desire to observe their binding force, "but *desire derives from the reason we recognise,* and not vice-versa" (Searle 2010:131, cited in I. Fairclough and Fairclough 2013, 73). In other words, the problem is not that we do not desire to accept the binding force of a given declaration, but that we do not collectively recognise its status.

Recently they have suggested the appropriateness of combining the analysis of argumentation with *Cultural Political Economy* (CPE) (Jessop 2007; Sum and Jessop 2013). CPE claims that "economic and political systems, relations, practices are socially constructed and that there is a cultural dimension to their social construction: discourse." (I. Fairclough and Fairclough 2012, 5). Especially in times of crisis, CPE focuses on 'imaginaries', future states of affairs which social agents intend to advance in the form of discourse for their materialisation. Therefore, argumentation theory combines with cultural political economy to provide a comprehensive account over the processes whereby some imaginaries and strategies succeed and come into being as social institutions, while others do not.

This latter feature of the model, is interesting insofar as it is not simply institutional facts that are introduced to the very core of the argumentation scheme of practical reason, therefore problematizing the status of institutions in the context of deliberative argumentation. Moreover, it provides the means to further the critical analysis of discourse to its cultural, political, and economic context.

4   Out of the Box (II): The Primacy of Rhetoric

A further interesting way forward underlines the level of rhetoric and intends to develop the social psychological approach to argumentation presented by Landemore (2013, 123–44). Indeed, there is a dynamic discussion from the perspective of deliberative democratic theory on the role of rhetoric (Abizadeh 2007; Chambers 2009; Dryzek 2010; Garsten 2011; Lyon 2013). The suggestion in this case, is to advance in the rhetorical characterisation of deliberation, and I find it especially interesting to deal with the challenge mass democracies represent for the model of deliberation, so far as the requirement I established about having to argue with *real* others seems difficult to meet in practice.

Abizadeh, for example, takes up the compound challenge of pluralism and social integration that has been a feature of the reasoning throughout this dissertation, albeit from a different point of view (Abizadeh 2007). His argument is that Habermas' project of reconciling social integration and political rule with freedom fails, precisely because his discourse-ethical theory of politics lacks a motivational force. Indeed, he takes up the argument against constitutional patriotism, usually associated with nationalism and republicanism, stating that constitutional patriotism is too thin to provide the affective identity capable of inspiring shared solidarity. In his words, these models "are too rational, too abstract, too universal, too rootless to be able to anchor the passion in a motivationally efficacious identity" (2007, 449). The solution he proposes, seeks to overcome the philosophy/rhetoric binaries between reason/passion, abstract/concrete, or universal/particular. In other words, it gives the art of persuasion a place in practical reason to restore its motivational force to discourse ethics.

I have taken a different stance towards the same issue, primarily because I disagree that the problem of complex diversity could be faced regarding affects, motivations, and so on. In this case, what is at stake is how to coordinate in the language of law, two opposed, but equally democratic, mandates that share the basics of the moral point of view, but legitimately disagree on its implementation in a particular system of rights. In this case, the differentiation made by Habermas between discourses of application and justification, misses the point so far as (unlike in moral controversies) in legal controversies, those that apply the law and those that make the law, are personally and institutionally distinct. Moreover, one side of the controversy makes the law, and the other side should comply, therefore, letting the powerless end with a dilemma: what comes first democracy or law? But, unable to respond to both on an equal footing.

Nonetheless, Abizadeh makes a point that I think could be compatible with my account. For example, if we take Searle's notion of status as a departure point, I have argued that the problem is not the absence of desire to accomplish with duties. The binding effect of the institutions of law is neutralised, not because of a lack of desire, rather it is the lack of a collective recognition of the reasons that provide the declaration with its deontic powers, or status. Searle's argument is that desire derives from reasons we recognise, not the other way around. However, there is a gap to explain how it is that reasons provide recognition to the status of certain social institutions while not to others.

