

# Dædalus

Journal of the American Academy of Arts & Sciences

Summer 2017

## The Prospects & Limits of Deliberative Democracy



James S. Fishkin & Jane Mansbridge, guest editors

with Claus Offe · Nicole Curato  
John S. Dryzek · Selen A. Ercan  
Carolyn M. Hendriks · Simon Niemeyer  
Bernard Manin · H el ene Landemore  
Arthur Lupia · Anne Norton · Ian Shapiro  
Cristina Lafont · Andr e B achtiger · Simon Beste  
Alice Siu · Cass R. Sunstein · Roy William Mayega  
Lynn Atuyambe · Nathan Tumuhamy e  
Julius Ssentongo · William Bazeyo  
Baogang He · Mark E. Warren

TYPVS PRÆFECTVRÆ.



Constituta ex varjjs animantium haec bellua formata,  
 At la hominum, et mores esse docuit veritas.

tribus galle egredie

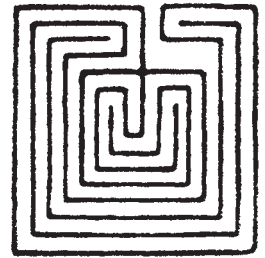
Si quis hanc faciat; cuiusque vit ferre animantibus  
 Nabona, affectus, conditioque; facis;

Is bonus, & mitis, sapiens, agilis, sit oportet.  
 O praefecturae difficile officium!

1740.

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Journal of the American Academy of Arts & Sciences



“The Prospects & Limits of Deliberative Democracy”

Volume 146, Number 3; Summer 2017

James S. Fishkin & Jane Mansbridge, Guest Editors

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*Inside front cover:* Pieter van der Borcht's *The Difficulty of Ruling over a Diverse Nation* (1578), adapted to appear as *The Difficulty of Deliberating in a Diverse Nation – Difficult, But Today Not Impossible*.

# Contents

- 6 Introduction  
*James S. Fishkin & Jane Mansbridge*

## Engaging the Issue

- 14 Referendum vs. Institutionalized Deliberation:  
What Democratic Theorists Can Learn from the  
2016 Brexit Decision  
*Claus Offe*
- 28 Twelve Key Findings in Deliberative Democracy Research  
*Nicole Curato, John S. Dryzek, Selen A. Ercan,  
Carolyn M. Hendriks & Simon Niemeyer*

## New Thinking

- 39 Political Deliberation & the Adversarial Principle  
*Bernard Manin*
- 51 Deliberative Democracy as Open,  
Not (Just) Representative Democracy  
*Hélène Landemore*

## Critics

- 64 Inequality is Always in the Room:  
Language & Power in Deliberative Democracy  
*Arthur Lupia & Anne Norton*
- 77 Collusion in Restraint of Democracy:  
Against Political Deliberation  
*Ian Shapiro*
- 85 Can Democracy be Deliberative & Participatory?  
The Democratic Case for Political Uses of Mini-Publics  
*Cristina Lafont*

## Responses

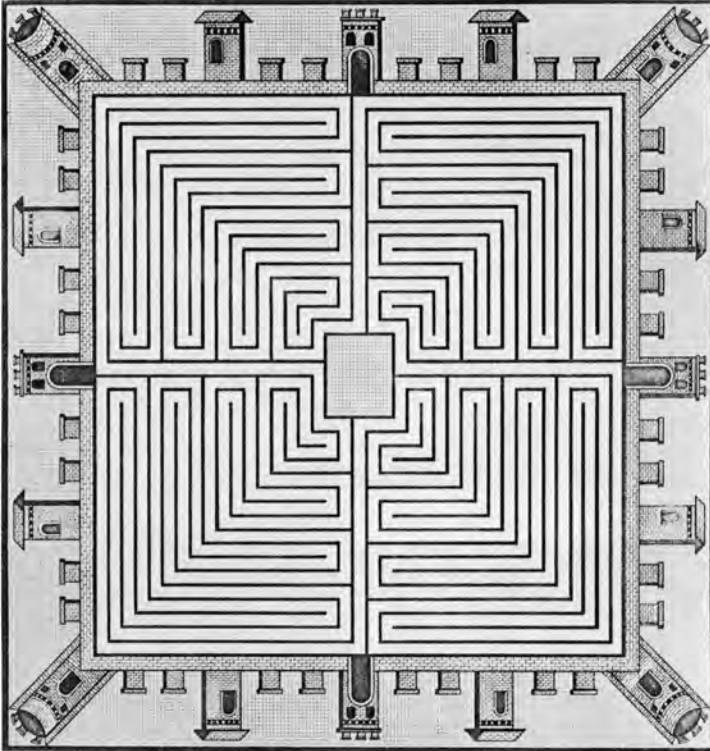
- 106 **Deliberative Citizens, (Non)Deliberative Politicians: A Rejoinder**  
*André Bächtiger & Simon Beste*
- 119 **Deliberation & the Challenge of Inequality**  
*Alice Siu*

