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Democratic and technocratic policy deliberation

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The discussion of the potential of Habermas' discourse ethics to help us better understand, and perhaps even improve, the making of public policy touches on a number of relevant issues, but perhaps most importantly on the limits of both technocratic and democratic decision-making. In nearly all policy fields, perceptions of growing uncertainty and complexity have increased the demand for technical expertise: just think about the confusion created by the new influenza, or the discussions of the consequences of climate change or of the causes of the financial crisis and the multiple strategies suggested for tackling it. Habermas does, rather briefly, in *Between Facts and Norms* (Habermas 1994 [1992], p. 387 ff.) discuss the excessive cognitive demands made on politics, and the delegation of deliberation to non-public forums; but he does not say much about the proper role of experts in politics.

To the extent that experts substantially drive decision-making, their influence is obviously in conflict with the principles of democratic participation and democracy. Habermas, and theories of deliberative democracy more generally, have been criticized as promoting a technocratic understanding of politics, justifying 'expertocratic' processes and institutions and thus serving as vehicle for the de-democratization of democracy (Buchstein and Jörke 2003, Thaa 2007). The expertocracy charge is based on the epistemic understanding of democracy that Habermas adopts, and on his apparent prioritizing of problem-solving over participation. At the same time, such interpretations of deliberative democracy are in stark contrast with the egalitarian and empowering impetus of most of its proponents. Moreover, the critics do not seem to offer much in terms of alternative ways to deal with the empirical complexity of policy problems and fulfill the undeniable need for information. The extent to which democratic decision-making in modern societies needs to be expert-driven and technocratic or citizen-driven and democratic will, of course, remain subject to reasonable disagreement, and will in practice need to be established through democratic procedures. Any academic attempt to answer questions about the legitimate role of experts in democratic politics, however, should take the empirical challenges of policy-making into account.

Consider different policy fields, starting with the following example from health policy. All developed democracies are confronted with constantly rising expenses for health care, which are mainly due to the progress in medical research and technology. Expenses for health care are predominantly consumptive expenses that have opportunity cost implications for other areas, such as education, defense or the protection of the environment. If other social goods are to be safeguarded, some limits have to be set in the financing and

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provision of health services. That is, health care needs to be rationed. But how, and by whom, are decisions on what services to include or exclude to be taken?

The answer depends on whether we view the problem as an information problem or as a distributive conflict. Viewing it only as an information problem means taking the goal of any decisions for granted, so that what is at stake is merely the selection of the right strategies to achieve it. Viewing the problem solely as a distributive conflict means focusing on the different claims and interests involved, while blanking out the effects of complexity and uncertainty, and the fact that political preferences are formed and transformed in the argumentative process. I would argue that the conflict over the rationing of health care, and political conflicts in general, have both informational and distributive aspects, which is why a legitimate and publicly acceptable decision can be achieved neither purely technocratically nor without expert involvement.

The kind of specialized information that is required for an assessment of both the benefits derived and the costs incurred by medical technologies can only be provided by experts, and is an indispensable basis for decisions. Poorly informed decisions result in a waste of scarce resources and will undermine trust and support for the health care system and, eventually, for the democratic system as a whole. But the commissions of experts who evaluate medical services and pharmaceuticals typically assess single items; they rarely engage in the necessary comparative evaluation of different services and the competing claims of different patients. Such competing claims could be those of patients with terminal cancer fighting for extremely expensive last-chance therapies with unproven benefits, those of families with fertility problems seeking IVF, or those of morbidly obese patients asking for gastric bypass operations. The comparative evaluation of needs and deserts, and the claims deriving from them entails social value judgments which no amount of information can replace, and the distributive consequences that follow from the decisions taken require more democratic processes and institutions.

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In the field of environmental policy, challenges of uncertainty and complexity exceed even those in the health policy sector. Decisions are known to affect the fate of future generations, but their eventual costs and benefits remain uncertain and subject to expert disagreement. While it may surprise some that Habermas himself does not seem to be particularly concerned with matters of environmental policy, deliberative theories enjoy much popularity in this field (see, for example, Niemeyer 2004, Dryzek 2005). This may in part be due to the fact that the informational and distributive aspects of decision-making present themselves somewhat differently here. While in the assessment of health technology it is, at least in principle, possible to achieve a more or less 'objective' view of risks, benefits and costs, the effects that pollution, deforestation or the damming of rivers will have decades or centuries later is more difficult to predict. Competing offers of information and expertise thus cannot simply be used as a basis for decisions, but require an argumentative process of comparative evaluation.