At the structural level, the suggestion made by Fairclough and Fairclough was that analysis should account in parallel for cultural, political, and economic aspects (CPE), whereby some 'imaginaries' are materialised and others are not. Therefore, it is plausible to think that the recognition of the status of collective imaginaries involves different kinds of reasons too. The deliberative interpretation of this tenet in Argumentation Theory is presented by Abizadeh as the inclusion of persuasion in the operation of practical reason. Indeed, this is the default position in Argumentation Theory. The difference is that Abizadeh suggests we will be able to retain the distinction between strategic and communicative discourse without equating the former with persuasion and the latter with reason.

Fairclough and Fairclough, in contrast, specify strategy is an important part of political action (I. Fairclough and Fairclough 2013, 24). Political strategies involve a future state of affairs to be achieved using action, and proceed from the actual situation. However, they are formulated in discourse and conceived as 'imaginaries', but "'strategy' is a category within theories of action, not within theories of discourse" (2013, 24). It is an important concept, and a category in political theory and theories of political economy, but the distinction between the strategic and communicative negates the point of talking about discourse. On the contrary, Abizadeh suggests this distinction could be maintained about different *kinds* of persuasion, in particular, "we can distinguish between persuasion that is, and persuasion that is not, subordinated to the latter's given the end of reaching understanding" (Abizadeh 2007, 466).

The logic is similar to that of the sequential approach, if not now, then maybe later or in another site of the system, and at this point, I am not capable of elaborating a robust argument on the role of rhetoric. But as the initial position, I cannot see on what basis, displacing in time and space the ruling of social integration, solves the controversial *status* of the norm in the case of complex diversity. However, regarding mutual understanding, the pragma-dialectical approach provides a similar interpretation, although in this instance, through the subordination of rhetoric to the dialectic purpose of finding a reasonable solution to controversy; yet, with one condition and one important exception. The condition is that disagreement is reasonable if there is no alternative course that will make argumentation advance towards its shared purpose, meaning solving controversy, and this evaluation takes place over the socio-political circumstances in which deliberative argumentation takes place. Therefore, the exception, if there is no rationally persuasive alternative, or appropriate conditions are absent, is that the room is left open for a reasonable disagreement lasting in time among equally *legitimate* positions.

Besides philosophical dilemmas, concerns about the appropriate kind of rhetoric for deliberation, tend to structure debate among scholars, and is interlaced with concerns about the unavoidability of the scenery of an orator speaking to an audience in contemporary mass democracies.

Chambers (2009), for example, locates the dilemma in the relation between plebiscitary rhetorics and mass democracies. In short, plebiscitary rhetorics is not blamed because it mobilises passions instead of reasons, but due to its unavoidability and compound risk of elite manipulation. If the hearer is not entitled to make the speaker discursively accountable, the risk that the speaker does not take into account the perspective of her audience, brings about a fundamental asymmetry difficult to sustain from the perspective of deliberative democratic theory. She suggests the possibility of a deliberative rhetoric where a deliberative interaction can be established between orator and audience "even when the audience does not have the immediate possibility of responding and calling the speaker to account" (2009, 345).

Dryzek, on the other hand, suggests a systemic test given the limitation of a categorical differentiation between 'bridging and bonding' rhetoric (Dryzek 2010). Bridging rhetoric is a kind of rhetoric that associates people with different social characteristics. Bonding rhetoric, on the contrary,

> ... is the kind generally feared by democrats, because it is likely to deepen division with outgroups, to invoke dangerous emotions, to mobilise passions, to move groups to extremes (2010, 328).

According to him, this categorical typology is limited, because it takes division lines in societies as well defined, problematic, and persistent, while in the absence of such division lines "it is not clear exactly what is being bridged" (2010, 331). On the contrary, the systemic test evaluates the extent to which rhetoric contributes to the building of the deliberative system. In this way, it could also identify situations where bridging rhetoric, for example, is used to co-opt and neutralise subaltern counter-publics.

Garsten (2009, 2011), by contrast, locates the burden of proof not in rhetoric, but in the political system. After an extensive review of this debate in the field of deliberative democracy, he suggests that

> ... the difficulty of encouraging rhetoric may be linked to the distinctive structure of modern representative government itself, to the fact that it puts ordinary citizens in the role of an audience tasked with watching and judging political rule from the outside rather than doing it for themselves (2011, 44).

