


DELIBERATIVE DEMOCRACY: A RHETORICAL CRITIQUE

DEMOCRACIA DELIBERATIVA: UMA CRÍTICA RETÓRICA

LA DEMOCRACIA DELIBERATIVA: UNA CRÍTICA RETÓRICA

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ABSTRACT

This article examines deliberative democracy as a contemporary attempt to reconstruct the legitimacy of the rule of law under conditions of normative pluralism and institutional complexity. While deliberative theory presents itself as a response to the erosion of legal authority, grounding legitimacy in public justification and discursive procedures, the article argues that this reconstruction rests on demanding and often unrealistic communicative, epistemic, and social assumptions. Drawing on a rhetorical perspective, classical theories of persuasion, the linguistic turn, and the notion of *dissoi logoi*, the analysis challenges the deliberative claim that political legitimacy can emerge from rational consensus independent of power relations and rhetorical inequality. The article shows that deliberative practices do not neutralize discretion or domination, but rather redistribute them through institutionally authorized vocabularies of justification that privilege certain speakers, forms of reasoning, and expertise. As a result, deliberative democracy risks converting legitimacy into a function of discursive competence and institutional position rather than democratic self-rule. The final section argues that this dynamic has significant implications for the contemporary understanding of the rule of law, which increasingly operates not as a constraint on power but as a rhetorical register for legitimizing discretionary decisions *ex post*. The article concludes that deliberative democracy, far from overcoming the semantic hollowing-out of the rule of law, may contribute to its consolidation.

Keywords: Rule of Law. Deliberative Democracy. Legal Analytic Rhetoric. Pragmatism.

RESUMO

Este artigo examina a democracia deliberativa como uma tentativa contemporânea de reconstruir a legitimidade do Estado de Direito sob condições de pluralismo normativo e complexidade institucional. Embora a teoria deliberativa se apresente como uma resposta à erosão da autoridade jurídica, fundamentando a legitimidade na justificação pública e em procedimentos discursivos, o artigo sustenta que essa reconstrução repousa sobre pressupostos comunicativos, epistêmicos e sociais exigentes e frequentemente irrealistas. A partir de uma perspectiva retórica, que recorre às teorias clássicas da persuasão, à virada linguística e à noção de *dissoi logoi*, a análise contesta a pretensão deliberativa de que a legitimidade política possa emergir de um consenso racional independente das relações de poder e das desigualdades retóricas. O artigo demonstra que as práticas deliberativas não neutralizam a discricionariedade nem a dominação, mas antes as redistribuem por meio de

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vocabulários de justificação institucionalmente autorizados, que privilegiam certos falantes, formas de raciocínio e tipos de expertise. Como resultado, a democracia deliberativa corre o risco de converter a legitimidade em uma função da competência discursiva e da posição institucional, em vez de expressão do autogoverno democrático. A seção final argumenta que essa dinâmica possui implicações significativas para a compreensão contemporânea do Estado de Direito, que passa a operar cada vez menos como um limite ao poder e cada vez mais como um registro retórico para legitimar decisões discricionárias ex post. O artigo conclui que a democracia deliberativa, longe de superar o esvaziamento semântico do Estado de Direito, pode contribuir para a sua consolidação.

Palavras-chave: Democracia Deliberativa. Retórica Jurídica Analítica. Rule of Law. Pragmatismo.

RESUMEN

Este artículo examina la democracia deliberativa como un intento contemporáneo de reconstruir la legitimidad del Estado de Derecho bajo condiciones de pluralismo normativo y complejidad institucional. Si bien la teoría deliberativa se presenta como una respuesta a la erosión de la autoridad jurídica, fundando la legitimidad en la justificación pública y en procedimientos discursivos, el artículo sostiene que dicha reconstrucción descansa sobre supuestos comunicativos, epistémicos y sociales exigentes y, a menudo, poco realistas. Desde una perspectiva retórica, que recurre a las teorías clásicas de la persuasión, al giro lingüístico y a la noción de *dissoi logoi*, el análisis cuestiona la pretensión deliberativa de que la legitimidad política pueda emerger de un consenso racional independiente de las relaciones de poder y de las desigualdades retóricas. El artículo muestra que las prácticas deliberativas no neutralizan la discrecionalidad ni la dominación, sino que más bien las redistribuyen a través de vocabularios de justificación institucionalmente autorizados que privilegian a determinados hablantes, formas de razonamiento y tipos de experticia. Como resultado, la democracia deliberativa corre el riesgo de convertir la legitimidad en una función de la competencia discursiva y de la posición institucional, en lugar de expresarla como autogobierno democrático. La sección final sostiene que esta dinámica tiene implicaciones significativas para la comprensión contemporánea del Estado de Derecho, que opera cada vez menos como un límite al poder y cada vez más como un registro retórico para legitimar decisiones discrecionales ex post. El artículo concluye que la democracia deliberativa, lejos de superar el vaciamiento semántico del Estado de Derecho, puede contribuir a su consolidación.

