

# Why Deliberation? Challenges for an Epistemic Model of Democratic Legitimacy\*

## ¿Por qué deliberar? Desafíos para un modelo epistémico de legitimidad democrática

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### Resumen

La democracia deliberativa es un ideal normativo de la democracia. Este modelo constituye no solo una propuesta para la regeneración de la legitimidad de nuestras instituciones, sino también un mecanismo para la toma de decisiones. Se basa en dos dimensiones: una procesal, en la que el modelo exige la inclusión y la misma capacidad de influencia en la decisión final de todos los afectados (Cohen, 1989; Bohman, 1996; Habermas, 1992), y una sustantiva, que exige que las decisiones políticas se tomen a través de un procedimiento colectivo basado en la argumentación y el debate público. Si estas condiciones se reconocen, las decisiones serán más racionales y mejores. Este artículo tiene dos objetivos. En primer lugar, presentaremos los elementos clave de esta concepción epistémica de la legitimidad política. En segundo, mostraremos los

### Abstract

Deliberative democracy is a normative ideal of democracy. This model is a proposal for the regeneration of the legitimacy of our institutions, but also a mechanism for decision making. It is based on two different dimensions: a procedural dimension where the model demands the inclusion and an equal capacity to influence the final decision of all those affected (Cohen, 1989; Bohman, 1996; Habermas, 1992) and a substantive dimension where the political decisions are made through a collective procedure of argumentation and public discussion. If these conditions are recognized, the decisions will be more rational and better decisions. This paper has two aims. First I will present the key elements of this epistemic conception of political legitimacy. Second I will show the challenges it faces. On the one hand, the counterfactual of many

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retos a que se enfrenta. Por un lado, el carácter contrafáctico de muchas de sus propuestas y, por el otro, los problemas derivados del sesgo consensualista del modelo.

of its postulates and on the other, the obvious problems of bias consensualist of this model.

**Palabras clave:**

Democracia deliberativa, valor epistémico, consenso, racionalidad, corrección moral.

**Key Words:**

Deliberative Democracy, Epistemic Value, Consensus, Rationality, Moral Rightness.

**Palabras clave descriptor:**

Democracia deliberativa, consenso (Ciencias sociales), toma de decisiones, epistemología social, participación política

**Keywords plus:**

Deliberative democracy, consensus (Social sciences), decision making, social epistemology, political participation

## Introduction

Liberals defend a presumption in favor of individual liberty and limit liberty only to protect the equal rights of others. In this sense, they underline a priority of “*just*” above the considerations about the “*good life*”. This is essentially the liberal mode of thinking about a just society. It denies the existence of anything that transcends individual preferences. Liberalism understands democracy as a formal and neutral procedure. According to it the legitimacy of the rules derives from the endorsement by the representatives in the Parliament following the established procedure. The justification of decisions can only derive from adopting a procedure that ensures fairness and equity. From this perspective, the main objective of the policy will be the best compromise between private, opposite and irreconcilable interests, and explicitly refuses anything that transcends private preferences.

Then, liberal democracy involves a minimal sense of autonomy and equality. The main value in democracy is the basic political equality among all citizens, understood as a “*prima facie*” equal right to influence or determinate political decisions. The citizens are considered autonomous, they make their own choices and they have a basic and equal right to participation. All this constitutes democracy. This presupposes that none of us possesses an infallible epistemology.

Deliberative democracy is a normative ideal of democracy. The notion of deliberative democracy appearance in 1980 in the work of Joseph M. Bessette. This was the democratic model of the American Constitution; it marks the initial researches about the model in the field of Anglo-Saxon political theory. But, the german sociologist and philosopher Jürgen Habermas is the most important author that dictates the content and the limits of the academic debate in later years, bridging continental and Anglo-American traditions of thought.

