

The substance of procedures

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Abstract

In *Democracy without Shortcuts*, Cristina Lafont identifies proceduralist or ‘deep pluralist’ conceptions of democracy alongside epistemic andlottocratic approaches as shortcuts that avoid the more challenging but, in her view, preferable path of engaging with and attempting to sway competing views, values and beliefs of fellow citizens. I argue that with the wholesale dismissal of proceduralist accounts of democracy Lafont herself takes two shortcuts: The first concerns the characterization of deep pluralism as unable to explain substantive disagreement after a decision is settled, and the second undervalues proceduralism’s ability to evaluate and criticize the substance of the political decision-making process. While her critique is fitting for minimalist conceptions of proceduralism, a theory of normative proceduralism shares many objectives with Lafont’s vision of a participatory deliberative democracy. Integrating those approaches instead of dismissing proceduralism outright would render her project appealing to theorists who would not otherwise consider themselves deliberative democrats.

Keywords

deep pluralism, democratic theory, disagreement, proceduralism

Cristina Lafont’s *Democracy without Shortcuts* envisions a conception of participatory deliberative democracy, in which citizens identify with and endorse the institutions and laws that they are subject to as their own.¹ By democratizing the institution of judicial review and empowering citizens to ‘put on their robes’,² Lafont demands for debates on justice and justification to descent from the clear heights of truth into the muddy waters of political disagreement. And while proceduralist or, in other words, ‘deep pluralist’³ conceptions of democracy stress the importance of both participation and conflict, just as Lafont insists upon, she identifies this perspective alongside epistemic and lottocratic

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approaches as a shortcut, circumventing the troublesome path of engaging with and attempting to sway competing views, values and beliefs.

I will argue that in her engagement with and dismissal of proceduralist accounts of democracy Lafont herself takes two shortcuts: The first concerns the characterization of deep pluralism as unable to explain substantive disagreement after a decision is settled, and the second undervalues proceduralism's ability to evaluate and criticize the substance of the political decision-making process. Although Lafont acknowledges that there are more or less functionalist theories of deep pluralism,⁴ the Schumpeterian spectre of minimalist proceduralism devoid of normative content too often lurks in the background of her critique and obscures an at least partial compatibility between her vision of deliberative democracy and a deep pluralist conception of democracy that departs from its minimalist origins. A theory of normative proceduralism⁵ in fact shares Lafont's explicit goal to prevent not only political domination but also political alienation, that is to foster democratic control by the citizens, and has more substantive implications than she recognizes. Integrating those aspects into a participatory conception of deliberative democracy would allow for her project to appeal to democratic theorists beyond the camp of deliberative democrats.

Lafont takes the first shortcut when she charges deep pluralists with an inconsistency: Despite claiming to acknowledge that disagreement goes all the way down, this perspective in fact does not allow for continued discord after a decision is made.⁶ If proceduralists agree with the procedures, she asks, how could they reasonably disagree with their outcome? If they consider the process by which a president is chosen to be legitimate, for example, how could they justify continued dissatisfaction with and contestation of the president-elect? Because, a proceduralist would reply, any decision is in principle revisable. Democracy is conceptualized precisely as the regime that institutionalizes the right to make a wrong decision.⁷ By acknowledging the contingency and thus tentativeness of any political choice, deep pluralists by no means aim at settling a decision 'definitively'⁸ but only temporarily. The 'misalignment between citizen's political opinions, on the one hand, and the policies to which they are subject, on the other', that Lafont identifies as the result of a proceduralist conception of democracy is then, first and foremost, not 'permanent'⁹ as she argues and, second, seems to suggest there could ever be a political form, not to mention a political praxis, that does not produce such misalignments. The charge that proceduralists search for a 'solution to the problem of pervasive disagreement'¹⁰ therefore seems misdirected. Deep pluralism – in contrast to many other approaches to democracy – does in fact not aim to solve or terminate conflict but rather to establish democratic legitimacy in the face of unavoidable disagreement concerning different and sometimes opposing political options. It is not despite, but because of the focus on procedures and not substance, that deep pluralists can be unhappy with a new president-elect without questioning the legitimacy of her election.

