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Deliberative Procedures as Social Technology

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Abstract: Research on deliberative procedures uses normative concepts not only to justify the democratic legitimacy of these procedures but also as analytical tools to understand their empirical effects. This leads to a normativist bias in deliberation research. I argue that deliberative procedures should instead be regarded as a type of opinion-shaping social technology. I introduce a theoretical scheme that helps researchers analyze the interplay between formal and informal aspects of deliberative procedures. The usefulness of the scheme is shown in a case study of the *EuroPolis Deliberative Poll*.

Keywords: deliberation, deliberative democracy, social technology, deliberative polls

For some time now, deliberative democracy has claimed a pre-eminent position in normatively guided research on democracy. While the rise of populism has challenged deliberative democracy as an empirical description of political systems, its normative ideals of open and equal opinion formation and rational discourse seem ever more important (Heath 2021). The concept of 'deliberation' is the basis of a (normative) reflective theory of democracy, but also of an applied theory for the innovation of democratic processes via deliberative participation procedures. It has spawned several different procedural formats, such as deliberative polls, consensus conferences, participatory budgeting or citizens' conferences, and a host of online formats (Esau, Frieß, and Eilders 2017; Fung 2003), some of which have considerable influence on political systems. As such the trend towards deliberative democratic procedures is a phenomenon of general societal relevance, which has, however, been almost completely neglected in sociology.

The basic claim of deliberative procedures is that political communication among citizens can be organized in such a way that certain problems of the mass public sphere (such as participation hurdles, socio-structural participation biases,

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rational ignorance, etc.) can be circumvented and better communication conditions be institutionalized (Barker and Hansen 2005; Dryzek 2000; Fishkin 2009; Landwehr 2012). Most procedures' purpose is not to bring about a decision, but to ensure optimal conditions for the formation of political preferences. Deliberative procedures do not aim at the macrocosm of a political system, but at concrete processes of citizen participation, the design of which should meet the ideal of 'deliberative' political communication as closely as possible. There is ample evidence of the effectiveness of deliberative procedures. For example, it was shown that participation in *Deliberative Polls* (a type of deliberative procedure) leads to greater expertise on the topic, increases political interest and willingness to participate, and fosters liberal and tolerant attitudes among participants (Carpini, Cook, and Jacobs 2004; Fishkin and Laslett 2003; Luskin, Fishkin, and Jowell 2002).

However, as I wish to argue and also show empirically in this article, the dual role of deliberative democracy theory as a means to construct deliberative procedures and as an empirical theory of supposed mechanisms and likely effects of deliberation is problematic. The mainstream of empirical research is guided by a perspective on deliberative procedures that views them almost exclusively as an implementation of normative standards. This limits the perspective on these procedures to a point where the real social effects of deliberative procedures are obscured (Section 1). To broaden the view on deliberative procedures I propose to distinguish the normative political theory from the sociology of deliberative procedures and to develop the latter by regarding deliberative procedures as a type of social technology (Section 2). In Section 3, I will apply this framework empirically to the EuroPolis Deliberative Poll and show that it is worthwhile to supplement normative deliberation research with a 'sober' sociological look at deliberative procedures.

1 Deliberative Procedures as Social Technology

The initiators of deliberative processes and the deliberation research that accompanies them conceive of their subject matter primarily in terms of process norms of normatively desirable communication (Friess and Herff 2023; Kommo Grönlund, Bächtigger, and Setälä 2014). However, deliberation is typically not conceptualized as a communicative process but as a situation of close-to-optimal speaking conditions. Deliberation is therefore conceived from the boundary conditions of the situation (Siu 2008). Deliberation research accordingly conceptualizes deliberation from a certain formal point of view by an aggregate variable: the 'deliberative quality' of a procedure (Bächtiger et al. 2010; Steenbergen et al. 2003). Deliberation itself, according to the credo of the bulk of procedural research,

cannot be scientifically observed *in actu*. Doubts about whether an empirical conversation was actually deliberative can therefore only be resolved by reference to these boundary conditions, not to the conversation itself. Therefore, a kind of indirect evidence has become common, which wants to show the existence of deliberation by the non-existence of non-deliberative influences (see for instance Fishkin 2009). Deliberation research develops indicators for argumentativeness, equality, freedom from power, respect, etc., which translate these norms into procedurally operationalizable and empirically measurable quantities (Frieß and Eilders 2015). Deliberative Procedures therefore come to be seen as tools that enable adequate boundary conditions for high-quality deliberative talk.

This leads to a peculiar view of formal elements of procedures. According to the usual account of deliberative procedures, these concretizing translations of normative specifications into institutional designs behave like passive means to existing normative ends. Formal structures are seen as enabling conditions of normatively desirable communication that guarantee 'deliberative quality.' The procedure is not thought of in terms of the interplay between formality and informality but in terms of the relationship between formal structure and normative values. Because many deliberation researchers are at the same time activists of deliberative democracy, the 'poietic' illusion easily arises that the values and rules according to which something is created should also be taken as a basis for understanding it. Every aspect, every step in the process of the deliberative procedure is considered exclusively in its manifest function of enabling rational and inclusive deliberation. In the narrowest case, only the extent to which empirical communication fails to meet the norms of 'good' deliberation becomes the object of empirical research. Thus, communication is not imagined from the point of view of speaking but from the point of view of approaching an ideal speech situation. And the procedure is not understood as a social technology that may have unforeseen effects but as a passive means to achieve the end of high-quality deliberation.

The narrowing of research to the (situational) conditions of normatively desirable communication resulting from this construction of the research object leads to empirical problems. How participants talk to each other, i.e. the whole process of deliberation, remains a 'black box' (this expression is used in agreement by Gerber et al. 2014; Mutz 2008; Ryfe 2007). Bächtiger and Wyss sum up: "Overall, after a good decade of empirical research on deliberation, it remains open in many cases what we have really seen when we empirically observe deliberative action and arguing" (2013, 176). This also applies to Bächtiger's own discourse quality index (Steenbergen et al. 2003), which is useful for classifying individual speech acts and their aggregate in terms of ideal criteria but does not allow a procedural reconstruction of the logic of communicative action coordination. Because the process of communication remains largely invisible to the usual research instruments,

there is wide room for skepticism. Why should convincingly documented changes in participants' opinions be based on 'learning' rather than social-psychologically plausible polarization tendencies or adaptations to group majorities (Sanders 2010; Schkade, Sunstein, and Hastie 2007; Sunstein 2003)?