This model is a proposal for the regeneration of the legitimacy of our institutions. On the contrary to the liberal model of democracy, Jürgen Habermas defends that it is possible the moral agreement. This agreement derives from a particular process of communication. A communication that is oriented to mutual understanding and it is subjected to several criteria for measuring the quality of dialogue (“*Real Speech Situation*”). The result of this process is a rational agreement, a rational consensus (Cfr. Habermas, 2000, p. 21). When we attribute an epistemic value to this consensus, we assume that the result of a deliberative process its rightness. If these conditions of measuring the quality of deliberation were recognized, the decisions would be correct from a moral point of view and they would be more rational and better decisions.

This affirmation implies two important paradoxes. First, the plural character of our societies raises doubts about the real possibility of moral substantive agreement. Second, in spite of resonances of the Habermas’s studies about this epistemic justification of the

democracy, the theoretical arguments have been presented without empirical evidences neither a robust explanation. Both aspects will address in this paper.

In this paper I expose the weaknesses of this justification of deliberative democracy. First I describe the habermasian deliberative model. Then, I present the essential elements of this normative model. This characterization is necessary in order to recognize the elements of an epistemic conception of democracy. Secondly I contrast their assumptions with the reality. In this sense, I want emphasize this relationship between normative and empirical dimensions of the model because the recognition of these notions would provide a better description of the theory and allow cover potential normative deficits.

### **The Habermasian deliberative model**

Habermas's proposal is original in the following sense. The moral universalism of Habermas depends on a dialogical procedure of communication. This procedure is oriented to mutual understanding and this is subjected to several criteria for measuring the quality of dialogue ("*Real Speech Situation*"). According to this, this model is different of the monological model of John Rawls and the contemporary republican model - where the deliberation depends on virtuous participation of citizens, who are committed with the common good. This ideal deliberation allows reaching a rational agreement.

Habermas resort to an analysis of our communicative practices. In *Theory of Communicative Action* Habermas suppose there is a close relation between rationality and knowledge, the main idea is "how speaking and acting subjects acquire and use knowledge" (Habermas, 1984, p. 11). According to this, there are two types of actions, in accordance with the status of the rules that govern the behavior: we can find goal-directed actions, within we meet the rational action and teleological actions. Communicative action is the action of a deliberative process, where two or more individuals interact and coordinate their action agreed upon interpretations of the situation (Habermas, 1984, p. 86). Thus, Habermas distinguishes between genuine and strategic discussion. In the former, participants seek mutual understanding and agreement, and use communicative rationality. In the latter, at least one participant simply tries to win, perhaps by manipulation or threats, and uses strategic rationality: he aims at his own success, not at genuine understanding and agreement.

Habermas identifies and reconstructs universal conditions or "universal validity claims" in the structures of argumentative speech. Within communicative action an agent must necessarily engage these claims and believe that such claims can be made.

The argument relies on the following assumptions:

1. Communication can proceed between two individuals only on the basis of a consensus regarding the validity claims raised by the speech acts they exchange;

2. These validity claims concern at least three dimensions of validity: a) truthfulness, b) rightness, and c) truth
3. That a mutual understanding is maintained on the basis of the shared presupposition that any validity claim agreed upon could be justified, if necessary, by making recourse to good reasons.

In other words, a speaker claims not only that what they say is true (c) but also that it is normatively right (b) and honest (a). Moreover, the speaker implicitly offers to justify these claims if challenged and justify them with reasons. These are the claims that are open to criticism and justification. Thus, if a speaker, when challenged, can offer no acceptable reasons for the normative framework they implied through the offering of a given speech act, that speech act would be unacceptable because it is irrational.

This approach involves a “procedural view of rationality”. Habermas situates rationality as a capacity inherent within language, especially in the form of argumentation. The validity of any norm may be subjected to this rational checkout, that is, this discursive procedure. In other words, rationality is a characteristic of the process by which the decision is made. “The intrinsic characteristics of the process allow attributing a rational value to the decisions. The rationality inherent in this practice is seen in the fact that a communicatively achieved agreement must be based in the end on reasons. And the rationality of those who participate in this communicative practice is determined by whether, of necessary, they could, under suitable circumstances, provide reasons for their expressions” (Habermas, 1984, p. 17)<sup>1</sup>.