In *Saving Persuasion* (2009) Garsten, rather than defending the virtues of rhetoric, rejects the opposite conviction; public reason is not "a bottom-up development" originating in coffee-shops and "broadening into a "public sphere", but

> ... a top-down story in which the notion of public reason is invented by political philosophers seeking to quell religious, political controversy by subjecting debate to an authoritative standard (2009, 177).

Moreover, the argument could be labelled as 'rhetoric against rhetoric', in so far as either a political system is fully deliberative, that is implausible, or representative democracies cannot avoid the rhetorical moment of citizens being persuaded by authorities to accept their judgment at the moment for example, in which they are ruled. According to Garsten, rhetoric is part of politics whether we like it or not. What the denial of persuasion in deliberative democratic theory, entails are a denial of citizen's capacity to make use of it.

On the contrary, according to him, rejecting the role of persuasion in the name of rational agreement, or impartiality, instead of countervailing disengagement, fuels dogmatism. Regarding citizens "part of the solution should involve an effort to engage more directly with them and their views" (2009, 185), as they are not as they should be. To that end, deliberation should be detached from the logic of a discourse of justification, and stop asking citizens to substitute their private judgments, for ones that emerge from an authoritative public point of view. Deliberation should "adopt a more intuitive or direct view of what makes a decision deliberative" (2009, 191). He suggests a general definition of deliberation as a 'considered response' that attends situated judgment and deliberative partiality (2009, 192). Effective deliberation may take advantage of tacit knowledge that each citizen has from her experience, but deliberation should not place itself, in a standpoint that denies the importance of these attachments (2009, 194). Finally, he assumes rhetoric does not immunise against demagogy so far as demagogy cannot be avoided (2009, 200). The solution, in this case, is not about citizens but the dispersion of authoritative bodies so that they will respond more adequately to situationally grounded perspectives.

In sum, deliberative concerns on rhetoric are linked to the unavoidable role of persuasion in mass democracies. The challenge is the position of the other in the orator-audience scenery and the mechanisms allowing the demarcation when this communication may be labelled deliberative. Chambers and Dryzek, suggest different demarcation criteria that permit good or bad rhetoric to be distinguished, while Garsten and Abizadeh, suggest that what has to be redefined is the deliberative ideal. However, once again, the perspective shifts if we consider the relationship between deliberation and rhetoric from the perspective of Argumentation Theory.

Regarding the relationship between audience and orator, Michael Billig (1996), suggests for example that, "the image of the powerful orator playing masterfully with the emotion of the helpless crowd is a myth" (1996, 225). The line of argumentation underlying this statement is sustained as follows.

First, according to Billig, a persuasive orator needs to identify with her audience to effectively convey her argument. But this does not imply that the orator should align her position to those of the audience. Even to change the existing opinion, or prejudices, some degree of identification is needed because, "some of their (an audience's) opinions are needed to support the fulcrum by which he would move other opinions" (1996, 224). Billig refers to several experimental set-ups where, for example, a Marxist minority takes a critical stance towards the liberal pacifism of the majority of the group. In the exercise, the minority finds it is more persuasive, and shows a certain flexibility and respect towards pacifist (not liberal) values to defend its position, rather than denying the other's position as 'bourgeois sentimentality.'

Second, this adaptation to the audience entails the oratory of the speaker informs, not only about the orator, but also about the audience. Moreover, "[s]ince the orator and the audience are linked together, oratory must be seen as an irreducibly social activity" (1996, 226). It entails at minimum that they share common argumentative forms because "the speaker must use shape of arguments which are recognisable to the audience" (1996, 226). Moreover, the oratory of the speaker not only shares argumentative forms with the audience, but "it also comprises a common content" (1996, 226). To identify with their audiences, communal links between audience and orator are emphasised

> ... foremost amongst which are shared values and beliefs, [so that] ... [t]he orator, in identifying with the beliefs of the audience, will be treating the audience as a community bound together by shared opinions (1996, 226).