Palabras clave: Rule of Law. Democracia Deliberativa. Retórica Jurídica Analítica.

1 INTRODUCTION

Historically, the origins of rule of law can be traced to Aristotle articulating an early formulation by arguing that the rule of law is preferable to the rule of any individual, insofar as law embodies reason free from passion (Politics, III). In the Roman legal tradition, the idea of imperium constrained by lex, together with the development of juristic reasoning, reinforced the understanding that authority must operate within an impersonal legal order. The Magna Carta (1215) constrained monarchical power against the Barons and affirmed that even the sovereign is subject to law. In early modern political theory, John Locke grounded the rule of law in natural rights and consent, insisting that legitimate government acts only through standing laws oriented toward the common good. Montesquieu further systematized this insight by linking the rule of law to the separation of powers as a safeguard against tyranny.

In the modern constitutional tradition, A.V. Dicey famously distilled the doctrine into principles of legality, equality before the law, and judicial protection of rights. More recent theorists have reframed the concept in explicitly normative terms: Lon Fuller emphasized the “inner morality of law” as a condition of legal validity, Joseph Raz developed a formal and instrumental account of the rule of law, and Jürgen Habermas integrated it into a broader theory of democratic legitimacy, conceiving the rule of law as dependent on participatory and discursive processes of justification.

Rodrigues, McCubbins, and Weingast (2010) argue that the contemporary notion of the rule of law has become increasingly conceptually hollow as it has detached itself from any coherent and shared theory of law. In their account, the rule of law no longer refers to a stable set of institutional constraints or legal properties, but instead functions as a highly elastic normative label, capable of being invoked in support of divergent—and often incompatible—political projects. Because its meaning shifts according to underlying philosophical commitments, appeals to the rule of law can equally justify formal legalism, substantive moral reasoning, expansive judicial discretion, or deference to political authority. This conceptual indeterminacy renders the rule of law analytically weak and institutionally unreliable, allowing it to operate less as a genuine constraint on power than as a rhetorical resource mobilized ex post to legitimate preferred outcomes. Rather than disciplining political and judicial action, the rule of law has become “complex admixture of positive assumptions, inchoate political and legal theory, and occasionally wishful thinking”.

Confirming this diagnosis, contemporary doubts about the normative force of the rule

of law are not confined to a single theoretical tradition. From markedly different perspectives, Niklas Luhmann, Jeremy Waldron, and Richard Posner converge on the diagnosis that the concept has increasing difficulty operating as a robust constraint on legal and political discretion. For Luhmann (2004), the rule of law loses its capacity to function as an external normative standard and instead operates primarily as a mechanism for stabilizing expectations internal to the legal system. For Waldron (2008), “the Rule of Law is one of the most important political ideals of our time.” And yet the rule of law has been reduced to an honorific ideal whose abstract and procedural character provides limited guidance for resolving hard cases or constraining institutional power. From a pragmatic standpoint, Posner (2008) criticizes abstract theorization of the law with the use of substantive principles like “Ronald Dworkin’s principle of egalitarian natural justice” and “John Rawls’s “public reason” approach” and advances a complementary critique, arguing that appeals to the rule of law frequently obscure the consequentialist, political activist, jusmoralistic and discretionary nature of judicial decision-making, transforming the concept into a rhetorical veneer rather than an operative discipline. Taken together, these accounts suggest that the rule of law increasingly functions less as a substantive logic of constraint than as a symbolic register through which legal and political outcomes are retrospectively legitimized—thus setting the stage for contemporary claims that the concept has become analytically thin and institutionally unreliable.