He equated empirical truth with ideal justifiability –a consensus theory of truth–. According to that theory, the “truth condition of propositions is the potential assent of all others”; thus “the universal-pragmatic meaning of truth... is determined by the demand of reaching a rational consensus” (Habermas, 1971/2001, pp. 86, 89). Such formulations suggest that Habermas equated the meaning of truth with the outcome of a universal, rational consensus, which he understood in reference to the ideal speech situation (Habermas, 1971/2001, pp. 97-98).

In a moral dimension, Habermas translates this consensus theory of truth, thus, he summarizes his idealized conception of practical discourse in the “discourse principle”: A rule of action or choice is justified, and thus valid, only if all those affected by the rule or choice could accept it in a reasonable discourse (Habermas, 1990, pp. 66, 93). The Discourse principle thus applies moral rightness and ethical authenticity.

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<sup>1</sup> In that context, argumentation appears in the form of public discussion and debate over practical questions that confront political bodies (practical discourse). In the moral dimension, Habermas show an idealized model of practical discourse.

Then, the “Real speech situation” acts as a regulative ideal, as a model for the critical evaluation of formal dialogues (e.g., environmental conflict resolution). This regulative ideal provided one set of criteria for measuring the quality of discourse: (i) no one capable of making a relevant contribution has been excluded, (ii) participants have equal voice, (iii) they are internally free to speak their honest opinion without deception or self-deception, and (iv) there are no sources of coercion built into the process and procedures of discourse. These conditions are counterfactual in the sense that actual discourses can rarely realize—and can never empirically certify—full inclusion, non-coercion, and equality. At the same time, these idealizing presuppositions have an operative effect on actual discourse: we may regard outcomes as reasonable (Habermas, 2003a, p. 108). In this sense, this process of argumentation is self-correcting learning process because warrant the rational expectation that the relevant information and reason “put on the table” and can influence the outcomes (Habermas, 2005a, p. 51). Other criteria concern required dispositions of participants: reflexive attitudes towards one’s own claims, willingness to take the demands and the counter-arguments of the other seriously, and sincerity or the absence of manipulation and self-deception (Habermas, 2005b, pp. 39-40). According to Habermas, the legitimacy of an authority only comes from a democratic process that allows a reasonable assumption for rational acceptance of their results (Habermas, 1992). The result of this procedure is a consensus; however, this does not mean the possibility of the persistence of deep ethical disagreement, like Rawls. The participants in a deliberation have to get a decision rationally motivated and it becomes from the same reasons (Habermas, 1998, p. 161).

### **An epistemic conception of democracy**

My purpose here, then, is to contribute to clarify the precise claims of this epistemic conception of democracy. Deliberative democracy represents an alternative point of view to “pure proceduralist” conception of democracy and the “substantive” conceptions of democracy. The decisions, that are the result of a deliberation, are more legitimate because they have been adopted by procedural conditions that allow fair decisions. But, these decisions would not only legitimate, but also it would be correct because they have been adopted on the basis of the best argument-of the rational argument. In this sense, the idea of epistemic value is the main source of moral validity of the deliberative model and the main argument in its defense.

Deliberative democracy is an ideal of political legitimacy. Ideally speaking, political decisions are considered legitimate if they are the product of a deliberative procedure of decision-making. The adjective ‘deliberative’ aggregated to democracy refers to a particular way of decision-making, based on argumentation or deliberation, as opposed to bargaining and voting (Elster, 1995, p. 239). Political decisions are to be made

through a collective procedure of argumentation where arguing consists in exchanging reasons, oriented to the goal of rationally convincing others, instead of strategic participation oriented to impose on others personal political preferences or desires (Manin, 1987, pp. 352-353; Cohen, 1989a, pp. 17-21; Estlund, 1993; Gutmann and Thompson, 1996; Christiano, 1996, pp. 53-55; Fishkin and Laslett, 2003, p. 2); and it is supposed to lead us, at least ideally, to rational consensus<sup>2</sup>.

