

Lottocracy and deliberative accountability

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Abstract

The comment on Cristina Lafont's book includes two main points. (1) Minipublics do not necessarily stand in opposition to political theories that justify electoral democracy and participatory conceptions of deliberative democracy. In contrast to such a view, I argue that minipublics should be combined with electoral and participatory forms of democracy. (2) A deliberative concept of accountability may overcome some of the shortcomings of the traditional, voluntaristic concepts of democratic accountability.

Keywords

Cristina Lafont, deliberative accountability, electoral law reform, lottocracy, minipublics

Cristina Lafont's new book is an important contribution to democratic theory. I am impressed by the clear-cut way she has given the current debates on democracy and democratic reform a new cognitive structure. Not surprisingly, I got drawn particularly into her sharp criticism of lottocratic conceptions of democracy in chapters 4–6. She characterizes minipublics as an undemocratic shortcut because it substitutes political mass participation with deliberation by small groups of citizens. The core of her argument relies on her understanding of minipublics to be introduced in the name of 'democratization' (p. 111). Following this characterization, she forcefully argues that one cannot have it both ways with respect to the (representative) mirror claim and to the (epistemic) filter claim (pp. 109–17). However, I am not fully convinced by her rejection of minipublics as a means for further democratic reform.

- (1) One of the most fascinating sections in her book is the counterfactual scenario of a political system in which all political decisions are made by minipublics

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(p. 119). I do agree with most of her conclusions in this section. However, by pushing the idea of minipublics to such a radical world of lottocracy she loses sight of the special cases for minipublics in which they do not rely mainly on the normative ideal of democratization. These special cases are those issues in which political decision makers who have our full democratic legitimacy are object to criticism on ground of personal interests. Classical issues for such cases are electoral law reform or the payment of politicians. In both cases, political decision makers have a strong incentive to vote for their own personal interest (to be re-elected or to earn more money). The practices of gerrymandering in the United States stand out as negative examples for such kind of political decisions.

In the past, a few minipublics have been installed for electoral reform, most prominently in British Columbia, in Ontario and in the Netherlands, respectively, which were commissioned with working up a proposal for a new electoral law in the state/country. Cristina Lafont does not pay special attention to these cases in her book although a number of political scientists have closely followed and analysed this kind of democratic polity-making. In all three cases, there had been widespread dissatisfaction with the existing electoral law and the political actors in the respective parliaments had been unable to arrive at any agreement to reform it. In all three cases, this Gordian knot was finally severed by a senior politician who – in a kind of *political outsourcing* – brought in the idea of a minipublic to solve the dispute. In the two Canadian states, this action was combined with the condition that the reform proposal should be subsequently approved through plebiscites; in the Netherlands, the coalition government at the time attached the stipulation that parliament would have final say-so with regard to the proposal.

Much to the surprise of many sceptical observers, in all three cases the minipublics worked very well. Their participation rates were always very high and they invited various experts to explain the effects of various electoral systems. The level of discussion was exceedingly high among members with regard to normative principles and technical details; and in the end, after extensive debates with large majorities for conjoint proposals, they succeeded in putting forward detailed plans for reform. Yet in none of the three cases were the changes worked up by the minipublics finally enacted. In both Canadian states, the respective proposals were derailed by supermajority and double-majority quorums, and in the Netherlands a new governmental coalition came to power whose smaller parties had an interest in maintaining the electoral law that had been in place since 1917. According to Cristina Lafont's general line of argument, one could argue that 'blind deference' (p. 127) had been stopped by the regular institution of modern mass democracy.

I would argue the opposite. I would argue that in all three instances it was simply the case that the powers granted to the minipublics by the other political actors had been evidently insufficient. Such a claim finally leads to a fundamental question as to the legitimizing hierarchy in modern democracies: in the legitimizing competition between an elected parliament, a plebiscite and a minipublic, which institution should have primacy? In my view, we cannot give a general answer to this question. One speaks of the absolute primacy of an allegedly 'authentic will of the people' via plebiscites, but studies have shown that only in rare cases is such a will actually represented; electoral

law questions are in fact one of the areas in which only very few citizens have an informed political 'will'. I call this the *deficit of will*. The problem with parliamentary decisions on changes to the electoral law mentioned above is that in such questions the political actors in parties and parliaments find themselves in conflict with their own power interests. Thus we are faced with a *deficit of neutrality* because of the exclusive self-reference of these topics for members of parliaments.