Therefore, it is proper of rhetorical persuasion to establish a link with the audience in so far as it is necessary for an orator's speech to be effective. In any case, the orator-audience scenery does not only inform about the speaker, but also its audience. More interestingly, it informs on the relationship established between a speaker and her audience, in their particular rhetorical context. With this commonsensical assumption, the image of the proactive orator facing a passive audience becomes at least, questionable. Moreover, this link is established at two levels: the form and the content of argumentation. Therefore, this basic idea provides an attractive departure point to respond to the challenge of the plurality of venues, whereby contemporary democracies define the relationship between citizens, and for example representatives, or even themselves. Let me exemplify this idea taking as baseline the content of argumentation.

According to Billig, shared places where orator and audience meet each other reflect common-places commonly used by orators, because they are commonly held by their audience, and common-places that inform over the sense of a particular community (1996, 230). He makes two important remarks. First, common-places inform over particular communities because "[e]ach community possesses its own common-sense, expressed in common-place, but nevertheless potent, symbols" (1996, 231). Thus, common-sense should be understood anthropologically and not in an unrestricted manner. Second, the anthropological common-sense should not be understood in an absolute sense because, "each audience will no doubt imagine its own common-sense to exemplify *le bon sense*" (1996, 233). Let me explain the argument underlying this second remark in more detail.

An orator knows the different common-places of different audiences so that, in principle, we might think her way of thinking is flexible regarding the kind of arguments, and set of common-places she could mobilise, depending on the audience to which she wants to identify to be persuasive. The other side of the coin, in this case, is that "one would expect the audience to be characterized by one-sided prejudices" (1996, 233). However, this differentiation between an orator with argumentative skills not reciprocated in the audience, is only part of the story according to Billig, "[i]t omits the paradox, which arises when one considers not the argument which might arise between communities, but within one community." (1996, 233) The clearest example of this is two parties trying to identify with the same audience, with both appealing to the common-sense of the same community, but arguing in oppositional ways.

This paradox underlines that "the common-sense of an audience is not unitary, but is composed of contrary aspects" (1996, 234). Contrary aspects of the common sense "are deeply embedded in the vocabulary of the language itself", and the linguistic aspect illustrates "how inherently contrary common-sense is", because "[t]he mere possession of these words means that we can take either side in the dilemmas and controversies which chance our way." (1996, 237) These terms are close to each other so that "in particular instances, reasonable or reasoned arguments can be made for preferring one term to its rhetorical contrary" and this should not be considered "a failure of efficient mental organization" (1996, 237). On the contrary,

> [i]t is because of this proximity between the undefined borders of opposites, that common-sense can provide us with dilemmas to think and argue about; and only if there are such dilemmas and *deliberation*[141], rather than the smooth and unthinking categorization of all worldly particulars, can our discourse bear a moral quality (1996, 238).

For example, in collaboration with the IXA Group (UPV-EHU), I conducted a small experiment to test ANALHITZA[142] (Otegi *et al.* 2017) a tool for linguistic analysis. I analysed the semantic frames of participants about different aspects of the same question, and different key concepts. We selected a sample of 40 texts (20 in Basque and 20 in Spanish), with a similar length (more than 300 characters), written in a similar date (April 2008), and responding to the same question. *In the current situation which difficulties and opportunities do you see for peace and political normalization?* I looked for most repeated words regarding Difficulties and Opportunities at each linguistic set. Table (29), reports the frequency lists of words from responses of citizens including the ten most repeated words.