This article builds on João Maurício Adeodato’s rhetorical-skeptical critique of legal language, according to which normative texts suffer from a structural semantic hollowing-out that prevents them from functioning as effective constraints on decision-making. Across his work, Adeodato argues that legal texts operate merely as signifiers without fixed meanings, incapable of determining outcomes *ex ante* and instead serving as rhetorical resources mobilized *ex post* to legitimate decisions already taken (Adeodato 2011; 2014). This thesis is articulated most explicitly in Adeodato (2021) where he demonstrates that the generality and abstraction of legal language make hermeneutic agreement impossible, shifting the stabilization of meaning from texts themselves to institutional procedures and authoritative actors. The central claim of this article is that Adeodato’s critique applies with particular force to the contemporary concept of the rule of law, which increasingly functions as an empty normative label rather than as a substantive logic of constraint. Read through this lens, the rule of law appears less as an operative mechanism limiting discretion than as a rhetorical register through which political and judicial outcomes are retrospectively justified.

This diagnosis places Adeodato in productive dialogue with Posner's legal pragmatism, which similarly exposes the rule of law as a rhetorical veil masking the discretionary and consequentialist character of adjudication (Posner 2008); with Waldron's claim that the rule of law has become an honorific ideal whose abstract proceduralism offers limited guidance in hard cases (Waldron 2008); and with Luhmann's systems-theoretical account, according to which the rule of law no longer functions as an external normative standard but as an internally referential mechanism for stabilizing expectations within the legal system (Luhmann 2004). The article's contribution lies in extending Adeodato's rhetorical critique beyond statutory interpretation to the level of foundational legal ideals, arguing that contemporary appeals to the rule of law exemplify, rather than escape, the semantic indeterminacy and legitimating dynamics he identifies.

This article treats deliberative democracy as a normative response to the contemporary erosion of the rule of law and offers a rhetorical and pragmatic critique of that response. Against this background, our research question concerns how the rule of law relates to democratic models by grounding a specifically procedural and discursive logic of legitimacy. The article is organized as follows: (1) Deliberative Democracy and the Normative Reconstruction of Legal Legitimacy; (2) A Rhetorical Critique of Deliberative Democracy; (3) Rule of Law and Democracy.

2 HABERMASIAN DELIBERATIVE DEMOCRACY AND THE NORMATIVE RECONSTRUCTION OF LEGAL LEGITIMACY

Within contemporary political and legal theory, deliberative democracy represents the most systematic attempt to reconstruct the legitimacy of the rule of law under conditions of normative pluralism and institutional complexity. "Law is better understood as a functional complement to morality...law...is supposed to protect the autonomy of all persons equally." In his account of the "internal relation" between democracy and the rule of law, Jürgen Habermas rejects both purely formal conceptions of legality "...positive law can no longer draw its legitimacy from a higher law." and substantive moral theories that ground legitimacy in outcomes independent of democratic procedures (Habermas 1995). Against these alternatives, he argues that democratic self-legislation and legal validity are co-original: the rule of law secures the institutional conditions for democratic will-formation, while democratic procedures provide the only non-arbitrary foundation for the legitimacy of law. "The democratic idea of self-legislation must acquire its validity in the medium of law itself." On

this view, legal norms are legitimate not because they embody pre-political moral truths or conform to established authority, but insofar as they can be justified through inclusive, public, and procedurally fair processes of discursive will-formation. Deliberation thus functions as the normative hinge connecting legality and legitimacy, allowing the rule of law to be reconceived not merely as a system of constraints on power, but as the juridical expression of collective self-government grounded in reasons acceptable to all affected provided a redistribution of legal powers to compensate the growing inequalities in economic power through the provisions of welfare entitlements. Habermas criticizes the feminist politics of equality to have failed twice, first to have obtained formal equality and later to have obtained welfare paternalism and argue that both lack legitimacy out of public debate.