Alternatives to parliaments or referenda would be an externalization of the decision to a court or a special independent commission. This strategy of externalization, however, faces a dilemma. With respect to the courts, this strategy runs the risk that politicians are even more motivated to appoint their members according to their own political interests. If, on the other hand, the appointment process is more independent of current politics, their members run the risk of being too removed from the will and experience of citizens. Minipublics are the institutional alternative to courts and commissions in such cases. My suggestion is on those issues in which there are indications of a deficit in will or neutrality, we should prefer political reforms that switch from elective parliamentarism to minipublics. In the institutional setting of modern democracies, such a mode serves – *pace* Benjamin Constant and Carl Schmitt – as a new version of the classical *pouvoir neutre*.

So basically I am arguing that minipublics do not necessarily have to stand in opposition to political theories that justify electoral democracies, parliamentarism and participatory conceptions of deliberative democracy. It may even be quite the opposite: since I argued that minipublics properly be institutionalized to be complementary to elective parliamentarism, voting and drawing the lot are not adversarial political procedures per se, but they may be combined.

(2) According to the main line of argument in the second half of Cristina Lafont's book, we should move in the direction to a more participatory conception of deliberative democracy (pp. 161–88). Such a conception would turn 'blind deference' in the case of minipublics into democratically controlled deference in the case of mass democracy via political parties, interest groups and the public sphere. Thus the *traditional understanding of accountability* is supposed to make her conception of participatory deliberation normatively more attractive. Sure, for modern democratic legitimacy, accountability is of central relevance. And taken at face value, the democratic accountability of minipublics appears to be highly problematic.

Let us just imagine the following scenario: what happens if a citizen gets drawn as a member of the House of Lots – let's say on an important issue like electoral or even constitutional reform – and cashes in the salary for his or her participation but does not show up, is simply inactive or wants to get bribed? To some extent, this is a speculative question. But to some extent, the empirical evidence we have so far from a number of pilot projects may help to answer the question. And to some extent, a comparison with the real situation of accountability in parliamentary democracy today may give reason not to overstate the relevance of this question.

However, even if we take the concept of strict accountability respectively the unbroken linkage of accountability-relations as the normative yardstick to judge the legitimacy of modern parliamentarism, the result will be mixed at best. In most European democracies, the leading candidates running for parliaments are on 'party-lists', which makes it nearly impossible to get rid of certain politicians by voters. In addition, for a number of important political offices and positions (e.g. the central bank, state-owned companies, boards of directors and supervisory boards for public institutions, political positions on the level of the EU) the linkage of accountability-relations have such a length or are so obscured that it is nearly impossible to detect them even if you are a professional political scientist. And it is at least worth mentioning that the argument about a deficit of accountability has not been made for members of parliament who tell voters in advance that their next term will be their last term.

The empirical evidence we have so far from more than 100 pilot projects with minipublics also contributes to reflect differently about the traditional understanding of political accountability. These empirical findings can be summarized in the following three findings. First, the participation rate in these political bodies is high and stable. Second, the intensity of engagement and the cognitive level of the deliberations correlate with the real political power of such a political body (whether it is merely an ornamental institution to figure out what the citizens like *or* whether the decisions are supposed to have some real political influence). And third, the face-to-face discussions among fellow citizens in the lottery assembly have an encouraging effect for developing a sense of responsibility for the political community.

Such empirical findings give reason to think differently about the concept of democratic accountability. Traditionally we think about accountability in the following way: we vote for a representative and in exchange the representative does her best for the good of us and the political community. Thus it is not the initial authorization, but the subsequent electoral form of accountability – the serial nature of elections – that gives us reason to expect the representative to act in accordance to our expectations. This model includes that a representative who is acting for us but does not fulfil her duty can be made accountable by us not only through the courts (if she has broken the law) but also that we do not vote for her again (if she has not fulfilled our political expectations) as a punishment. In the case of a minipublic, the possibility to go after members who have broken the law does not get lost; but in contrast to the traditional understanding we do not have the option not to vote for her again as a punishment because the House members are allotted randomly.

This difference does not mean that democratic accountability gets totally lost in the setting of a minipublic. The empirical research on minipublics in the cases of the two Canadian states mentioned above has identified a kind of citizen representative with weak accountability of members to individual constituents, but strong discursive accountability of members to the public, as well as strong institutional accountability for forming and delivering a publicly justifiable decision. Such a discursive accountability means that the members of minipublics who were engaged in discussions with their co-members had been very keen on coming up with arguments which were recognized as relying on the public good. Fairness and public justifiability have become the dominant concern for the members of minipublics. In such a *deliberative understanding*

of accountability, the social and temporal dimensions of reference have been widened: the points of reference for accountability are not restricted to the voters of today or the next election but to all citizens, including even those of future generations. By the way it would be interesting to know how minipublics would decide on the best policy to deal with the Corona pandemic.

However, I do admit that there is more empirical research and more theoretical work to be done if one wants to put aside all concerns raised by Cristina Lafont to the problem of accountability for minipublics. Her book is an important inspiration to critically rethink the justifications for the introduction of minipublics.