## Applications

- 129 **Deliberative Democracy in the Trenches**  
*Cass R. Sunstein*
- 140 **Applying Deliberative Democracy in Africa:  
Uganda's First Deliberative Polls**  
*James S. Fishkin, Roy William Mayega, Lynn Atuyambe,  
Nathan Tumuhameye, Julius Ssentongo, Alice Siu & William Bazeyo*
- 155 **Authoritarian Deliberation in China**  
*Baogang He & Mark E. Warren*

# Dædalus

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Nineteenth-century depiction of a Roman mosaic labyrinth, now lost, found in Villa di Diomede, Pompeii

Dædalus was founded in 1955 and established as a quarterly in 1958. The journal's namesake was renowned in ancient Greece as an inventor, scientist, and unriddler of riddles. Its emblem, a maze seen from above, symbolizes the aspiration of its founders to "lift each of us above his cell in the labyrinth of learning in order that he may see the entire structure as if from above, where each separate part loses its comfortable separateness."

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Editorial offices: *Dædalus*, American Academy of  
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# Introduction

*James S. Fishkin & Jane Mansbridge*

JAMES S. FISHKIN, a Fellow of the American Academy since 2014, is Director of the Center for Deliberative Democracy, the Janet M. Peck Chair in International Communication, Professor of Communication, and Professor of Political Science (by courtesy) at Stanford University.

JANE MANSBRIDGE, a Fellow of the American Academy since 1994, is the Charles F. Adams Professor of Political Leadership and Democratic Values at the Harvard Kennedy School.

(\*See endnotes for complete contributor biographies.)

Democracy is under siege. Approval ratings for democratic institutions in most countries around the world are at near-record lows. The number of recognized democratic countries in the world is no longer expanding after the so-called Third Wave of democratic transitions.<sup>1</sup> Indeed, there is something of a “democratic recession.”<sup>2</sup> Further, some apparently democratic countries with competitive elections are undermining elements of *liberal* democracy: the rights and liberties that ensure freedom of thought and expression, protection of the rule of law, and all the protections for the substructure of civil society that may be as important for making democracy work as the electoral process itself.<sup>3</sup> The model of party competition-based democracy – the principal model of democracy in the modern era – seems under threat.

That model also has competition. What might be called “meritocratic authoritarianism,” a model in which regimes with flawed democratic processes nevertheless provide good governance, is attracting attention and some support. Singapore is the only successful extant example, although some suggest China as another nation moving in this direction. Singapore is not a Western-style party- and competition-based democracy, but it is well-known for its competent civil servants schooled in making decisions on a cost-benefit basis to solve public problems, with the goals set by elite consultation with input from elections rather than by party competition.

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Public discontent makes further difficulties for the competitive model. Democracies around the world struggle with the apparent gulf between political elites who are widely distrusted and mobilized citizens who fuel populism with the energy of angry voices. Disillusioned citizens turning against elites have produced unexpected election results, including the Brexit decision and the 2016 U.S. presidential election.

The competitive elections and referenda of most current democracies depend on mobilizing millions of voters within a context of advertising, social media, and efforts to manipulate as well as inform public opinion. Competing teams want to win and, in most cases, are interested in informing voters only when it is to their advantage. The rationale for competitive democracy, most influentially developed by the late economist Joseph Schumpeter, held that the same techniques of advertising used in the commercial sphere to get people to buy products can be expected in the political sphere. On this view, we should not expect a “genuine” public will, but rather “a manufactured will” that is just a by-product of political competition.<sup>4</sup>

Yet the ideal of democracy as the rule of “the people” is deeply undermined when the will of the people is in large part manufactured. The legitimacy of democracy depends on some real link between the public will and the public policies and office-holders who are selected. Although some have criticized this “folk theory of democracy” as empirically naive, its very status as a folk theory reflects how widespread this normative expectation is.<sup>5</sup> To the extent that leaders manufacture the public will, the normative causal arrow goes in the wrong direction. If current democracies cannot produce meaningful processes of public will formation, the legitimacy claims of meritocratic autocracies or even more fully autocratic systems become comparatively stronger.<sup>6</sup>

Over the last two decades, another approach to democracy has become increasingly prominent. Based on greater deliberation among the public and its representatives, deliberative democracy has the potential, at least in theory, to respond to today’s current challenges. If the many versions of a more deliberative democracy live up to their aspirations, they could help revive democratic legitimacy, provide for more authentic public will formation, provide a middle ground between widely mistrusted elites and the angry voices of populism, and help fulfill some of our common normative expectations about democracy.