In light of the data collected in most studies, the same change in opinion can be interpreted both as a rational learning effect in the sense of deliberative theory and as a non-cognitive adaptation to group majorities (Gerber et al. 2018; Gerber 2015; Sanders 2012). The suspicion is gaining ground that it may be "necessary to consider the perverse effects of the professionalization and institutionalization of citizen participation" (Bottin and Mazeaud 2023, 345) What seems to be lacking is some insight into deliberative processes and a set of tools to elicit the likely effect of formal procedural structures on procedural outcomes. We need an idea of how 'the machine' actually works.

While I do not know of any attempt to take the formality of deliberative procedures more seriously, some authors have noted the communication theoretic blind spot of deliberation research's dominant "ethical-evaluative paradigm," as Andreas Schäfer calls it (2017, 428). Some authors draw on Bourdieu to understand the power dynamics in deliberation. Indeed they do provide reflections on the institutional and organizational background of deliberative procedures—asking important questions about the motives of the organizers and the role of habitual predispositions of participants (Holdo 2020; Ryfe 2007). However, the claim by Holdo (2015, 2016) that Bourdieusian theories about the reproduction of power relations through speech can elucidate the actual dynamics of deliberation is bought dearly with theoretical inconsistencies. While Bourdieu's framework is well suited to explain power dynamics in deliberation it has no conceptual space to account for the (maybe rare) events of learning and actual reflection in deliberation. Holdo, therefore, recommends that we "take reasons seriously, possibly at the expense of considering the full implications of a perspective centred on power relations" (Holdo 2015, 1109)—but while this may seem empirically plausible, there is simply no action theoretic framework available from a Bourdieusian perspective to 'take reasons seriously' and if there are no concepts for doing this, it becomes impossible to determine the relative importance of action coordination through power versus action coordination through reasons. This may be one reason for him to later drop the Bourdieusian approach in favor of 'interpretative methods' (Holdo 2020)—but without a theoretical notion of what to look for, the best methods will not be of much help.

A more promising starting point is taken by Schäfer, who stresses that we need concepts for capturing "[T]he theoretical core of deliberation while remaining sensitive to diverse empirical manifestations of deliberative practice" (2017, 422). He contrasts arguing and bargaining as two important forms of communicative action

coordination and relates the relative importance of each form to the institutional logic of different parliamentary systems. This is an important step in the right direction, but the processual logic of 'arguing' and 'bargaining' is not spelled out; the inner workings of the forms and empirical criteria for assessing them are therefore rather unclear. Also, he refers these forms directly to the logic of democratic institutions, thereby bypassing the chance to develop a general theory of deliberative *procedures*.

In the following, I propose a way to overcome these conceptual difficulties. The focus of the proposal is mainly the contact area between organizational sociology, the sociology of formal procedures, and deliberation research. In particular, Niklas Luhmann's concept of procedure (Luhmann 1983) in combination with findings from conversation-analytical research on mediation and moderation offers an insightful perspective on deliberative procedures.

2 A Framework for Analyzing Deliberative Procedures

Karl Raimund Popper famously argued against all attempts to develop utopian scenarios for societies, especially in the social sciences. Instead, he recommends a piecemeal approach to planned social change that he dubs 'social technology'. Small steps towards the fulfillment of normative goals should be taken by designing institutions to tackle specific social problems (Popper 1975, 320–42). He compares this approach to the way engineers design a new machine: With a well-defined problem in mind and therefore with criteria according to which the solution of a problem can be assessed, also with lots of test runs and adaptations (332–4). While the term social technology was later used by critical theorists to express their disdain towards a merely 'useful' and complacent social science, it captures quite well what deliberative procedures are from a social science point of view. The whole deliberative movement is reformist, not revolutionary, and especially deliberative procedures closely match the idea of social technology in Popper's sense. Many deliberative formats are not naturally occurring communicative forms but are carefully crafted according to theoretical principles. The formats of deliberative democracy just like other technologies serve a purpose according to which they are designed and evaluated.

However, describing deliberative procedures as a social technology also opens up interesting research perspectives that tend to be overlooked or excluded in the normative self-description of deliberation research and activism. Technology may have unintended or even perverse consequences and while it may be designed with the best intentions in mind, its quality ought to be judged by looking at what it *does*

rather than what people *claim* it should do. The social technology lens puts the unintended consequences and latent functions of deliberative procedures on an equal footing with the intended effects.

Conventional deliberative democracy theory considers formal structures almost exclusively in their role as enablers of normatively desired outcomes. We want the discussion to be more equal and balanced? Let's just employ moderators who make sure that everyone gets a fair share in the debate and that people respect each other. However, there is little to no reflection on the latent functions of formal structures in the deliberative democracy literature. Should we really assume that ensuring equal and fair participation is *all* that moderators do? Is it really legitimate to see a procedural and thus 'formal' conversational situation (cf. Atkinson 1982) as a mere correction of biases of an informal situation in which deliberation arises from the natural flow of a conversation (the paradigm from which Habermas reconstructs the ideal speech situation)?

To systematically get the unintended effects of formal structures into view I suggest resorting to a sociological theory of formal procedures which was classically elaborated by Luhmann (1983). Luhmann describes procedures as processes structured by formalized behavioral expectations that guide actions without determining them (1983, 41ff.). The formal structure determines the type of procedure (hearing, trial, citizens' consultation, etc.) and consists of more or less formalized norms, which also prescribe its temporal course. A particularly important aspect of its formal structure concerns the roles and role scripts: Roles anchor actors in the procedure. The procedural roles are thus a crucial hinge between the formal procedural structure and the reality of an empirical procedure. This allows a view of formal procedures, that describes them as governed by role specifications and scripts of action without fully determining the course of action (which would cause the procedure to degenerate into a ritual). Instead, formal expectations always leave room for more or less wide margins of possible behavior and decisions which are merely brought into a 'functional perspective' by the procedure (44). For the parties acting in the procedure, then, the formal structure functions more as a boundary condition and resource that can be drawn upon, especially in the case of conflict.