Nevertheless, and this is Lafont's second shortcut in dismissing deep pluralism, a theory of normative proceduralism has more substantive implications than she recognizes. Lafont claims to engage only with those aspects that are distinct from and incompatible with deliberative democracy while integrating others.¹¹ However, a more sympathetic reading of some proceduralist conceptions could challenge those perceived

incompatibilities and, on the contrary, disclose significant overlap – not vis-à-vis the theoretical premises, to be sure, but certainly regarding the vision of democratic self-government that deep pluralists and deliberative democrats share. Two brief examples illustrate this point: First, Lafont charges deep pluralism with the inability to defend minority rights. Since the legitimacy of a decision is based upon a majority vote and independent from any substantive considerations, proceduralist democracy lacks the ‘institutional incentive to be sensitive or responsive to any deliberative challenges brought about by minorities’,¹² according to Lafont. However, the specific branch of proceduralism that locates its normative value precisely in the ‘process’ unbeatable capacity to protect and promote equal political liberty’ does not consider ‘political minorities [...] mere subjects of lawmaking’, as Lafont implies, but explicitly aims to protect ‘civil, political, and basic social rights with the aim of ensuring a meaningful equal participation’.¹³ Second, a normative proceduralist approach not only is able to ensure the input legitimacy of decisions, as is often assumed, but has the capacity to evaluate their outcome as well. While the result of a political process cannot be prescribed, for example, on the basis of its reasonableness, specific decisions can be criticized as illegitimate if they compromise the condition of equal opportunity in the future. Normative proceduralism, thus, does not in fact limit its analytical and critical import merely to the decision-making process but offers plenty of resources to criticize, prevent and sanction many of the same instances that Lafont’s participatory deliberative democracy aims to avoid as well.

To be clear, I do not propose wholesale compatibility between the proceduralist and the deliberative conception of democracy. However, by taking seriously deep pluralist’s commitment to the revisability of each decision and by acknowledging their ability to evaluate the substance of decisions based on purely procedural commitments, a joint vision of democratic self-government that both conceptions promote may come into view. Lafont makes a convincing case for avoiding shortcuts and instead embracing the arduous and ‘long, participatory road of shaping each other’s political opinion’.¹⁴ But the even longer road, the one that knows neither shortcuts nor ‘final destinations’,¹⁵ is the infinite one that normative proceduralists propose. Decisions are made, but they are never final; disagreement goes all the way down, but it is precisely democracy’s constitutive openness to contestation that guarantees equal freedom; and while substantive outcomes are not prescribed, they can nonetheless be criticized based on how they affect the equal freedom of future procedures. By stressing the incompatibilities instead of the shared democratic imaginary with deep pluralism, Lafont undersells her vision of a democracy without shortcuts, which has the potential to appeal to democratic theorists who would not otherwise consider themselves deliberative democrats.

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Notes

1. See, for example, Lafont (2020, 11, 18, 21, 33).
2. Lafont (2020, 240).
3. Lafont (2020, 34).

4. Lafont (2020, 35f).
5. Cf. Saffon and Urbinati (2013); cf. Urbinati (2014). Saffon and Urbinati base their concept of normative proceduralism on Hans Kelsen's democratic theory and develop a liberal proceduralist conception of democracy. I have suggested elsewhere that Kelsen could also be understood as the precursor for a theory of radical democratic proceduralism: Cf. Gebh (2020).
6. Cf. Lafont (2020, 42).
7. Cf. Urbinati (2014, 98).
8. Lafont (2020, 42).
9. Lafont (2020, 163).
10. Lafont (2020, 41).
11. Cf. Lafont (2020, 35).
12. Lafont (2020, 173).
13. Saffon and Urbinati (2013, 442, 459).
14. Lafont (2020, 87).
15. Lafont (2020, 72).

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