Can this potential be realized? In what ways and to what extent? Deliberative democracy has created a rich literature in both theory and practice. This issue of *Dædalus* assesses both its prospects and limits. We include advocates as well as critics. As deliberative democrats, our aim is to stimulate public deliberation about deliberative democracy, weighing arguments for and against its application in different contexts and for different purposes.

How can deliberative democracy, if it were to work as envisaged by its supporters, respond to the challenges just sketched? First, if the more-deliberative institutions that many advocate can be applied to real decisions in actual ongoing democracies, arguably they could have a positive effect on legitimacy and lead to better governance. They could make a better connection between the public’s real concerns and how they are governed. Second, these institutions could help fill the gap between distrusted elites and angry populists. Elites are distrusted in part because they seem and often are unresponsive to the public’s concerns, hopes, and values. Perhaps, the suspicion arises, the elites are really out for themselves. On the other hand, populism stirs up angry, mostly nondeliberative voices that can be mobilized in plebiscitary campaigns, whether for Brexit or for

*Introduction* elected office. In their contributions to this issue, both Claus Offe and Hélène Landemore explore the crisis of legitimacy in representative government, including the clash between status quo-oriented elites and populism. Deliberative democratic methods open up the prospect of prescriptions that are both representative of the entire population and based on sober, evidence-based analysis of the merits of competing arguments. Popular deliberative institutions are grounded in the public's values and concerns, so the voice they magnify is not the voice of the elites. But that voice is usually also, after deliberation, more evidence-based and reflective of the merits of the major policy arguments. Hence these institutions fill an important gap.

How might popular deliberative democracy, if it were to work as envisaged by its supporters, fulfill normative expectations of democracy, thought to be unrealistic by critics of the "folk theory"? The issue turns on the empirical possibility that the public can actually deliberate. Can the people weigh the trade-offs? Can they assess competing arguments? Can they connect their deliberations with their voting preferences or other expressions of preference about what should be done? Is the problem that the people are not competent, or that they are not in the right institutional context to be effectively motivated to participate? These are empirical questions, and the controversies about them are part of our dialogue.

This issue includes varying definitions, approaches, and contexts. The root notion is that deliberation requires "weighing" competing arguments for policies or candidates in a context of mutually civil and diverse discussion in which people can decide on the merits of arguments with good information. Is such a thing possible in an era of fake news, social media, and public discussions largely among the like-minded?

These are some of the challenges facing those who might try to make deliberative democracy practical.

The earliest work on deliberative democracy began by investigating legislatures.<sup>7</sup> In this issue, Cass Sunstein, in contrast, looks at deliberation among policy-makers within the executive branch. Bernard Manin looks outside government toward debates and public forums that can improve the deliberative quality of campaigns and discussions among the public at large.

Much of the energy in deliberative democracy efforts has focused on statistical microcosms or mini-publics, in which citizens, usually recruited by random sampling, deliberate in organized settings. In some settings, relatively small groups of fifteen or so deliberate online with an elected representative.<sup>8</sup> In other settings, the groups can be given access to balanced information and briefing materials that make the best case for and against various options. They can also be given access to competing experts who answer their questions from different points of view. Then, at the end of the deliberations in these organized settings, there is some way of harvesting their considered judgments. Several of the essays discuss Deliberative Polling, which brings together a random sample of citizens for a weekend of deliberation and gathers data, as in an opinion poll, from the random samples both upon recruitment and then again at the end of the deliberations. The method also permits qualitative data by recording the discussions, both in moderated small groups and in plenary sessions where questions generated in the small groups are directed at experts representing different points of view. Other mini-publics, such as "citizens' juries" and "consensus conferences," are usually smaller (a couple of dozen instead of two or three hundred people) and arrive at something like an agreed-upon statement or verdict as a recommendation to the public or

to authorized policy-makers. Some randomly selected mini-publics even make binding decisions.<sup>9</sup>

The basic rationale for the mini-public approach is that if the random sample that is gathered to deliberate is representative of the population, and if it deliberates under good conditions, then its considered judgments after deliberation should represent what the larger population *would* think if somehow those citizens could engage in similarly good conditions for considering the issue. A great deal depends on the mini-public actually being representative and on the account of good conditions to which it is exposed.