Deliberation assumes, as we have been seen, both the existence of rightness (or impartiality, or some other equivalent) in political decisions, and the possibility to know which is the right (or impartial) decision (Cohen, 1986a; Estlund, 1997, p. 174; Christiano, 1997). In other words, when we attribute epistemic value to this procedure, this means that:

First, the existence of a correctness standard. This standard allows us to know when a decision is correct. In our case, this standard is the “Real speech situation”. According to Habermas this ideal situation operates like a criterion of correctness of decisions. This “ideal situation” imposes regulatory conditions to the deliberative process (regulative ideal), the conditions of the process allow to attribute a rational value to the decisions.

Second, there is a procedure, deliberation, that allows getting those right decisions. According to the first point, this procedure should be subject to these normative conditions that operate as standard for assessing the quality of the dialogue.

The goal of these deliberative processes is the agreement among all participants. This agreement represents the right or the best decisions from the formal or procedural point of view but also it is the best from a substantive point of view. In other words, The legitimacy of decisions does not only derive exclusively from these procedural conditions. The idea of legitimacy depends on the fulfillment of two essential conditions: 1) satisfying the procedural requirements for a correct procedure (formal legitimacy) and 2) the rational acceptability of the results of this procedure (substantive acceptability).

### **The assumptions of deliberation**

The notion of “epistemic value” has, not only, a normative dimension. First, the normative dimension refers to the fulfillment of certain conditions and criteria of procedural justice, as a primary source of substantive validity and legitimacy of political decisions. Second, this concept has an empirical dimension that refers to the sociological, political and institutional conditions under a deliberative democracy would allow correct (or rightness) decisions (rational decisions).

But, what determines that the procedure allow us to get right decisions? Deliberative theorists argue that the procedural conditions, including cognitive elements that allow a

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<sup>2</sup> Deliberating with other people entails a personal disposition of participants to modify their beliefs in light of the best argument.

better understanding of the issues, object of the deliberation. The deliberation, primarily, is a qualified form of communication whose conditions under which it operates allows that the beliefs, values and preferences of citizens can change and be more rational.

These procedural conditions would ensure access to more and better information and a dialogic exchange of reasons and arguments. This exchange takes place without constraints that could preclude a “rational” transformation of preferences by the only force of the better argument. From the point of view of the “group”, all transformations of these preferences will be in the same direction (due to the force of the better argument).

The inclusion of all those (potentially) affected by a decision in the process of decision-making would aim the presence of all relevant perspectives to the decision. Recognizing an equal capacity of influence, the final decision would ensure that each participant have an equal chance to be heard, introduce topics, proposals and criticize the proposals of the other participants (Young, 1999; Smith, 2000, p. 31). Finally, the absence of coercion would ensure that decisions would have been made exclusively on the basis of the better argument, the rational argument.

Deliberative processes would increase the information available (Fearon, 1998, p. 45). Deliberation would guarantee access to private information of individuals, the intensity of preferences and relevant evidences or alternative approaches to the issues. This allows avoid cognitive errors and biases that can occur in situations where there is a single perspective or an interpretive framework. Bohman calls it the “epistemic value of diversity” (Bohman, 2007, p. 349). In other words, deliberation reduces the limitations of individual reasoning, forcing us to revise the very strength of our arguments, cognitive asymmetries and then increase the quality of the decisions (Bohman, 2006, p. 188).

Participants must be motivated by the common good or the rightness of political decisions (Sunstein, 1988; Cohen, 1989a and 1998; Gutmann and Thompson, 1996 and 2004; Bohman, 1996 and 1998; Christiano, 1997; Young, 2001; Pettit, 1997), and only try to convince others rationally by the force of arguments: that is, by showing that their proposal is better than any other on fair terms, and not on a self-interested basis (Habermas, 1981; Elster, 1983; Cohen, 1989; Gutmann and Thompson, 1996 and 2004).

Deliberation is configured as a collective procedure of argumentation. The participants must provide reasons and arguments, proposals and suggestions in order to reach a common decision. If the process takes places without constraints, except the strength of the arguments, the process would achieve rationally motivated agreements, decisions that are not only legitimate, but also correct from an independent moral standpoint<sup>3</sup>.