This distinction of levels between the *formal shape of a procedure* and its *enactment in interaction* is crucial for deliberation research. There is little systematicity in constructing comparable objects of research and even less effort to systematically assess the relation between formal procedures and their informal implementation: "the comparison between 'forms' of deliberation in different settings remains essentially unexamined" (Maia et al. 2020, 113). Additionally, I propose to distinguish the level of interconnected speech acts and their crystallization into communicative forms of coordination (like bargaining, arguing, story-telling) which is of special

relevance for deliberation research. So overall three levels of analysis of a sociology of deliberative procedures can be distinguished:

1. The level of the formal structure of the procedure. Formal structure is constitutive for determining the type of procedure. We can therefore classify types of deliberative events and procedures by looking at these formal rules, e.g. whether it is a 'town hall meeting', a 'participatory budgeting conference', or another type of mini public. Formal structures include explicit norms (procedural rules) and paradigmatic notions of their proper implementation. Formal rules specify the official purpose of the procedure, procedural steps, relevant stakeholders, role differentiation, the process order of interaction, and aggregation modes for collective decisions or opinion formation. Formal structures embed procedural communication, serve as a resource for it, and can be used as legitimate grounds for procedural decisions in cases of conflict.
2. The level of procedural interaction. Almost all deliberative procedures include one or more interactions as part of the process they institute. These are particularly important to the procedure for normative reasons, as this is where deliberation is supposed to take place. Sociologically, interaction is usually defined in terms of copresence and reciprocal awareness among speakers in an environment that provides objects of mutual attention (Goffman 1959, 1972; Kieserling 1999). Almost all procedural interactions are 'centered' interactions (Goffman 2008), which implies a special openness to verbal communication and visibility and mutual observation of bodies in their function as 'display'. Procedural interactions are strongly influenced by the formal structure of the procedure as they follow the requirements of the formal structure (first level) in terms of choice of partner, time horizon, beginning and end, and to some extent also the choice of topic (Bora 1996, 160).
3. The level of speech acts/speech processes. This level, unlike formal structures and interaction dynamics, is not a familiar category in the perception of the participants. Speech acts are part of deliberative interaction (level 2). However, they deserve special attention, because 'deliberation' in the normatively demanding sense emerges through the concatenation of speech acts into forms of communicative action (for a theoretical conceptualization of forms see Anicker 2020, for empirical research on form realization, see Maia et al. 2020). Only through an analysis of the interrelated speech acts can it be clarified what happens in deliberative procedures and, in particular, whether deliberation actually takes place or whether other forms of communication dominate.

The representation of the formal structure in the interaction is incumbent on specific roles (such as sponsor, organizer, and moderator), who watch over the fact that the interaction is carried out according to the formal rules of deliberation.

Both the formal structures and the external role specifications are 'situated' and, as the interaction progresses, translated into an increasingly defined informal structure of the interaction (Fietkau 1996, 278ff.); for the concepts of 'situatedness' and 'situational roles', (see Goffman 1972, 85; 2008) Thus, the interaction here does not stand 'for itself', independent of the context of the procedure. Rather, parts of the procedure are accomplished through interaction, i.e. interaction can be understood as selective realization and concretization of the formal procedural structure.

Even though the interpretation of speech acts (level 3) in procedural interaction is the obvious focal point of deliberation research (paradigmatic: Steenbergen et al. 2003), the focus for an explanatory program of a sociology of deliberative procedures must consider all the levels to be able to explore the connection between procedural structure and interaction and the form of communicative action coordination. Otherwise, one collects data on conversations without being able to relate them to the type of procedure in which they take place. This, in turn, leads to the problem that the findings become incomparable with each other.

Much of conventional deliberation research takes its ideas of how procedures work from level 1 and uses level 3 only to measure, how well the formal requirements are met. The second level of procedural interaction, however, is most interesting from a sociological point of view. In his theory on formal procedures, Luhmann shows how the interaction order of formal procedures produces binding effects and ways of legitimizing their results that would be unforeseen by only considering their formal specification. In Luhmann's view, procedures constrain less in the social dimension (rigid norms on level 1) than in the time dimension of interaction. Each procedure unfolds in time and the procedural history exerts consistency constraints on future actions:

> Every contribution enters into the history of the procedure and can then, within narrow limits, perhaps still be reinterpreted, but no longer taken back. (…) In the light of what is already fixed, what is still open is interpreted and further narrowed. (Luhmann 1983, 44, own translation)

The participants' commitment to the procedure and their position in it thus is *not* achieved by the rigidity of compelling formal sanctions, but through the participants' self-commitment in the course of the contingent history of the procedure (95ff.). The procedure transforms relative openness into relative determination in the course of the history of procedural events. This is exactly what deliberation researchers should be interested in: the gradual self-commitment of people to opinions and attitudes that were inexistent or unsteady before in the course of the deliberative procedure.

Luhmann, however, was rather skeptical about the role of rationality and reasons in formal procedures. For him, the only function of reasons for decisions is

to hide the sheer contingency of decisions from the decision makers and provide post hoc justifications while Habermas insists that reasons indeed *can* motivate decisions (cf. Habermas 1998, 575–6). Therefore, for the framework to be compatible with Habermas' communication theory and deliberation theory in general, we need to leave open the possibility that *one* of the many ways in which participants in deliberative encounters can reach a position on a subject is indeed rational learning through deliberative forms of communication.[1] Understood like this, Luhmann's general concept of procedure is a good starting point precisely because it is normatively indifferent. It does not prejudge the question of whether a concrete procedure is to be described as a realization of rational conditions of communication or rather as a manipulative mechanism of the pacification of conflict positions. Precisely for this reason, it is suitable for providing an analytical framework for the empirical study of deliberative procedures that does not bury the subject matter under excessive normative presuppositions.

This basic pattern can be made fruitful for the description of deliberative procedures. Deliberative procedures are just like most other organizational procedures characterized by (weakly) formalized norms and role differentiation. They also show procedurally structured dynamics of interaction which can and should develop binding effects. It is therefore plausible to conceptualize deliberative opinion formation as a transition from relative openness to relative fixedness of convictions and positions. To follow the unconstrained compulsion of the better argument means to put one's view into the open and to let oneself be successively influenced and finally fixed by the course of the speech contributions.