Whenever an application of deliberative democracy depends on a randomly selected mini-public, that application raises the issue of degree of empowerment. Can or should such mini-publics supplant democracy by competitive elections? No contributor to this issue makes that argument. But in several cases, duly appointed administrators have committed in advance to implementing the recommendations of such a mini-public and, in some cases, those recommendations are binding. How much can randomly selected groups be relied upon for authoritative public decisions and in what ways? Cristina Lafont argues against relying solely on such groups for decisions, but opens the door to discussions of a possible albeit limited role for them. She usefully poses the problem from the perspective of the vast majority of citizens who will not be in a mini-public: how do the deliberations connect with them if they have not deliberated?

The essays are organized roughly in five groups. To introduce the topic of deliberative democracy, Claus Offe sketches the conflict between distrusted elites and the populism of Brexit and other plebiscitary processes, arguing that deliberation via random sampling could help fill the void, con-

necting the people to policy-making. Nicole Curato, John Dryzek, Selen Ercan, Carolyn Hendriks, and Simon Niemeyer offer a systematic overview of what they regard as the key findings of the deliberative democracy research around the globe. Their findings are optimistic and differ from some of the critical perspectives presented later in the issue.

The second group of essays might be labeled “new thinking.” Bernard Manin proposes that the core of deliberation is captured by what he calls the “adversarial principle,” according to which public discussions should be organized to allow a “confrontation of opposing positions.” Implementing this idea is more complex than first appears and has a history going back to Ancient Athenian institutions. Manin offers various suggestions, including some for modern televised debates. H el ene Landemore asks whether deliberative democracy can be saved from the current crisis of representative democracy around the world. Her positive answer depends on an ambitious sketch of an “open democracy,” in which institutions would be inclusive and power accessible to ordinary citizens, including through representation in deliberative bodies of randomly chosen citizens, citizens’ initiatives, and crowd-sourced law-making and policy processes.

The next two groups of essays alternately present and respond to some of the main criticisms of deliberative democracy. Arthur Lupia and Anne Norton argue in their elegant phrasing that “inequality is always in the room.” If the outcome of deliberation is inevitably distorted by the more advantaged participants dominating the discussions, the results are not likely to represent the true views of the rest of the group. Rather, any such results would reproduce the inequalities and power relations among the participants. Inequality among participants is one of the major challenges to the larger idea of implementing deliberative

*Introduction* democracy – a challenge that must be pursued with great seriousness.

Responding to critics of deliberation, Alice Siu reflects on the role of inequality using data from Deliberative Polls, both online and face-to-face, finding far less distortion than critics expect. She also offers surprising findings on who takes the most talking time, who has the greatest influence on the outcomes, and who offers more “justified” arguments, supplying reasons for their positions. But this is an ongoing empirical question. No one has yet systematically studied the role of inequality under different deliberative designs. More research with controlled experiments could clarify this issue further.

Ian Shapiro robustly defends the model of competitive democracy as the alternative to deliberative democracy. He believes that through party competition we can foster an “argumentative ideal” that has elements of deliberation, but does not suffer from either the lack of realism of the deliberative model or the potential veto power of intense minorities that emerges when consensus is the decision rule or goal. He champions an argumentative version of the Westminster two-party competition model in which each side must make its case. He also criticizes the room for deliberation offered in multiparty proportional representation systems, in an argument that contrasts with the position offered by André Bächtiger and Simon Beste in their contribution to this issue.

Bächtiger and Beste contest the “standard argument that politicians do not want to deliberate and citizens are not able to.” They draw on extensive empirical work with the “Discourse Quality Index,” which examines the reasoning offered by deliberators in legislatures, especially on the question of whether they offer justifications for their assertions. They find that, despite the current cynicism about representative democracy, room for genuine deliberation appears in

some parliamentary contexts, particularly those characterized by “coalition settings, second chambers, secrecy, low party discipline, low issue polarization, and the strong presence of moderate parties.” Their institutional prescription for parliament contrasts sharply with Shapiro’s. Regarding public deliberation, they draw on EuroPolis, a European-wide Deliberative Poll with a sample of ordinary citizens, and provide evidence that the citizens were able to reason in ways comparable to those of the parliamentarians.