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<sup>3</sup> The correctness criterion is an ideal situation. The “real speech situation” imposes a set of normative principles that guide the deliberative process itself and it serves to ensure the degree of the rationality of the decision. I want to emphasize is that the appealing to this “intersubjective”



In other words, it depends, in fact: 1) citizens have values, beliefs and preferences, and they are able to express and defend them, 2) participants will vary the intensity, the ranking of the preferences, and change beliefs - with respect to matters of public interest- oriented for the rationality of the arguments, instead of strategic participation motivated by the personal political preferences or desires; 3) after this process, there will be a rational convergence of preferences, beliefs and desires.

The goal of deliberative democracy is to generate collective outcomes that all participants can be considered legitimate. This benefit is not empirically falsifiable (it is a moral standard). Although this condition is not empirically verifiable, we can examine empirically the conditions under that decisions are more rational (one of the conditions its legitimacy). I want emphasize this relationship between our dimensions because, thus, if our assumptions about the model are wrong or just too naive, we will put at risk the normative desirability of the theory. Then, the deliberative democracy has an epistemic value because:

1. The individuals have “deliberative capacities”. A successful deliberation depends on some cognitive and moral capacities. Citizens will have or create their own beliefs and preferences, with ability to consider alternatives and an attitude to receive a favorable and serious demands and counter-arguments of others, etc... In other words, individuals are rational, ethical and moral agents. Individuals have a basic cognitive capacity to argue with reasons, to recognize criteria of justification, to be logical and to reflect on their own presuppositions.

At this point, we must consider whether the individuals possess, or not, these capabilities and if they have the same degree of these capacities. The answer to these questions is factual, although is not only empirical, the policy implications that derive from its claim.

However, the research suggests that individual's capacities are less than the deliberative theory believes. The use of information and the formation of the individual judgments depend on contextual factors and important cognitive factors.

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standard of rightness is problematic from a normative point of view. The protection of “procedural rights”, and impartial procedure does not guarantee rightness policy outcomes. Procedural views are pure when they locate the standard of legitimacy for the outcomes of the process entirely in the fact of whether a legitimate procedure was followed. In contrast, substantive views defend that there are rights or values that are distinct from democracy, because they are linked to substantive values of justice and according to these theorists. The idea of “co-originality” present in the work of Jürgen Habermas and implicit in the majority of deliberative theorist reject the conflict between what Berlin termed “positive” and “negative” liberty and what Constant called the “liberty of the ancients” and the “liberty of the moderns (Brettschneider, 2005 and 2007). These theories force us to seek a way to ensure objectivity (characteristic) of truth. Thus, any real agreement or consensus will be correct, automatically. Thus, these authors suggest that truth does not depend on a “real” practice; but that correction depends on that the real processes are adjusted to that “ideal” procedure (Cfr. Habermas, 1985, p. 86; Cohen, 1989).

The empirical studies suggest that the individuals are not particularly rational and logical in their judgments. They show the important influence of cognitive factors in the formation of their judgments: the use of heuristic (Cfr. Downs, 1957; Popkin, 1991; Sniderman, 1992), prejudices and stereotypes (Tajfel, 1969; Devine 1995a, 1995b) cognitive dissonance (Festinger, 1975) or pre-existing strong emotional commitments and preferences. Recent studies in psychology and neuroscience show that reason, emotions and feelings are aspects that are intrinsically related to the processes of cognition and decision making. These studies have shown several important things: (a) emotions, feelings and cognition are involved in a complex interaction processes (Damasio, 1994 and 2003), b) emotions and feelings help to adapt effectively and solve complex social problems (Ledoux, 1996; Elster, 1999) and c) the emotions are socially constructed too (Turner and Stets, 2005; Clarke *et al.*, 2006 ). All these studies suggest, first, the importance of our emotions and feelings when we are making judgments and an essential role of the informal aspect (greetings...) of the social and interpersonal communication.