This deliberative reconstruction presupposes, however, a broader transformation of the public sphere and its role in democratic legitimacy. In his recent reflections on the further structural transformation of the political public sphere, Habermas revisits the sociological and institutional conditions under which public deliberation can plausibly perform its legitimating function in contemporary societies marked by functional differentiation, digital communication, and systemic pressures from markets and administration (Habermas 2022). While acknowledging profound disruptions in the communicative infrastructure of democracy, he maintains that discursive accountability and public justification remain normatively indispensable, particularly for sustaining the legitimacy of law in complex polities. From this perspective, deliberative democracy appears as a response to the perceived erosion of the rule of law's normative force: by relocating legitimacy in procedures of public reasoning rather than in fixed meanings, institutional authority, or substantive moral consensus, it seeks to restore the rule of law as a practice of justified coercion rather than mere compliance with formally valid norms. The promise of deliberative democracy, therefore, lies in its claim that procedural rationality and communicative justification can compensate for the semantic indeterminacy of modern law, reconnecting legal validity with democratic legitimacy through discourse rather than dogma.

Deliberative democracy rests on a demanding set of normative and institutional assumptions. Habermas consistently maintains that deliberative democracy presupposes demanding background conditions of political and social equality, including social rights, redistributive arrangements, and forms of civic education that enable effective participation. Without such conditions, formal communicative freedoms risk becoming socially skewed, undermining the legitimacy-conferring function of public deliberation (Habermas 1992;

1996).

Early critics of procedural and discursive conceptions of democracy, most notably Carl Schmitt, argued that rational political discussion presupposes a degree of substantive homogeneity within the demos. In the absence of shared values and common political aims, deliberation degenerates into strategy or rhetoric, while decisive political questions are resolved through sovereign decision rather than public justification (Schmitt 1923; 1928).

A further characteristic of deliberative democracy is the high epistemic and moral demand it places on citizens. Deliberative theories frequently assume participants who possess sufficient civic virtue, informational competence, and deliberative capacity to assess complex public policies and revise their preferences in response to better arguments. Critics have noted that these expectations rely on an idealized conception of citizenship, often resembling the figure of a highly rational, well-informed, and morally motivated decision-maker. This assumption contrasts with more minimalist democratic models, which treat ordinary political participation as compatible with limited information, strategic behavior, and persistent disagreement (Posner 2003; Waldron 1999).

Another central assumption of deliberative democracy concerns the treatment of interests and political conflict. Deliberative models tend to distinguish legitimate public reasons from narrowly self-interested claims, aspiring to orient political contestation toward the common good. However, critics argue that this distinction underestimates the extent to which democratic disagreement is grounded in durable interests, ideological commitments, and value pluralism rather than in misunderstandings remediable through further deliberation. From this perspective, disagreement persists not because of insufficient justification, but because competing positions reflect incompatible priorities that cannot be reconciled through argument alone (Waldron 2006; Posner 2003).

Finally, deliberative democracy presupposes a particular conception of representative government and institutional mediation. While deliberation is intended to improve the quality of political outcomes, it also risks reallocating authority toward actors—judges, experts, or professional deliberators—better positioned to satisfy deliberative standards. Empirical work on group behavior further suggests that deliberation does not reliably produce convergence or better-reasoned outcomes, but may instead intensify polarization and reinforce preexisting biases (Sunstein 2002; 2009). Alternative democratic theories thus emphasize representation and procedural stability as mechanisms for managing persistent disagreement, enabling compromise, and preserving legitimacy without requiring consensus

on public reason. From this standpoint, democratic legitimacy derives less from epistemic ideals of deliberation than from institutional arrangements capable of accommodating durable pluralism within heterogeneous societies.

3 A RHETORICAL CRITIQUE OF DELIBERATIVE ASSUMPTIONS

One of the central assumptions of deliberative democracy is that political legitimacy can emerge from rational discourse oriented toward mutual understanding. This assumption rests on a distinctly logocentric conception of communication, according to which arguments are evaluated primarily on the basis of their logical coherence and normative appeal. From a rhetorical perspective, however, this view neglects the classical Aristotelian insight that persuasion operates through a triad of elements—logos, ethos, and pathos—none of which can be neutralized in real communicative contexts. Political discourse is never purely rational; it is inevitably shaped by the speaker's credibility, emotional resonance, and audience disposition. Deliberative theories that privilege logos while marginalizing ethos and pathos therefore rely on an abstraction of political communication that rarely corresponds to empirical reality.