So, on the one hand, the scheme provides a systematic basis for generalizing research findings across different types of deliberative procedures according to their formal structure (indicating the kind of social technology). On the other hand, it guides the explanation of deliberative outcomes by systematically focusing on the realization of the procedure in interaction and the mechanisms of binding the participants to certain positions (which could be rational learning or some form of non-rational or even manipulative influence). The following case study will show how this framework can be used to systematically examine the interrelation of levels in a deliberative procedure.

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1 It is quite common to mistake Habermas' reconstruction of the normative validity of democratic constitutions for an empirical description, which would commit him to a naïve view on democratic procedures as an empirical realization of popular sovereignty—rational learning would be the *only* way people reach positions in deliberative procedures. In fact, he takes a dual perspective on democratic procedures as power-systems *and* as systems of legitimate authority and develops a complex theory of their intersection (cf. Habermas 1998, 383–98; 622–3).

3 Application of the Framework: The *EuroPolis Deliberative Poll*

Perhaps the most scientifically recognized type of deliberative procedure is the so-called 'Deliberative Poll' (Fishkin, Luskin, and Jowell 2000; Fishkin and Luskin 2005; Fishkin 2009). Deliberative Polls combine the principle of social science experiments (matching experimental and control groups) with the principle of political opinion polling and a normative theory about the attendant circumstances of reasonable political deliberation. The procedure aims to construct informed public opinion by specifying and implementing parameters of political equality, inclusive participation, deliberation (in the sense of reflective weighing), and minority protection as ideal discussion conditions of empirical speech situations (Fishkin 1987, 2009, 32–94).

Instead of only asking about political attitudes, which are often enough based on 'non-attitudes' (Converse), the randomly selected members of a deliberative poll are, after an initial opinion poll, briefed on the topic with expert-composed informational materials. On site, they are confronted with the arguments and beliefs of other participants in intensive small group and plenary discussions. Only then is the actual 'deliberative' opinion of the participants solicited. According to its inventors, the Deliberative Poll is designed to show what 'the people' (or members of the particular political unit of interest) would think "if they thought, knew, and talked more about the issues" (Fishkin and Luskin 2005, 294). The most important elements of the formal structure of deliberative polls are captured in Figure 1.

In the following, I will consider two elements of a particular deliberative poll: First, the initial provision of information materials, and second, the procedural interaction in deliberative polls directed by small-group moderators. The empirical material comes from a case study on the EuroPolis deliberative Poll which took place in 2009. It is probably one of the most elaborate, most expensive, and best-researched deliberative polls. The main topics negotiated were 'migration' and 'climate change' each with a focus on what the appropriate EU policy response would be in these two policy areas. About 3000 respondents to a survey on EU-related political attitudes were asked after the survey about their willingness to participate in the face-to-face phase of the Deliberative Poll. Of the randomly selected 600 invited, 348 participated (Isernia and Fishkin 2014, 316). For the deliberative small group discussions, 25 groups were formed, with randomized composition controlled to ensure that no more than 2–3 different languages were spoken in the group so that expressions could be translated simultaneously. Opinions and topic-related attitudes were collected in a standardized manner in four waves of data

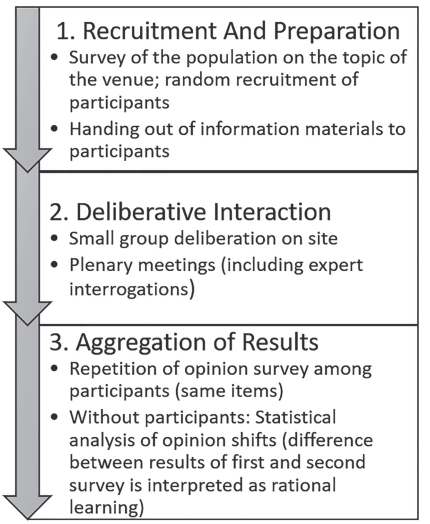

Figure 1: Formal structure of deliberative polls.

collection—one week each before and after the event, and at the beginning and end (Isernia and Fishkin 2014, 317; Sanders 2012, 622).

The following two chapters present a sociological analysis of the *EuroPolis* Information Materials and the effects of Moderators on the procedural interaction of small groups. This requires us to break with the conviction that the language of justification should also be the language of describing political procedures. We need to set aside the 'official' interpretation of the meaning of the elements of the procedure in the light of its official goal—rational opinion formation on the topics of immigration and climate change in this case. Only then we can systematically ask about the latent functions of individual procedural steps.

3.1 EuroPolis4—Neutral and Balanced Briefing Materials?

Typically, briefing materials contain general information on the topic, as well as debate points for which various pro and con arguments are listed. In the case of EuroPolis, this information was produced by different groups of experts (some of the experts responsible for producing the briefing materials also provide information in the plenary session interactions organized as hearings). The normative purpose of the briefing is to raise the cognitive quality ('thoughtfulness', cf. Fishkin 2009, 119f.) of the discussions via balanced information. To prevent hidden partisanship from being smuggled into the process under the guise of expertise, experts with

institutionally divergent affiliations; e.g. from research institutes or think tanks with different political positioning, should oversee the compilation of the briefing materials. Factual neutrality is thus to be achieved here via the balance or equilibrium of different positions. Information materials are part of the formal structure of deliberative polls and therefore correspond to level 1 in the heuristic above. But instead of just checking for the degree of the fulfillment of the official purpose (informing about the subject), a sociological analysis must ask for *all* the likely effects of a formal procedural step like the composition and distribution of briefing materials.

From this perspective, two principled objections must be raised against a one-sided normative view of this procedural step. First, authoritative information about factual arguments sent in advance not only informs about an object of political debate but also about the social space of legitimately defensible positions that can be taken on this subject (see Levy and Sakaiya 2020 for the efficacy of this prior framing). This is almost always narrower than the range of opinions in the population:

> Like the other deliberative venues of which I am aware, deliberative polls do not provide the deliberators with radical left or right alternatives that are not within the currently feasible political process. Including such options is not practical in a context in which the funding and frame for Deliberative Polls and their like are provided by governments, the mainstream media, or mainstream foundations. (Mansbridge 2010, 55)

The briefing materials can therefore also be understood as outlining the realm of legitimate dissent about an issue. The narrowing of positions to the 'doable' mainstream opinions sets standards for acceptable speaker positions. This raises the hurdles for positions that are not, or rarely, represented in policy advice-related expert discourse. In a sense, then, 'reasonable disagreement' (Rawls 1989) is not the outcome but already the starting point of the process, whose authority is further underscored by the social status of the 'expert' authors of the briefing materials. The unobtrusive framing and pre-structuring of the discussion through information materials may be used by interested parties not to open up but to narrow the scope for political deliberation.