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[141] Emphasis added.
[142] The tool can be tested also for English language texts here: http://ixa2.si.ehu.es/clarink/analhitza.php?lang=en (Consulted: 2017-08-14).

| Difficulties		Opportunities	
Basque	Spanish	Basque	Spanish
Alderdi	**Politico**	Bake	Vez
Politiko	**Partido**	**Aukera**	**Oportunidad**
ETA	**Violencia**	Herri	Tener
Bake	Ir	Gizarte	Politico
Lortu	Dificultad	Euskal	Cada
Arazo	Sociedad	Eman	Creer
Herritar	Tener	Ikusi	**Querer**
Jarrera	Existir	**Nahi**	Poder
Biolentzia	Poder	Bide	Politica
Euskal	Parte	Herritar	Decir

Table 27: Frequency Lists

Regarding differences, in the Basque set and difficulties column, we find words like 'ETA', 'bake' ('peace'), 'Euskal' ('Basque'), 'herritar' ('citizens'), 'jarrera' ('attitude') absent in the Spanish list. The other way around we find words in the Spanish set absent in the Basque set like 'sociedad' ('society'), 'tener' ('to have'), 'existir' ('exist') or 'poder' ('power'). Moreover, we can speculate on these differences. For example, while Basque speaking participants include references to 'attitude' the Spanish set refers to 'existence', the Basque set to 'Basque' 'citizen' and the Spanish set to 'society'; or the counterintuitive example of 'ETA' being mentioned only in the Basque set.

Regarding similarities, both linguistic communities included 'alderdi'/'partido' ('parties'), 'politiko'/'politico' ('political') and 'biolentzia'/'violencia' ('violence') in the difficulties list, and 'aukera'/'oportunidad' ('opportunity') and 'nahi'/'querer' ('want') in the opportunities list. In short, members of both linguistic communities were clear that the problem involved political parties and violence, and they wanted an opportunity for peace and normalisation. Therefore, both ideas and their linguistic expressions, represent common-places for the participants in The Konpondu Initiative.

From a classical deliberative point of view, those will be the focus of our attention, but according to Billig, the interesting point is that those common places are the *locus* of deliberative controversy within the shared common sense of this particular community.

For example, common place regarding difficulties for peace and normalization is 'violence'. We used Network Text Analysis (Carley 1997) to extract co-occurrence networks and compared resulting semantic maps around the concept of 'violence' (Graph 7). Results revealed several remarkable differences in their meaning of 'violence'. While, in the Basque set violence is linked with words like 'ETA', 'politiko' ('political') or 'politika' ('politics'), 'pentsatu' ('think') or 'gatazka' ('conflict'). In the Spanish set violence is linked to words like 'verdadero' ('true'), 'nunca' ('never'), 'existir' ('exist') or 'asesinato' ('killing').
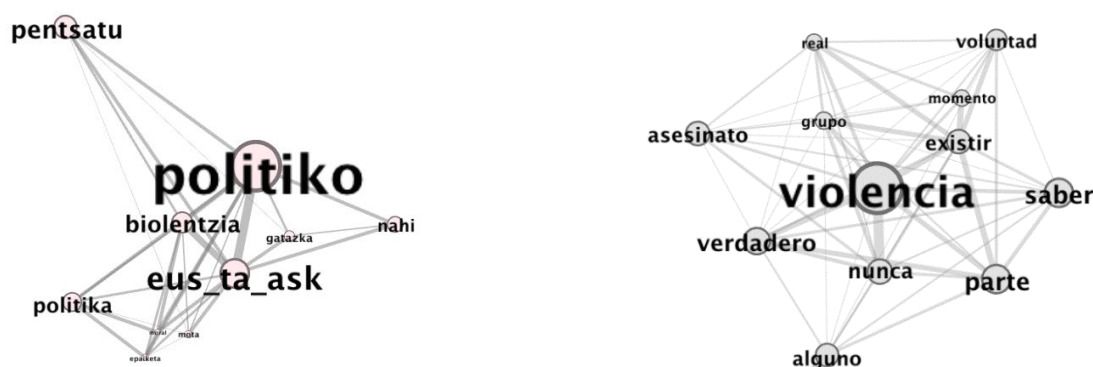
Graph 7: Co-occurrence maps for 'violence' in the Spanish and Basque sets

In Billig's terms, violence is a common place used by participants because they consider this common-place, was also held by their audiences (other participants). Looking at the differences in the ways different linguistic communities semantically framed the common-place violence we get a more reliable picture of the controversies that feeding deliberation around commonsensical assumptions in the Basque community.