Moreover, the information comes from our political environment (mass media, political parties...) and depends on a complex interaction of psychological factors: values, knowledge, etc ... People do not have a full catalogue of opinions, people possess a number of considerations that may compete with each other, and their salience depends on the contextual framework (Cfr. Converse, 1964; Zaller, 1992).

2. The deliberative theorists assume a problematic assumption regarding the nature of communication and group dynamics. The deliberation is presented like a communication normatively constrained, communication that aims to change the content of, intensity of, or the reasons for the preferences, beliefs, actions or interpretations of one's interlocutors with respect to matters of public concern (Neblo, 2005, p. 174). These conditions should ensure to reach agreement, a consensus among all participants. A consensus that appears as an expression of the rationality and the moral rightness.

In this light, deliberative theory understands the communication as a phenomenon essentially non-problematic. From this point of view, communication would be a neutral vehicle for the transport of subjectively constructed views, a mere epiphenomenon resulting from the dynamic or cognitive structures of individuals and social structure. A minimal analysis of the latest research shows that communicative exchanges determine the quality of cognition. While the quality of the structures of communication are clearly affected by the cognitive abilities of the individuals involved, these cognitive abilities are themselves, at least in part a product of communicative exchanges in which individuals are regularly involved (Rosenberg, 2002).

Interactions between individuals produce different psychological processes (Cfr. Sherif, 1936; Ash, 1951). In this respect, a minimal review of the literature shows that the cognitive skills of the individuals affect the quality of the communication structures. These cognitive

abilities are, at least partially, a product of the communication exchanges that are regularly involved individuals. (Cfr. Duck, 1994, p. 6). On the other hand, the desirability of the deliberative process depends on the real possibility of this rational consensus, in other words, the possibility of achieving a rational process of convergence of views.

At this point, we must emphasize two aspects related to this process of convergence. First, deliberative theorists believe that individuals modify the intensity, or the ranking of the preferences, beliefs, actions or interpretation on the basis of the rational argument and with respect to matters of public interest. Secondly, the transformation of the individual preferences would occur in the same direction and that this process is rational.

Nevertheless, in a one hand, political values such as party identification or ideology, would also serve to anchor our opinions. These values are very strong predispositions, they are learned in the socialization process and are slightly modified and resulting relatively immune to the “mass media” or political persuasion (Popkin, 1991; Sniderman, Brody and Tetlock, 1992). In the other hand, it is not sure that the consensus will be a necessary result of this communication process. The empirical studies about group dynamics challenge this idea. We do not behave when we act individually that when we represent a group or we are part of one. There would be important phenomenon as “discontinuity” or “groupthink” that would affect this process.

The concept of discontinuity refers to the idea that the existence of the group itself has a crucial impact on the behavior of individuals (Cfr. Ash, 1951 and 1956). The pressure on individuals and groups can induce that the individuals in a minority position would tend to accommodate his opinion to the majority opinion. Second, the tendency to unanimity among group members may be due to processes of creation and reduction of “cognitive dissonance” (Festinger, 1975) or motivated by the “groupthink” phenomenon (Janis, 1972). The concept of dissonance cognitive suggests that people are induced to behave in ways that are not inconsistent with their beliefs, when it occurs an uncomfortable psychological tension is aroused. This tension will lead people to change their beliefs to fit their actual behavior. Festinger examined how people evaluate their own opinions and desires by comparing themselves with others, and how groups exert pressures on individuals to conform to group norms and goals. The concept of groupthink describes the tendency of individuals engaged in group process to change their preferences in the sense of the majority (Cfr. Janis, 1972).

Moreover, it is not clear that the dynamics of communication necessarily lead to agreement or reconciliation. It is possible that deliberation might transform preferences<sup>4</sup>,

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<sup>4</sup> The focus of Fishkin and Luskin’s research has been whether Deliberative Polls enhance policy-relevant knowledge and changes opinions, something they have found to be the case in the majority of their deliberations (Fishkin, Iyengar and Luskin, 2005; Luskin, Fishkin and Jowell, 2002; McLean *et al.*, 2000).

democratic deliberation might help to accomplish this by allowing relevant constituencies to sort out, and hopefully reduce, the dimensions over which they disagree (Knight and Johnson 1994, p. 282). But it is a real possibility that, it might even exacerbate conflict. Deliberation could tend to move groups, and the individuals who compose them, toward a more extreme point in the direction indicated by their own pre-deliberation judgments.