The second objection concerns the question of the relationship between expert knowledge and politics. Experts are not simply citizens with more factual information. As a rule, they owe their expert status to a radical narrowing of their epistemic interests and confinement to specific methods within highly specialized disciplines. The neutrality of expert information must therefore always turn out to be a chimera when the *appropriateness of disciplinary perspectives* is politically at stake. It can be questionable whether it is politically appropriate to treat a problem as specifically

cultural, economic, sociopolitical, and so on. Experts by definition[2] lack the expertise to do this. Sociologically, therefore, the claim of neutrality of briefing materials must be examined for possible deficits in the selection of viewpoints under which 'rational' arguments on an issue are assembled. The question is: Which rationalities, i.e., which obstinately heightened value references of 'rational' politics made into the domain of expert interpretations, can be reconstructed as relevant criteria for the selection of certain information?

Both considerations have heuristic value for an evaluation of the materials by specifically asking which space of legitimate factual positions is outlined by the positions and arguments included in the materials, from which social partial rationalities are fed, and in which relation these different rationality standards are placed.

3.1.1 Empirical Analysis of Briefing Materials

It is characteristic for deliberation research to follow the normative proceduralism of the deliberation ideal, resulting in agnosticism about the *content* of briefing materials and the arguments they contain. Usually, an assessment of the argumentative content or quality is deemed beyond the scope of legitimate research interests of objective social science analysis. Indeed, from a formal point of view in the case of *EuroPolis*, all precautions seem to have been taken to ensure that the briefing materials are as neutral as possible. According to Isernia and Fishkin, the original draft of the *EuroPolis* briefing materials was prepared by a group of independent experts under the coordination of the European Policy Centre. The original document was commented on and modified in three rounds of revisions by various experts as well as politicians from all political groups in the European Parliament. The final version was approved by the scientific advisory board of the *EuroPolis* project, checked for comprehensibility, and then translated into 21 languages (Isernia and Fishkin 2014, 316f.). Given such an elaborate production process, it seems almost petty to insist on the reservations expressed above.

At second glance, it may seem surprising, however, that such a large number of experts should have agreed on a short and generally understandable document on a matter as complex and multidimensional as migration policy. How are the many facets of migration as a legal, cultural, religious-political, economic, democratic-theoretical, welfare-state, and human-rights issue adequately summarized in 14 pages? Thus, a somewhat more detailed look at the briefing materials may still be worthwhile. The following content-analytical and hermeneutical sequence analysis

2 Consider Luhmann's slim definition of experts as people who are unable to answer some questions (Krause 2005, 148).

asks about the perspectives underlying the briefing materials and the relationship of different standpoints to each other.

The first content page on migration defines the 'key issues,' (Briefing Materials 2009, 6). In the migration debate this concerns in particular, the 'how much' and the 'how' of legal and illegal immigration. The framing under which the issue is presented is that of an *economic challenge*:

> The key challenge for EU and national policy-makers is to reconcile the various objectives of policies (…): attracting the migrants from outside the EU that many believe it needs for economic reasons while deterring others from entering the EU illegally. (6)

While there is also a remark on the page pointing to immigration as a cultural integration problem for the receiving states (considerations about the motives and legitimate expectations of immigrants are completely missing), the cultural dimension of the issue is settled in one sentence:

> The integration of migrants to enable them to play a full part in the economic, social, political, civic and cultural life of their 'host' country is also a much-debated issue, prompting discussion about the extent to which migrants should be required to adapt to the societies in which they now live or be free to follow their own customs and traditions. *This issue is, however, beyond the scope of these briefing materials*. (6, my emphasis.)

This opens the way, as will be shown in more detail below, for an almost exclusively economic problem definition throughout the rest of the briefing materials. The dual objective of attracting desirable (translate: economically useful) migrants and repelling undesirable ones ("attracting the migrants from outside the EU […] while deterring others from entering the EU illegally") explains, according to the briefing materials, the 'two-track' strategy of many member states to simultaneously strengthen their borders, and open channels for the legal migration of skilled "workers" (6). The migration policy of the member states so far presents itself as the result of an economic policy strategy that selects migrants according to their usefulness as a productive force. Having introduced the problem in this way, 'Key elements of the immigration debate' are summarized:

> Many experts argue that the resulting shortages of workers cannot be filled through increased fertility and skills training alone. This has prompted a growing debate over what role, if any, legal migration should play in filling these shortages and expanding the EU's workforce, with the discussion focusing on who and how many. (…)
>
> Furthermore, most of the migrants currently in the EU are in low-skilled jobs. Those who are in favor of admitting more migrants argue that the Union's ambitions to remain a global economic player and lead the world in key sectors (such as technology and services) mean it

> needs more workers with specialized and high skill levels who may be available in greater quantities in other parts of the world. (7, emphasis mine)

Those who advocate more immigration are thus in favor of the 'right' kind of immigration. Immigration should be for qualified specialists who help the economic development of the EU knowledge economy. Then the opposing side has its say again, restoring the 'balance' with its likewise *economic* arguments:

> But others argue that Europe does not need migrants to fill these shortages. They point to rising levels of unemployment in some EU member states, and insist that the answer lies in retraining 'national' workers to provide them with the necessary skills and making it easier for them to switch jobs and professions. (7)

After a short description of the formal competencies of the EU, the document closes with a description of different regulatory models. Here, two types of measures that apply in different countries are also highlighted visually by indentation:

> … quota systems—setting ceilings on the total number of migrants that can be admitted in any one year, with the decision primarily based on how many additional migrants it wants overall rather than on meeting specific economic needs (as, for example, in Austria, Italy and Portugal); or points systems—focusing on attracting migrant workers with the skills needed to fill job vacancies by identifying what skills are required and then judging applications for residence and work permits on the basis of whether they meet those needs (as, for example, in the UK). (8–9)

No deep hermeneutic skills are needed to make educated guesses about the preferred immigration instrument of the authors of the briefing materials. The evaluation scheme against which the two alternatives 'points system' and 'quota system' present themselves for assessment is obviously the national interest of the receiving state in replenishing its labor force through migration. In this context, the points system functions as a flexible instrument that allows admission arrangements to be made according to 'economic needs'. The quota system is defined negatively as a system of immigration regulation that does not select according to economic need. Particular attention should be paid to the choice of words in the description of the same process of selection. While the quota system 'sets ceilings' and thus limits the number of migrants 'that can be admitted', the points system is an instrument for 'attracting' migrants based on the needs of the receiving economy. Selection according to economic criteria thus presents itself as the more open and intelligent tool, as opposed to the 'blunt instrument' of quotas (10).