The interesting shift is that in this case, the content of orator's speeches informs on the interactions between them and their audiences, over the controversial nature of the common-place 'violence', in this particular community. Moreover, the moral value of this controversy is not within the capacity of the deliberative process to neutralise. It is not on what they have in common; meaning, the common-place that violence is a difficulty, it is the other way around; the moral value of common-places is that they provide a point of reference for different perspectives within the same community to meet each other, but the virtue of common-places is that they provide means for controversy and deliberative thinking to take place.

It is interesting to my case, because together with the analysis of argumentative moves, schemes, and structures, it provides an elegant way to articulate the analysis of the form of argumentation with the substantive content.

5   Out of the Box (III): Identity and Deliberation

The altered perspective of argumentation theory conveys a Copernican turn to understand the controversial relationship between identity and democracy, but more specifically between complex diversity and deliberation. The opening paragraph of this dissertation recalled an experience in a London pub where I contemplated the question: where am I from? The taken-for-granted sequence of events led me, and my casual friend, into a stalemate of mutual categorization. Either with 'us' or against 'me'. Indeed, according to Billig, categorization is a central cognitive feature of human beings. The need to name others is essential, at least if we are to locate ourselves in a world that moves too fast, and it is too complex.

Throughout this thesis, I have settled the departure point of Habermas' categorization of collective identities to be either civic or ethnic. However, I have also noted that things change, they change with abandon, and no one is to blame. Moreover, categorization is also permeated by the 'spirit of contradiction' that permits me, or my friend, to reject categorization (Billig 1996, 160). Indeed, according to Billig, the reverse move of categorization comes when we intend to place a particular stimulus in a general category, because we are forced to consider this particular stimulus through what it makes it different. This particularization reverses categorization because of the simple reason that a particular case never fits completely with a given category, and this very fact makes the category itself questionable in the light of each particular case.

Moreover, "humans, through their use of language, possess that most important capability which makes rhetoric possible: the ability to negate" (1996, 165). It is thanks to this ability to negate that we are not left to assume ourselves as individuals filled up with stereotyped prejudices. In other words,

> [c]ategorization does not provide the basis for thinking in a simple sense. The automatic application of categories is the negation of thinking, in that it is a thoughtless process (Billig 1996, 170).

On the contrary, thinking starts when we begin to alternate from how to categorise a particularization to which categorization to particularise. In other words, reflection proceeds from when we begin to wonder whether or not Catalonia is a nation, and then to continue asking ourselves what being a nation really means in the light of the Catalan nation. According to Billig, both processes are inseparable and open-ended. Of course, any controversy could find a temporal settlement. This is what a constitution is: a temporary settlement of controversy over who constitutes the people. However, insofar as a final word is always sought, it only serves to refresh interest, restore *momentum*, foster new criticism, and require further justification. Therefore, categories are means, not ends. They are aimed at new criticism pushing towards further justification. Moreover, the opposite is thoughtless. And the same goes for constitutions.

Regarding categories, Billig suggests, they could be considered, rather, as meta models or 'essentially contested concepts' (1996, 177). William E. Connolly, for example, explained that essentially contested concepts in politics are elusive with regard clear-cut ontological demarcations because they "involve endless disputes about their proper uses on the part of their users" (Connolly 1983, 10). They are internally complex and contestable 'cluster concepts' (1983, 12–22) and "contests over the correct use of partly shared appraisal concepts" could be considered themselves "an intrinsic part of politics" (1983, 39). In short, if we think identity is an essentially contested concept, foreclosing it means we are compelled not to consider identity in the same way as equality, freedom, rights… In other words, there is politics; and there is what is left; it is what I am, how I feel, what I like… but this is my identity, which is mine and politically meaningless.