In the distributive dimension, too, environmental policy differs from health policy. One group that will be affected by any decisions taken – the generations to come – can raise claims only, if at all, through self-appointed guardians. The weighing of their interests against those of living people may require democratic institutions as we know them to be redesigned. Deliberation may be a way to discursively represent the interests and perspectives of those who cannot physically be present (Dryzek and Niemeyer 2008); and it is certainly a way to assess and evaluate competing sets of information. Moreover, many decisions in this area have a strong local dimension. Where a dam is to be built or where wind engines are to be set up, local residents are disproportionately affected and it is essential to bring their perspectives to bear and win their consent to any solution.

Environmental policy may thus indeed be a policy field where deliberation is particularly fruitful and important.

However, let us consider labor market policy as a final example. Deliberative and participatory processes that have been tried widely and successfully in environmental policy, and to a lesser extent in the health sector, do not normally address matters of more traditional social and economic policy. Why is that? Here, the informational and distributive dimensions of decisions again present themselves differently from the way they do in health or environmental policy. As in all policy fields, expert opinions on the effects of, for example, activating unemployment policies, compete. However, the kind of disagreement we find in social and economic policy is different, in that research and opinions appear to a larger extent to be ideologically motivated, as trade unions, employer associations and political parties recruit their own experts. This may be due to the fact that the distributive dimension is so dominant here: with regard to our future health needs, we find ourselves behind a veil of ignorance (although one that is not entirely opaque); with regard to how environmental policy decisions will affect our interests, we are similarly ignorant; but it is entirely clear who will be affected by a reduction in unemployment benefits; and even if such a policy would in the long term have beneficial effects for the economy or unemployment rates, we cannot legitimately expect its victims to accept the theoretical grounds on which the decision has been taken. Argumentation is by no means ruled out here, and actors will try to provide justifications for their respective positions; but reasoning is likely to be 'motivated reasoning' (Kunda 1990) in that information-seeking strategies and the assessment of reasons are biased.

Looking at the differences between these policy fields, it is tempting to account for them by reference to Habermas' distinction between pragmatic, ethical-political and moral questions and discourses (Habermas 1994 [1992], pp. 195–201). Pragmatic questions, according to Habermas, concern the instrumentally appropriate strategies for the achievement of given goals, and pragmatic discourses thus focus on the truth of assumptions about the world. Ethical-political questions concern the question of what 'we' as a collective should do at a given point in space and time. Finally, moral questions concern moral imperatives that apply regardless of the contingent interests of the community. The question of which health services are to be funded might be viewed as a pragmatic one; environmental policy issues might be viewed in moral terms; and economic and social policy matters such as labor market policy might be viewed as ethical-political ones. Habermas himself, though, in the postscript to later editions of *Between Facts and Norms*, acknowledges that the distinction makes sense only at the analytical level, and specific empirical questions and discourses cannot be assigned to any one type (Habermas 1994 [1992], p. 667, FN 3). Instead, political conflicts will usually have pragmatic and moral, as well as ethical-political, dimensions.

In practice, attempts to disentangle these dimensions can, if successful, help to clear up misunderstandings and achieve principled compromises or working agreements (Eriksen 2007). When it comes to the potential roles of technocratic expertise and citizen deliberation in various fields, however, a closer look at the informational and distributive dimensions of decisions seems more important to me than an attempt to disentangle Habermas' types of discourses. Depending on how these dimensions present themselves in any given case, and how salient each is, questions about the necessary degree of expert involvement, the potential for citizen participation, and the proper realization of democratic accountability will be answered differently; and different modes of interaction and institutions may be possible (Landwehr 2010). For empirical policy analysis, one essential question should be about how the weight given to expert information and that given to

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democratic input and control in the organization of decision-making processes and institutions affect outcomes. This leads me to two desiderata and some methodological problems that pose themselves for research that seeks to explore the potential contribution of Habermas' discourse ethics to the understanding and perhaps the improvement of decision-making processes.

First, we should take care that we do not indiscriminately describe any kind of communication as deliberation, and that we do not view deliberation as the only proper mode of political interaction and one that should replace all others. Instead, we should seek a more systematic definition and comparison of different modes of political interaction. I have suggested a distinction between discussion, deliberation, bargaining and debate (Landwehr 2009, 2010). With regard to the role of experts in politics, we should in particular distinguish between discussion and debate, which are, although argumentative, essentially antagonistic, and deliberation, which is not only argumentative but also coordinative – because it centers around the question 'What shall we do?'. While the participation of experts in discussion and debate is not only unproblematic, but even desirable, their role in deliberation, at least where it is to result in binding decisions, requires more critical consideration. We should thus address the roles and functions of different modes of interaction in democratic politics, looking in particular at the different types of actors – experts, bureaucrats, stakeholders, citizens – each can and should involve. This includes the question of whether deliberation should be defined by its democratic and inclusive qualities, or whether we should regard deliberation as a mode of interaction that can be either technocratic and exclusive in expert deliberation or democratic and inclusive in citizen deliberation. When Habermas (1994 [1992], pp. 388–389) describes deliberative politics as a 'network of discourses and negotiations', empirical research on it should try to establish and describe the different nodes in this network.