After this introduction, there is a tabular listing of pros and cons, for predefined "policy options" (10–12). Also, this list is clearly dominated by an economic perspective. 32 of the 33 arguments suggest that the issue should be evaluated in terms of

the costs of admitting and managing migrants, economic benefits, and labor market-specific needs. The vast majority of arguments refer to migrants not as 'migrants' (11 mentions) or 'people' (1 mention), but mostly as 'workers' (30 mentions). Only one policy option stands out as there is an alternative value standard for the cost-benefit calculation introduced: the suggestively titled "'laissez-faire' approach". Here and only here, "global inequalities" and "workers' rights" are mentioned (12).

Already in the pagination, this 'policy option' is conspicuous by its isolation on one page alone. The 'laissez-faire approach' consists of not regulating immigration at all in order to—as the top pro-argument (!)—save money for visa and border controls. The lowest-ranked pro-argument is an allusion to the human rights discourse (still impregnated with economic discourse) in which such demands are most likely to be found: "It reduces global inequalities by offering opportunities to all those who want to come and work in the EU." (12) Directly opposed to this argument is the counter-argument: "It increases global inequalities as may lead to increased 'brain drain' from developing countries to the EU." (12)

The concern for the (economic) well-being of the countries of origin expressed in the brain drain argument, however, is limited to this form of immigration. None of the policy options for controlled migration policies, which should primarily or exclusively select highly qualified migrants, contains this argument, which should be all the more valid in this case. As an additional counterargument, we find the only argument with clear labor rights concerns in the entire list: "Employers may abuse this system and violate worker rights." (12)

In another counterargument against the 'laissez-faire approach,' echoes of populist discourse also appear for the first time in the document: "Migrant workers could 'take' EU citizens' jobs by offering their services more cheaply, being willing to work much longer hours, etc.—This could also lead to lower wages and poorer working conditions for everyone, with cheap 'imported' labor driving salaries down generally." (12).

While all other arguments on the topic of 'legal migration' adopt either an economic ('the economy's needs') or a company-centered ('employers') basis of evaluation, here for the first time the view of workers in the EU is explicitly taken. Aren't migrants potentially taking jobs away from EU citizens and driving down wages? Again, one would have to ask why these arguments should only apply to the 'anarchic' laissez-faire approach and not to labor migration in general and skill-based immigration control in particular.

I analyze the briefing materials on immigration only up to this point, without further analyzing the economist perspective that underlies both sides of the pro and con lines. Nor will I explore further the possible causes of this one-sidedness-whether it be the strategic interest of organizers in particular policies (see Ryfe 2002; 2007) or the operational blindness of homogeneous expert cultures. Suffice

it to say that in this case there is an obvious particularity of expert information. Overall, the briefing materials on migration give the impression that migration policy decisions are best made with a calculator. The gain in argumentative sharpness and comprehensibility that such unambiguous framing entails is bought by the massive blunting of entire classes of arguments. Here we see in practice—though in a startlingly clear form—what is obvious for reasons of principle: The short text of a briefing cannot possibly represent the entire spectrum of the diversity of perspectives and opinions on a topic that can be justified within these perspectives.

In this case, however, it is probably not even possible to speak of an attempt to provide a balanced view. Our analysis shows a consistent one-sidedness of the rationality criteria for migration policy decisions in favor of an economic logic aimed at economic benefits for EU member states. The formal arrangements for the factual representation of different perspectives have obviously either been undermined or have failed. For deliberation research, it is only possible to detect these kinds of failures, if the formalistic view on the functions of procedures is lifted in favor of an engagement with the actual content of deliberation and the procedural steps that are supposed to enable it. While briefing materials cannot for reasons of principle cover all possible perspectives on a topic (therefore making it always sociologically interesting to ask about excluded perspectives), *practically* a plurality of different viewpoints can and should be expected from the standpoint of designers of deliberative venues and deliberation researchers. For deliberation research, it may be viable to use common theories about societal orders of justification (Boltanski and Thévenot 1999) or the differentiation of rationality criteria in function systems as a heuristic to check for a basic plurality of perspectives.

3.2 *EuroPolis*—Equal and Fair Participation in Small-Group Discussions

The second element of the *EuroPolis Deliberative Poll* to be analyzed is the part of the venue which according to the normative self-description is at the very core of deliberation: the small-group discussion between the participants. Also in this case it will prove useful to temporarily fade out the normative perspective in favor of a more sober look at small-group discussions as a piece of social technology. I will especially focus on the link between the formal structure of small-group discussions (level 1 in our framework) and the form of communication that is likely to be enabled by it (levels 2 and 3).

The most important formal structuring of deliberative small groups consists of the differentiation of participant and moderator roles (level 1). The procedure

of how to talk is not designed by the participants but by the organizers and their team. Hosts, organizers, moderators, and other actors exert primary control over the implementation of the procedure. While moderators typically know what to do, participants need to learn what is required from them, as they usually do not have prior experience with deliberative procedures. Empirically, we should therefore expect a particular primacy of the moderator role in the organized interaction (level 2). A sociological analysis has to turn the conventional normative viewpoint on its head: It is not the participants, but the organizers and those entrusted with the implementation who are central to a role-theoretical description of the procedure. It is therefore legitimate to center the theoretical analysis of the small group interaction on the role of the moderator and ask about the likely impact on the complementary participant role.