The Aristotelian triad exposes a first unrealistic premise of deliberative democracy: the belief that deliberative settings can suspend power asymmetries and rhetorical inequalities. Ethos—the perceived authority, expertise, or moral standing of the speaker—plays a decisive role in determining which arguments are taken seriously. In deliberative forums, judges, academics, policy experts, and professionals typically enjoy greater symbolic authority than ordinary citizens, regardless of the intrinsic quality of their arguments. Pathos, in turn, shapes persuasion through emotional framing, narratives of fear or hope, and appeals to identity. Deliberative models that assume participants can bracket these dimensions underestimate how deeply persuasion is embedded in social hierarchies and rhetorical competence.

We should also take into account eristics, understood as the strategic use of language to prevail in disputes rather than to clarify truth. One of its most elementary forms consists in renaming practices or institutions so that they appropriate terms already endowed with positive normative resonance. “Democracy” is a paradigmatic example of this strategy. Although we cannot anticipate the concrete features that future political systems will assume, it is highly likely that they will continue to describe themselves as democratic.

This difficulty is further illuminated by the linguistic turn in twentieth-century

philosophy, which undermines the idea that language functions as a transparent medium for conveying neutral reasons. From Wittgenstein to later pragmatic philosophers, meaning is understood as use-dependent, context-bound, and shaped by social practices. Deliberative democracy, however, often presupposes a shared linguistic horizon within which reasons can be publicly accessible and universally compelling. In pluralistic societies marked by divergent vocabularies, moral frameworks, and cultural references, this presupposition is fragile. What counts as a “good reason” is itself linguistically and socially constructed, frequently reflecting the normative commitments of dominant interpretive communities. Once the insights of the linguistic turn are taken seriously, the deliberative ideal of neutral public reason becomes increasingly difficult to sustain. Legal and political language is not merely descriptive; it is performative and strategic. Concepts such as “proportionality,” “reasonableness,” “public interest,” or “constitutional values” do not carry fixed meanings but are continuously reinterpreted within institutional struggles. Deliberation thus does not eliminate power; it redistributes it to those who control the authoritative language of justification. This casts doubt on the deliberative claim that legitimacy flows from rational consensus rather than from institutionalized forms of symbolic power. The classical sophistic notion of *dissoi logoi*—the idea that opposing arguments can be plausibly made on the same issue—presents an additional challenge to deliberative optimism. *Dissoi logoi* highlight the inherent contestability of practical reasoning and the absence of definitive solutions in matters of politics and law. Deliberative democracy tends to underplay this dimension by assuming that sustained argumentation will eventually converge toward consensus or reasoned agreement. Yet in many political disputes—abortion, free speech, religious liberty, migration—conflicting positions persist precisely because they reflect incommensurable values rather than informational deficits or argumentative failures.

Taken together, the Aristotelian theory of rhetoric, the linguistic turn, and the concept of *dissoi logoi* suggest that deliberative democracy rests on a series of unrealistic communicative and epistemic assumptions. Political disagreement is not merely a transitional stage on the way to consensus, nor can power and rhetoric be neutralized through procedural design. Instead of transforming preferences through reason alone, deliberative practices often reframe conflict in ways that privilege certain speakers, vocabularies, and forms of expertise. From a pragmatic standpoint, this does not render deliberation useless, but it does undermine its claim to serve as the normative foundation of

democratic legitimacy in complex and heterogeneous societies.

Against this background, contemporary anxieties about the fragmentation of public discourse appear less as a technological anomaly than as an intensification of long-standing tensions within the deliberative ideal itself. Habermas (2022) appears to be concerned that the architecture of social media does not foster convergence toward public reasoning; instead, it reinforces fragmentation through the formation of bubbles and echo chambers. In this sense, he seems to express a certain nostalgia for traditional capitalist media, whose editorial mediation—despite its well-known limitations—could orient audiences toward the construction of a shared social reality. Such a diagnosis implicitly opens the door to some form of governmental intervention aimed at promoting an architecture more conducive to “public deliberation”. As he says: “...it's not a matter of political opinion but a constitutional imperative.” The difficulty, however, lies in the fact that the state is not a neutral arbiter of public reason, but an institution structured by hegemonic coalitions that tend to universalize their own normative commitments—thereby generating persistent tensions with pluralism and democratic legitimacy. Deliberation, once again, risks becoming a terrain shaped by the victors rather than a forum of equal public reasoning.