Disagreement and conflict are not only the starting point of deliberation but a primary creative resource. As a creative process, deliberation might well proliferate rather than diminish understandings in a given political contest. First, deliberation can exacerbate the conflict and polarize the preferences and previous attitudes of individuals ("group polarization") (Moscovici and Zavalloni, 1969; Myers and Bishop, 1970; Stoner, 1961). It occurs when the people will find a disproportionately large number of arguments against their points of view and because people want to be perceived favorably by other group members. Once they hear what others believe, they often adjust their positions in the direction of the dominant position.

For these reason, even though deliberation would be able to induce a shared understanding of the dimensions of conflict, it is possible that may serve simply to focus attention on the depth of disagreement. A participant may conclude that "if this is what is at stake, then I really disagree (Knight y Johnson, 1994, p. 286). It would help to explain extremism, "radicalization," cultural shifts, and the behavior of political parties and religious organizations (Sunstein, 2002)<sup>5</sup>.

### **What can we learn of the empirical evidences?**

If we remember, Habermas emphasized the intersubjective and dialogic conditions of moral development. His understanding is based on the presupposition of reaching consensus were dropped from dialogue, and then the deliberative process would lose its rational sense and become something else other than rational argumentation. Thus, this legitimacy model of the decision is based on the epistemic value of the deliberation process. This epistemic value has two important dimensions: normative and empirical elements.

The epistemic justification of deliberative democracy presumes necessarily that 1) citizens would have a minimum capacity cognitive: they have beliefs, values and preferences and will be able to express and expose their opinions with rational arguments within the process, 2) if the deliberation was developed under the regulatory conditions that shape and constrain the deliberation, individuals would be able to modify the intensity, the preferences, beliefs and, 3) as a result of this argumentative process the collective decisions would be achieved by mutual agreement.

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<sup>5</sup> Here the crucial point is the "force of the better argument". Other forms of influence are explicitly excluded, so that interlocutors are free to be convinced with reasons.

From the empirical dimension, deliberative theory tends to stress rationality and people's capacity to reason about issues. This entails an emphasis on individual cognitive processes and rationality. Individuals would have a basic cognitive capacity to argue with reasons, to recognize criteria of justification, to be logical and to reflect on their own presuppositions. Emotion is undesirable as it is understood as synonymous with the manipulation, a process that deliberation serves to correct. The consensus represents a more rational decision and the real possibility of the possibility of generally accepted solutions. The consensus depends on the ability of the individual for changing their preferences and the real possibility of an agreement. The use of public and rational discussion as a mechanism of deactivation of the conflict and differences in the field of political reflections.

Deliberative theory has also tended to portray ideal deliberation as involving cognitive process of isolated individuals (Rosenberg, 2007). Deliberation cannot be purely cognitive and it does not take place only inside our heads. Psychological researches suggest that individuals are not particularly rational and logical in their judgments; the understanding depends on individual psychological and contextual factors. Empirical evidences reveal that the dichotomy between reason and passion are not real. The way we reason about reality results from the interaction of cognitive and emotional mechanisms (Phelps, 2006) and reveal the importance of our emotions and feelings in our processes of cognition. Empirical evidences show that cognition is a process of "understanding with others" (De Jaegher, Di Paolo and Gallagher, 2010, p. 442). Deliberation is a group process. It is the result from social interactions and processes of mutual influence and for them, can therefore, not be divorced from the dynamics of group life (Black, 2008; Hartz-Karp *et al.*, 2010).

In a normative dimension, the consensus represents the real possibility of moral agreement, a rational solution to the moral conflicts. I do not want to discuss this affirmation at this moment, I want emphasize that the problem is not that deliberative democracy presupposes the consensus as the rational solution to the moral conflict, but that consensus is preferable to conflict.