In the normative literature, moderators are mostly seen simply in their function to enhance the natural capacity of interaction for political discussion by embodying values of discursive fairness (Landwehr 2014; Garcia 2017, 2–4). "[Moderators] maintain an atmosphere of civility and mutual respect, encourage the diffident, restrain the loquacious, and ensure that all the major proposals and all the major arguments for and against them in the briefing document get aired." (Fishkin and Luskin 2005, 288) They are supposed to ensure the deliberative quality, objectivity, and civility of the small group interaction. However, by now there is some awareness in the deliberation literature that moderation or 'facilitation' can be a double-edged sword. On the one hand, moderators can contravene the tendency of ungoverned talk to reproduce social hierarchies but on the other hand, they may exert influence on deliberation very different from the one envisaged by the normative ideals (Escobar 2019). The search for latent functions of moderation is, however, still relatively underdeveloped as a number of authors argue. Schneidemesser et al. state that "scholarly work on the internal workings of deliberative processes regarding especially the role of process design and facilitation remains rather limited" (2023, 1); and also Garcia (2017, 1) stresses the lack of theoretical attention and empirical research. From the perspective of a sociology of deliberation what is missing especially is the theoretical connection between the formal structure of the deliberative forum, the mediation style, and instituted forms of deliberation.

To establish this link, I propose to look beyond deliberation research (even though studies of Maia et al. 2020 and Schneidemesser, Oppold, and Stasiak 2023 take important first steps). The role of conflict and focus group moderation and mediation is well-researched in sociology and many insights may be fruitfully

transferred to deliberation research.[3] An important toolkit for digging deeper into the relationship between the formal structure and the procedural interaction comes from conversation analysis and the emphasis on turn-taking (Sacks, Schegloff, and Jefferson 1974). From this angle, the first thing to note is that moderators have privileged access to the speaker role. Not only are they always allowed to take the floor themselves (right to self-selection), but they are also allowed to give the floor to others or even to push them on stage (right to other selection). Both rights are not available to the participants.

A typical effect of the moderator's centralized control over the right to speak is that the moderator becomes a preferred (though not exclusive) address of contributions. Participants no longer speak directly to each other but address their speech to the moderator (Garcia 1991). Thus, other participants are often not directly addressed, nor are they under immediate zugzwang by "conversational demands" (Gibbard 1990, 172). The interruption of direct response possibilities by the moderation creates a temporal and emotional distance between the speech acts of the individual participants, which makes the expression of affects unlikely (see Simmel 1968, 77). This seems, at first glance, desirable for the rationality of the procedure. However, the blocking of chances for direct interaction is also counterproductive for the most cherished form of communication in the deliberative literature: argumentative exchange. As will be shown, structural dynamics of argumentation become systematically less likely. Habermas defines argumentation as a "type of speech in which the participants address contentious validity claims and attempt to redeem or criticize them with arguments" (Habermas 1981, 38, my translation). Speech acts in argumentation typically take the form of 'adjacent pairs'. Claims are met with counter-claims; Criticism is answered with justification; questions are followed by answers (see for a theoretical conceptualization of the form of argumentation Anicker 2020).

Such sequences, however, are made less likely and less effective in a centralized turn-taking system. Garcia argues that the *meaning of nonparticipation* changes in interactions with centralized control over the system of speaker change (Garcia 1991, 830). While in everyday interaction nonparticipation can be interpreted as tacit approval (cf. Luhmann 1983, 41f.; Urfalino 2007), this assumption cannot be sustained in moderated discussions with centralized control over the right to speak, as everyone knows that people cannot self-select. One knows that

3 There are no strong reasons to suppose that the logic of moderation in deliberative procedures is entirely different from moderation elsewhere. Actually, Fishkin claims that "the best DP [deliberative poll, F.A.] moderators are focus group leaders, who undergo a slight retraining" and continues to argue that the set of skills to assess a group's preference for product prototypes is quite similar to those skills needed to moderate deliberation (Fishkin 2010, 68).

others know that one could disagree with the current speaker—and for this very reason, one does not need to mark one's factual reservations by explicitly objecting. This makes disagreements and therefore argumentation considerably less likely.

Based on this analysis we would not expect that people argued much in EuroPolis—and actually, we are lucky to have some empirical evidence for this. EuroPolis is one of the few deliberative polls in which communication modes were studied by André Bächtiger and Michèle Gerber (2014). The authors were looking for 'vigorous contestation' and therefore handpicked attitudinal heterogeneous small groups within *EuroPolis* to look for a high potential for conflict and disagreement (122; for more refined distinctions of different forms of deliberation (level 3) see Anicker 2020 and Maia et al. 2020). However, factual disputes remain the exception. In practically none of the four (out of 25) groups studied do prolonged confrontational arguments emerge. The few argumentative speech sequences mostly comprise only a couple of speech acts (126). Agreement and explicit disagreement to preceding turns range between 10 and 20 percent in most groups, while most new turns remain neutral to their predecessors. Despite large attitudinal divergences within the groups, prolonged argumentative factual disputes are virtually nonexistent, and even simple dissent is rarely found.

Participation is relatively evenly distributed across the participants, but there seems to be neither room nor interest in lengthy debates. This is remarkable given the controversial nature of the topics of migration policy and climate change. Only one short argumentative episode (127ff.) seems to lead to some cognitive and emotional involvement, which is rather exceptional and is attributed by Bächtiger and Gerber to the unusually combative character of one of the participants. In other words: *EuroPolis* seems to be, broadly speaking, a case of deliberation without arguing. How can this be? Certainly, this extraordinary absence of argumentation (level 3) cannot only be explained by the mere presence of moderators in their interruption of direct confrontation opportunities. It must have something to do with the type of interaction which is instituted by the moderators (level 2).

To understand the link, we need to consider *the risk structure of certain communication formats for moderators*. As many researchers of mediation and moderation highlighted, there are conflicting goals inherent in the moderator role. Moderators fulfill a 'ringmaster role' (Maley 1995) and, as remarked above, control the turn-taking system. This authority does not, however, entitle the moderator to work towards a specific factual outcome of the conversation (S. Jacobs 2002, 1406)—this is basically the idea of 'neutral' facilitation discussed in the normative literature. However, as research has shown the widely shared commitment to 'neutrality' does neither imply renunciation of intervention, nor limitation to a narrowly circumscribed behavioral repertoire (Astor 2007; Hale and Nix 1997; Heisterkamp 2006; Jacobs and Aakhus 2002). Instead, it serves as an 'umbrella term' (Jacobs 2002,

1406) which can mean different things ranging from non-partisanship to alternating partisanship to a commitment to general values (this flexibility is sometimes acknowledged in deliberation research as well, see Beauvais and Baechtiger 2016; Friess and Herff 2023).