Yet, it becomes politically meaningful as soon as I make it part of the controversy in a political context, because it is the social context of argumentation that defines the meaning of an argument. In other words, when I place my identity in the context of political controversy to negate a certain categorization, it becomes politically meaningful and worthy from a deliberative perspective. It does so, because my argument does not speak about me, it is a claim raised against a counterargument. For example, in the introduction I quoted Laura Mintegi stating that if there is going to be a 'Basque way' then it is either no longer 'Basque', or it is no longer a 'way'. The argumentative context of this claim is, according to Billig, unavoidable, and it is around it that we can understand the meaning of her assertion. She was introducing a book on Basque independence and her argument, and that of the book, was that if the Basque Country is going to be independent, it has to think less about how to be Basque, and more about how, or what for, the wish to become a country consists in. But it says nothing about how Laura Mintegi feels, or lives, her Basqueness.

Moreover, not only does context define meaning, but it also settles the reasonableness of the course of argumentation. The endless nature of these kind of disputes, means that in cases where two arguments oppose, "*both are seen as equally reasonable*; we will choose, but not on the falsity or irrationality of the one or the other" (Billig 1996, 124). An official decision can foreclose neither dispute in so far as it will entail the negation of thinking, indeed, it is not the agreement underlying the majority position that either frames discussion, or, even less, defines the justifiability or reasonableness of the positions in dispute (1996, 238–52). The deliberativeness of an argument is not settled then, by using the capacity of some to be recognised in their claims as a matter of public concern by all. Neither is it settled in the name of law. It is the opposite. It is the challenge what matters, because the challenge transforms unquestionable facts into controversial beliefs and forces the need for further justification.

This simple idea changes the terms of debate significantly in comparison to the Habermasian conception of deliberative justification. Billig places justification and critique as essential features of argumentative deliberation, but to create *momentum;* meaning, to bring shifts or drifts from conversation to argumentation,

> ... [a]ll that is necessary is for one conversationalist to criticise another's platitude about the world, and for that other to offer a justification (1996, 117).

In other words, critique is the engine of deliberative justification, rather than justification being the source of legitimacy for critique. Moreover, every justification refers to a context of argumentation because, "contesting, contradictory parties provide the necessary social context of argumentation, whereas a neutral audience is an optional extra" (1996, 120). It is not that my claim is justifiable, rational, or reasonable because it passes one test or another. What matters is whether it makes me enter the discussion with at least one person. It is the capacity to foster others to further justification that defines its worth.

Therefore, context defines meaning and reasonableness and the final playing field is no longer a universal audience but the one sitting in front of us, the one which challenges our most deeply held assumptions. Indeed, Billig defends argumentation as a universal capacity of human beings, but not in spite of their differences, but because of them (1996, 141).

Thinking is thus defined as a dialogic process, a means by which we learn by questioning ourselves, by taking the position of others and imagining variant possible futures, and the considering desirability of outcomes. It could be seen as occurring in the domain of the isolated individual, but

> ... [i]t is in the electric kindling of life in two minds… there sometimes arise glimpses, and shy revelations of affinity, suggestion, relation, analogy, that could not have been approached through any avenue of methodical study (De Quincey cited in Billig 1996, 146).

If thinking requires others constraints, there are no rules aside from the rules that must be agreed as part of the process, and that the outcome is not defined in such a way as to limit the open-endedness of the process. The fact that both parties always seek to have the final word reveals an intent to convince others, and the reality that this intent takes the form of arguments to reveal reason, mediates this intent. However, permission is no longer needed insofar as critique opens the door and the objective is not agreement necessarily, but *more* argumentation. Indeed, Billig's image of deliberation is not one where all voices seek to be similar and stay 'happily silent' (1996, 16). On the contrary, it is more one of 'chatter and discussion', in which 'any accord which is reached is to be breached'. Moreover, dialogue is a process that moves forward 'creatively and endlessly', in different contexts, and with different others each defining the argumentative context, the meaning of the argument, its form and its worth.

Thus, regarding me my friend in the pub; with politeness, I reserve the right to conclude it is up to me. I can avoid discussion, assume a situational identity, and have a nice conversation about the weather as an Australian. I can also change my strategy and take a Spanish stance if, for example, another Basque joins our conversation, just to challenge what is taken-for-granted about me, and move forwards towards an interesting discussion on what is 'us'. Or I could place myself in Catalan shoes, if a Spaniard takes the floor and joins my British friend to discuss the Scottish case. However, if deliberative argumentation is going to occur I need to have the capacity to critically stand, or reject what others think I should be. Or I evolve.