4 RULE OF LAW AND DEMOCRACY

Democracy—or whatever comes to be described under that name—has significant consequences for a legal system. Different democratic models entail distinct understandings of political legitimacy, the role of law, and the scope of judicial authority. In liberal or aggregative conceptions of democracy, law is primarily understood as the contingent outcome of political competition among interests, and legal positivism offers a plausible account of legal validity grounded in enacted rules and institutional procedures. By contrast, deliberative models of democracy conceive legitimacy as arising from reasons that are presumed to be morally justifiable to all citizens. Under this framework, law is not merely the product of political bargaining but the institutional expression of public reason. As a result, constitutional interpretation acquires an expanded moral dimension, allowing constitutional hermeneutics to invoke substantive values and principles that may override legislative choices. The adoption of deliberative democracy therefore tends to amplify the normative and institutional power of courts, transforming constitutional adjudication from a mechanism of legal control into a central site of moral and political authority.

Drawing on Richard Posner's critique in *Against Constitutional Theory*, deliberative

democracy can be understood as an extension of a broader tendency to moralize constitutional interpretation and elevate abstract theory over institutional competence. Posner argues that constitutional theory often substitutes speculative moral reasoning for practical judgment, encouraging courts to resolve political disagreements by appealing to contested normative ideals rather than to democratic procedures or institutional constraints. Within a deliberative democratic framework, this theoretical orientation reinforces the belief that legitimacy derives from morally justified public reason rather than from electoral accountability or interest-based compromise. As a result, constitutional adjudication becomes an arena for philosophical argumentation rather than a mechanism for managing conflict in pluralistic societies. From a pragmatic perspective, this approach overestimates the capacity of judges to identify universally valid reasons, underestimates the persistence of disagreement rooted in values and interests, and expands judicial authority beyond its institutional limits. Deliberative democracy thus risks replicating precisely the flaws Posner identifies in constitutional theory: the displacement of democratic decision-making by abstract moral argument, the insulation of outcomes from political accountability, and the transformation of law into a vehicle for elite intellectual preferences rather than a tool for governing real social conflict.

Within the framework of deliberative democracy, the rule of law is understood not merely as a system of formally enacted and predictable rules, but as an institutional expression of public reason. Legal legitimacy derives from the capacity of laws and judicial decisions to be justified through reasons that are regarded as morally acceptable and reciprocally accessible to all citizens. Under this conception, the rule of law is closely associated with substantive principles such as equality, reasonableness, proportionality, and respect for fundamental rights, which guide both legislation and adjudication. Courts play a central role in translating deliberative ideals into legal outcomes, ensuring that political decisions conform to standards of rational justification rather than mere aggregation of preferences or strategic bargaining. As a result, the rule of law in deliberative democracy acquires a moralized and interpretive character, in which constitutional norms and principles function as vehicles for articulating and enforcing the outcomes of rational public deliberation, even when this requires limiting or overriding democratically enacted legislation.

The theoretical foundations of deliberative democracy are most prominently associated with the work of Jürgen Habermas, particularly his theory of communicative

action and his later writings on law and democracy. For Habermas, democratic legitimacy arises from the possibility that norms and policies could receive rational assent from all those affected under conditions of ideal communication. This framework conceives democracy as a discursive process oriented toward mutual understanding, where the force of the better argument replaces strategic bargaining and coercion. Law, in this model, functions as the institutionalization of communicative rationality.

Deliberative democratic theory has a set of core assumptions. First, it presupposes that citizens possess sufficient epistemic capacity to understand arguments, evaluate reasons, and participate meaningfully in public debate. Second, deliberation is assumed to occur under conditions of relative equality, where differences in social status, power, and rhetorical skill can be neutralized or at least mitigated. Third, deliberative democracy relies on the idea that public reasoning can transform preferences, allowing participants to revise their views in light of better arguments rather than merely aggregating fixed interests. A further assumption concerns the treatment of interests and conflict. Deliberative democracy typically aspires to suspend or bracket private interests in favor of considerations of the common good articulated through public reason. Political disagreement is expected to be processed through rational discourse, with consensus or at least reasoned agreement playing a central legitimating role. Under this view, democratic politics is not primarily a struggle among competing interests but a cooperative search for fair and justifiable solutions.