Secondly, we should look more closely at the various possible ways of institutionalizing deliberation and at the consequences of institutional choices. This applies both to the still more-or-less experimental models of citizen participation, such as deliberative polls or consensus conferences, and to the setting up of expert and stakeholder commissions, which are commonly promoted by governments and conceive of themselves as 'deliberative', too. In particular, we need to know more about the *distributive consequences* of different decision-making processes and single institutional factors. It may well be that there are different processes that qualify as equally fair, democratic or deliberative, but nonetheless tend to produce quite different distributive results. If we agree that decision-making processes and institutions have to be justified and chosen deliberatively, this information on their distributive effects is absolutely essential. Not only democratic decisions, but also democratic processes and institutions, must be subject to revision if they produce persistent winners or losers (cf. Dowding 2004). In order to appropriately describe and criticize, but also to offer workable suggestions for redesigning and improving, processes and institutions, a close collaboration between normative political theory and empirical analysis seems desirable (see Fischer 2009).

However, the alliance between normative theory and empirical methodology that we find in much of the research on deliberative policy-making also seems to be prone to some problematic biases. Somehow, those who advocate participatory and deliberative democracy from a normative point of view seem to be drawn towards a qualitative methodology that focuses on argumentation and the construction of norms where the analysis of interaction and policy formulation is concerned – in the same way that others who advocate more liberal and aggregative models of democracy seem to be drawn towards rational choice assumptions and a more formal and quantitative methodology.

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This is of course a tendency, not a general rule, but one of its consequences is that each group looks at interaction through a specific lens, focusing on specific aspects of the larger picture but blanking out others. The danger is that each may see only what they want to see. In the same way that rational choice analysis tends to be blind to the importance of argumentation and the impact of interactive reason-giving on individual motivation, interpretive policy analysis tends to be blind to irreducible distributive conflicts and the interests and incentive structures they generate. This methodological bias not only leads to a lack of self-criticism on both sides, but may also deprive interpretive analysis of its critical potential more generally. Where any instance of argumentation is enthusiastically celebrated, critical analysis turns into the mere affirmation of existing power structures and institutions.

Moreover, deliberative procedures that are forced upon irreducible conflicts of interest are likely to result in hidden agendas and hypocrisy. While hypocrisy may, under certain conditions, have a 'civilizing force' (Elster 1995, p. 250), it will neither reconcile conflicting interests nor is it an end in itself. Interpretive policy analysis gives away much of its potential if plausible explanations that suggest themselves once we consider the groupings of interests involved, and the way in which these are reproduced through institutions, are ignored. Workable suggestions for an improvement of processes and institutions are those which give serious attention to motives and incentives for inclusive and power-free deliberation.

Apart from the problems arising from the alliance between normative theory and empirical methodology, much of the empirical research on deliberation is grounded in discourse ethics in that it takes for granted that the effects of deliberation will be beneficial, while this assumption itself remains under-researched (Mutz 2008, Thompson 2008). Despite the good theoretical arguments for the benefits of deliberation, it seems that they *cannot* be assessed empirically as long as we continue to regard deliberation as a counterfactual ideal, so that we can always account for the failure of empirical deliberation to bring forth the desired effects by pointing to deficiencies in the deliberation – saying that it was just not power-free, inclusive, public enough. As Mutz (2008, p. 529) suggests, more modest, middle-range theory and research that looks separately at single requirements for good deliberation (e.g. civility, publicity, equality), evaluates positive and negative effects, and tracks conflicts between requirements, would help here.

Whether Habermas himself is more properly understood as a defender of participatory democracy or as an apologist for technocratic deliberation, I do not see myself in a position to decide. However, the fact that his work allows for more than a single interpretation is certainly one of the reasons why it is so influential, and the insistence that there exists a single 'correct' interpretation entails a strange positivism. I would argue, however, that if Habermas' work is to be instructive for policy research and policy-making, we need to assess more closely both empirical conditions for deliberation and its practical effects and role in policy-making. Normatively, we should consider the kind of deliberation we suggest and the purposes for which we advocate it more carefully. The extent to which the delegation of argumentation and decision-making from public arenas and elected representatives to expert forums is necessary and justifiable will need to be deliberatively and democratically assessed, acknowledging the fact that the selection of experts and the evaluation of information are ethical problems too. Whether it is experts, representatives or citizens who engage in it, deliberation that is blind to interests and incentives, and thus to its own limitations, will remain essentially technocratic. Democratic deliberation requires an awareness of the distributive aspects of decisions, and it will in most cases be a sequential and iterated processes that is more likely to result in reasoned compromises and

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working agreements than in consensus, as distributive conflicts will persist for as long as the need for information and *Verständigung*.

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