First, the desirability of the deliberative process depends on the real possibility of the consensus. But obviously it cannot be regarded as relevant any convergence of views. Deliberative theory requires a qualified consensus, a rational agreement. This view has important implications, and suggests one question: How can we evaluate the consensus really reached? The evaluation of consensus is a factual matter. We will only know the rational character of the real consensus if we examine the conditions under which consensus has been made. Thus, the most important thing is not the real consensus, but the criteria of "rationality" introduced to qualify it.

Second, it's more, in deliberative theory the relationship between conflict and consensus means that there is a sequence where the conflict is the starting point and the consensus is the point of arrival. However, the interrelationship between conflict and

consensus is much more complex, conflict and consensus are simply two sides of the same coin, are two dimensions of the same political phenomena. From in a normative point of view, the consensus is not necessarily desirable, because it might be oppressive, would “nullify the symbolic dimension of the game between authority and opposition” (Maldonado, 2007, p. 46, Shapiro, 2002, p. 199; Mouffe, 1993). The deliberative process do not necessarily culminate in an agreement, for this reason we need to consider the possibility of reasonable disagreement and dissent as possible results of the deliberative process and we need to think alternatives to consensus as the key to the legitimacy of political decisions.

## Conclusions

In this paper, I have attempted to offer a critical approach of the epistemic value of the democratic deliberation. Firstly, we saw that deliberative democracy is not only a model of legitimacy of political decisions but also a decision-making mechanism. In this vein, the attribution of epistemic value to the deliberation means that decisions will be better and more rational. According to Habermas, the legitimacy of an authority only comes from a democratic process that allows a reasonable assumption for rational acceptance of their results (Habermas, 1992). The result of this procedure is the consensus; this does mean the possibility of the solution of deep ethical disagreement. According to Habermas, the participants in a deliberation have to get a decision rationally motivated and it becomes from the same reasons (Habermas, 1998, p. 161). In other words, he defends a rigid concept of consensus which has an epistemic value and represents the best and more rational decision. Secondly, we provided an overview of the constituent elements of the epistemic justification of deliberative democracy. We have seen as the successful of deliberation depends on the important assumptions about the deliberative capacities of citizens, the nature of communication processes and group dynamics. Finally, I have examined some empirical studies which suggest that the deliberative assumptions regarding the cognitive capacities of individuals are incorrect and that communication is more than just a neutral medium or vehicle. Moreover, I have shown that the consensus is not a necessary result of the deliberation procedure, and it is possible that the deliberation exacerbated conflict or created a false consensus. This suggests that we need to think alternatives to consensus as the key to the legitimacy of political decisions.

We need to think alternatives to the consensus because the deliberative theory shows a general tendency to ignore the contingent and empirical dimension of the epistemic value, the contingent elements that can influence the deliberation results. If we want defend the instrumental or epistemic superiority of deliberation, we will need to compare the results of another mechanism (e.g: vote), this comparison is necessarily ad hoc, case-by-case. And empirically, the problem is that the deliberative theory 1) have overestimated the cognitive and / or moral capacities of the individuals, 2) they

have neglected the contingent conditions under processes which run “will formation”, 3) they have overestimated the consensus and thus have neglected of conflict and disagreement as possible outcomes of deliberation.

It is true that the moral correction of a decision is not empirically falsifiable, since it is a quality normative (moral) that predicts the results. However, we can empirically test the conditions that guarantee a greater or lesser rationality of the results, one of the conditions of its legitimacy. Deliberation is usually treated as a decision-making procedure with important cognitive and political benefits. However, this approach falls short to appreciate the full consequences of the deliberative process. The role of empirical evidences in theories of deliberation should not be counted as evidence for or against deliberation, but can show the various dimensions of success and the means of achieving them. A satisfactory answer to this question should entail measures to enhance the democratic capacity of citizens and the group dynamics in different participatory practices within the public sphere. Unless the capacity gained within these practices is visibly and comprehensibly linked to actual decision-making processes, the question of “why deliberate” would remain a continuing dilemma for democratic societies.

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