Finally, deliberative democratic theory assumes a degree of compatibility between its normative ideals and real-world political and legal institutions. Courts, legislatures, regulatory agencies, and public forums are often portrayed as sites where deliberation can be institutionalized and safeguarded. This assumption underlies the prominent role assigned to judicial review, expert reasoning, and constitutional interpretation in deliberative accounts of democracy. The resilience and feasibility of these assumptions in complex, pluralistic, and interest-driven societies, however, remain open to critical examination.

5 CONCLUSIONS

This article has argued that deliberative democracy, far from resolving the contemporary legitimacy deficits associated with the rule of law, reproduces them at a different semantic and institutional level. While deliberative theory presents itself as a normative response to the erosion of legal authority under conditions of pluralism and

complexity, its reliance on demanding communicative, epistemic, and social prerequisites undermines its promise of inclusive democratic justification. By presupposing idealized forms of reasoning, background conditions of equality, and shared linguistic horizons, deliberative democracy risks transforming legitimacy into a function of discursive competence and institutional positioning rather than collective self-rule. The result is not the elimination of discretion or power, but their rearticulation through procedures of justification that selectively privilege certain actors, vocabularies, and forms of expertise.

From a rhetorical and pragmatic perspective, the article has shown that deliberation cannot be understood as a neutral medium through which reasons circulate independently of power relations. Drawing on classical rhetoric, the linguistic turn, and the notion of *dissoi logoi*, it has emphasized that political and legal discourse is inevitably shaped by authority, emotion, interpretive practices, and strategic use of language. Deliberative procedures do not suspend these dynamics; they reorganize them. What appears as rational consensus often reflects the stabilization of meanings imposed by dominant interpretive communities rather than the resolution of substantive disagreement. In this sense, deliberative democracy underestimates the persistence of pluralism and conflict in modern societies and overstates the capacity of procedural rationality to generate legitimacy through argument alone.

A significant portion of the contemporary debate surrounding the regulation of digital platforms is implicitly structured by the ideals of deliberative democracy, particularly the concern with the quality of public discourse, the prevention of fragmentation, and the promotion of reason-giving practices in the public sphere. Strategically, however, these normative commitments are rarely presented as tied to a specific democratic theory. Instead, regulatory proposals are commonly justified in the name of “democracy” in general, as if there were a broad consensus that internet regulation straightforwardly serves democratic values as such. This rhetorical move obscures the fact that these policies rest on a particular conception of democracy—one that privileges deliberation, discursive rationality, and the disciplining of communicative pathologies—while marginalizing alternative democratic models that place greater weight on pluralism, contestation, or the aggregation of interests. As a result, public policies grounded in a specific normative theory of democracy are legitimized as if they expressed a neutral and uncontroversial commitment to democracy per se, thereby masking the theoretical and political choices involved.

These insights have direct implications for the contemporary understanding of the rule of law. As this article has argued, deliberative democracy contributes to the

transformation of the rule of law from a mechanism of constraint into a rhetorical register of legitimation. Legal principles no longer function primarily as limits on discretion, but as vocabularies through which discretionary decisions are retrospectively justified. Rather than restoring the normative force of the rule of law, deliberative democracy accommodates its semantic hollowing-out by embedding it in increasingly sophisticated forms of discursive validation. Recognizing this shift does not entail abandoning deliberation altogether, but it does require abandoning the illusion that deliberative procedures can serve as the normative foundation of democratic legitimacy in complex and heterogeneous societies.

A rhetorical approach to democracy and the rule of law may be more candid precisely insofar as it accepts the ordinary conditions of political communication, rather than grounding legitimacy in idealized models that presuppose equality, consensus, or neutral reason-giving. On this view, legitimacy must be understood against the background of enduring disagreement, rhetorical power, and the institutional contexts in which it is claimed and contested.

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