However, one thing is clearly forbidden. Moderators must not evaluate speech contributions according to their truth or normative rightness—that is: they must not validate or dispute them as 'arguments'. Nevertheless, as preferred addressees of the participants, they need to react to speech acts continuously. In normal conversation the typical reaction to statements is to approve or disapprove, thereby treating speeches as validity claims—which needs to be avoided. This makes the moderation of argumentation practically demanding for moderators. Another risk of argumentation is the low probability of consensual coordination of action. Because of the multiplicity of justifiable political convictions, it carries the risk of conflicts, the avoidance of which is an urgent task of moderation. *Moderated argumentation thus combines high demands for moderators with a high risk of disappointment and conflict*.

Indeed, empirical mediation research shows a tendency, especially in conflict mediation, to avoid the demanding format of argumentation in favor of recognition-based communication (Cobb 1997; Jacobs and Aakhus 2002). Understanding this mechanism better may be a key to understanding the mechanisms of deliberation. It may be helpful to consider an example of dispute resolution through recognition from an actual deliberation. Laura Black reports an episode from a public participation process involving the planning of the 9/11 Memorial in New York to commemorate the attacks of September 11, 2001. Specifically, the episode is about whether non-Americans should be included in planning for the memorial, which had not yet begun at the time of the proceedings. One of the participants—'Meg'—affirms this by stating:

> [t]o me it's important that an acknowledgement of the global scale of 9/11 be incorporated in some way into the memorial … I am so hopeful this memorial will show that as a country, while we sometimes behave as if it's our way or no way, we do respect and honor that we are one part of this world. (Black 2008, 101, omissions in the original)

If you expect the communication format of argumentation at this point, you would maybe expect someone to challenge the argument (e.g. challenging the framing of 9/11 as a 'global' event). Yet, the actual reaction was the following:

> Meg, I know you are right, but I have to admit … as much as I try, I still feel bitter that we were attacked by people from other places who used our facilities to harm us. I sometimes find myself really missing the days when English was the only language spoken here and I trusted my neighbor. Believe me I am far from prejudiced—I married a man from another

> country and embraced his culture. I wish I felt as you did. Intellectually it is so right, but emotionally it's not as easy for me." (101, omissions in the original).

The apparent agreement ("I know you are right …"; "Intellectually it [is] so right …") is contrasted with the speaker's own experience that grounds *opposite* conclusions. Compared to argumentation this marks an entirely different mode of dealing with validity claims. The affirmation of the other position is *not* to be understood as an affirmation of the factual position but marks the change of level from the sphere of truth claims to authenticity ('Wahrhaftigkeit') claims. What counts is no longer what is generally true and right, but what can be authentically affirmed from the horizon of one's own experience. Reasons thereby lose their intersubjectively compelling power making mutual recognition a 'weak' form of communicative rationality (for the distinction between weak and strong forms of communicative rationality see Anicker 2019, 205–63; Habermas 1999).

As we can suspect from the above analysis, this mode of communication is much more in line with the natural tendencies of the moderator role. The value of mutual recognition of all participants anchored in the moderator's role anyway. So what could be more convenient than to extend this to the factual content of their statements? In recognition-based communication, the moderator accepts statements as opinions to which each participant has a right. These speech acts are then not to be reacted to according to the pattern of a contentious claim to validity, but according to the pattern of the truthful revelation of inner feelings and experiences that deserve recognition and understanding by others instead of criticism. Since the recognition of one party does not exclude that of the other, even if their factual positions contradict each other, it becomes possible to orient the moderation to a general and therefore 'impartial' goal, namely the mutual recognition of positions. The institution of mutual recognition instead of argumentation minimizes role conflicts for the moderators, places lower demands on their communicative competencies, and often still allows for largely conflict-free communication even on contentious issues.

Based on this analysis, we can explain, why *EuroPolis* was a case of deliberation with very little argument. We may even further suspect that most deliberative procedures do not institute argumentation but rather mutual recognition. Some indications point to this direction: In training materials for another Deliberative Poll moderators are encouraged to create a "culture of dialogue, not debate" (Ryan 2001, 116) and sometimes episodes are reported in which moderators actively discourage argumentative disagreement (Knobloch et al. 2013, 118).

In one instance, there was even an instruction to participants in the form of a discussion rule: "Everyone is equally important, there is no right or wrong" (Hauschild 2012, 153, translation F.A.). While there are many different formats

of deliberative procedures and accordingly many different types of moderation (Schneidemesser 2023), our analysis suggests that professional facilitation by moderators and the usually desired 'arguing' in deliberation may—not only in *EuroPolis*—be at odds with each other. Whether this hypothesis holds is a question for further research that should systematically address the connection between the formal element of moderation (level 1), its institution in interaction (level 2), and its structuring effects on the forms of communicative exchange (level 3).

4 Conclusions

In this article, I advocated a more sober look at deliberative procedures as a kind of social technology. Just as with any other technology, we should systematically look for the consequences of its application, including the unintended ones. To avoid the normativist fallacy of much deliberation research, we need to refer to the formal elements of the procedure (level 1), to their implementation in interaction (level 2), as well as to the ensuing forms of communicative coordination (level 3). This analytical framework emphasizes above all the difference between formal and informal structures and foregrounds the explanation of processual binding effects of procedures as the main focus of analysis.

The case study on *EuroPolis* showed that such an approach can be fruitful in amplifying the view on deliberative procedures. A procedurally correct composition of briefing materials can lead to one-sided and biased information. The 'facilitation' of deliberation can lead to the abolishment of argumentation. While empirical research should therefore avoid equating normatively desired functions with actual ones, the sociology of deliberation advocated here does not deny the possibility of deliberation and strong communicative reason. It merely refrains from using normative self-description as an alternativeless outline for empirical research, and thus guards against confusing the practice of democracy with the blueprint of its technology.

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