ANEX A: Post-evaluation test

Elkarrizketarako udal-foroak balioztatzeko galdetegia
Cuestionario de evaluación de los Foros municipales de diálogo

1. Balioztatu ekimen hau 1etik 10 era (1 ez da batere positiboa eta 10 oso positiboa da)
   Valorar de 1 a 10 esta iniciativa (siendo 1 nada positiva y 10 muy positiva)

   1   2   3   4   5   6   7   8   9   10

   Zergatik?/¿Por qué?

2. Balioztatu 1etik 10 era erabilitako metodologia (1 ez da batere positiboa eta 10 oso positiboa da).
   Valorar de 1 a 10 la metodología utilizada (siendo 1 nada positiva y 10 muy positiva).

   1   2   3   4   5   6   7   8   9   10

   Zergatik?/¿Por qué?

3. Balioztatu 1etik 10 era foroaren dinamizatzaileak egindako lana (1 ez da batere positiboa eta 10 oso positiboa da)
   Valorar de 1 a 10 el trabajo realizado por la/el dinamizador del foro (siendo 1 nada positiva y 10 muy positiva).

   1   2   3   4   5   6   7   8   9   10

   Zergatik?/¿Por qué?

4. Zure ustez, anitza izan al da foroa parte-hartzaileak eta entzun dituzun iritziak kontuan hartuta?
   ¿Consideras que el foro ha sido plural en cuanto a los participantes y a las opiniones que has escuchado?

   Bai/sí   Ez/no   ez daki-ez du erantzuten/ no sabe-no contesta

5. Zer hobetuko zenuke antolatu behar diren hurrengo udal-foroei begira?
   ¿Qué mejorarías de cara a los próximos foros municipales que se van a organizar?

6. Zer-nolako gogoz etorri zinen eta zer-nolakoaz zoaz?
   ¿Con que ánimo has venido al foro y con que ánimo te vas?

7. Beste bilera bat antolatuko balitz, parte hartzeko prest egongo zinake?
   ¿En el caso de que se organizara otra reunión, estarías intersada/o en participar?

Parte-hartzailearen datu orokorrak/Datos generales de la persona participante:

Sexua/sexo: Adina/edad: Lanbidea/profesión:

Parte-hartze alorrak udalerrian: elkartea, taldea, erakundea . . . /Ambitos de participación en el municipio:

ANEX B: Persons Contacted

Name	Affiliation
Gorka Espiau	Agirre Lehendakaria Center (ALC)
Amaia Agirre	Agirre Lehendakaria Center (ALC)
Aitziber Blanco	Lokarri
Asier Blas	Parte-Hartuz (UPV/EHU)
Izaro Gorostidi	Parte-Hartuz (UPV/EHU)
Iñaki Barcena	Parte-Hartuz (UPV/EHU)
Igor Ahedo	Parte-Hartuz (UPV/EHU)
Jokin Olaizola	Basque Government
Jorge de la Herran	AGORA
Andrea Bartoli	Columbia International Centre for Conflict Resolution (CICR)
William Weisberg	Columbia International Centre for Conflict Resolution (CICR)
Armando Geller	Scensei - Basque Peace Process Scenarios (BPPS)

ANEX C: Recovered Documentation

Document Type	Number	Reference
Transcripts Municipal Forums	117	DOC 4-5
Transcripts Diaspora Forum	1	
Transcripts University Forums	3	
Post-evaluations questionnaires	773	DOC 3
Methodological guide	1	DOC 6
Report Parte-Hartuz	1	DOC 2
Report Agora	1	
Report CICR	2	
Explanation of the Roadmap	5	
Presentation of the Konpondu Initiative (draft)	2	
Posts at konpondu.net	39	
Compilation Responses to citizens by Ibarretxe	1	
Thank you letters	67	
Invitation letters	1	
Promotional Leaflet	1	DOC 1
Promotional videos with citizens	43	
Promotional videos by organisers	9	
Promotional audios	10	

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