In her essay, Cristina Lafont makes a case against giving any decisional status to mini-publics. Although she grants that deliberating mini-publics may make reasonable decisions when the participants have considered the options in good conditions, to grant them power over decisions on this basis would be to give “blind deference” to a “special version of elite conceptions of democracy.” On the representativeness argument for granting them power, the public might think that the participants in a mini-public “share our interests, values, and policy objectives,” so their views will “coincide with what we would have thought if we had participated.” Yet most larger mini-publics (including those that collect post-deliberative opinions in confidential questionnaires) are not designed to produce consensus. In this respect, they differ from the model of deliberation most criticized by Shapiro. Hence there is almost always, at least in the larger mini-publics, a majority view and a minority view revealed in the final confidential questionnaires or vote. Lafont argues that an individual voter who has not participated cannot be sure whether she would have been in the majority or in the minority after deliberation. Why should she be bound by the majority view post-deliberation if she might have come out with the minority view?

No essay in this issue stands as an explicit response to Lafont, as we fortuitously

had for the first two critics. So we will try to respond here by asking: if the citizens in the broader public believe in democracy, then why might they not take as seriously the recommendations of deliberating majorities as they do the decisions of non-deliberating majorities? In a deliberating mini-public, the final reported views are what the people in microcosm concluded on the basis of in-depth deliberation. If a decision is taken on the basis of the majority after deliberation, there will certainly be dissenters, as with any majority decision. Much depends on what we mean by the public taking the results seriously. Lafont argues forcefully against any trust-based argument that might suggest “blind deference” to the majority in a randomly selected mini-public. Perhaps, however, duly elected officials might delegate some responsibility to such a group. How much decisional status should the recommendations of a mini-public have? Should these mini-publics be an official part of a decision process or only part of the dialogue in the public sphere? Are there contexts in which they could bear the full weight of an institutional decision? The question of role poses a central challenge for deliberations based on mini-publics.

The final section focuses on applications. The essays shed light on the questions: who deliberates, and in what context? As Cass Sunstein notes, the term *deliberative democracy* was coined in a study of how deliberation took place in the Senate, in ways that, to some degree, matched how the Constitution’s framers thought the Senate ought to act.<sup>10</sup> Deliberation is a crucial part of government in the executive and judicial branches. Sunstein distills his experience in government to offer a compelling picture of deliberation taking place within the policy teams grappling with interagency issues and the production of good policy in the executive branch of the U.S. government. His account seems to satisfy all the criteria for

high-quality deliberation. In this case, however, high-level policy-makers, rather than the people themselves or their elected representatives, are doing the deliberating.

James Fishkin, Roy William Mayega, Lynn Atuyambe, Nathan Tumuhamy, Julius Ssentongo, Alice Siu, and William Bazeyo examine the first Deliberative Polls in Africa. Those skeptical of the capacity of randomly selected bodies to make intelligent decisions have assumed that if such procedures are viable at all, they must apply only or primarily in developed countries with highly educated populations. Can these methods be applied to populations with low literacy and very low educational levels? Can the people in such communities reason usefully about the trade-offs of major policy choices affecting their communities? Can they do so in ways useful for policy? The difficult issues of disaster relief and population pressure in rural Uganda pose a test case for the question: who can deliberate? In these first African Deliberative Polls, random sampling and deliberation allowed the people who must live with development policies to be consulted, with reasonable results, even in such difficult conditions.

In the final essay of the issue, Baogang He and Mark Warren look outside the purview of competitive democratic systems to ask whether the practice of deliberative democracy may be feasible within authoritarian regimes, such as China. They ask: why have some Chinese authorities embraced and supported the form of a randomly selected mini-public for “grass roots experimentation” for local government decisions? Can deliberating mini-publics be properly conducted for budget and other local decisions in a society that lacks the civil liberties and individual rights familiar in competitive democracies? What are the effects and prospects of what they call “deliberative authoritarianism?” Will such experimentation lead to further institutional de-

James S.  
Fishkin  
& Jane  
Mansbridge

*Introduction* velopment in line with democratic values or will it simply serve to legitimate current power relations and institutions, precluding long-term reform?

This issue examines a wide range of deliberative democratic practices and applications. It includes competitive democracies, authoritarian regimes, and developed and developing countries. It opens up debates on how to improve deliberation in legislatures and other governmental bodies, and on what institutional roles and decision power randomly selected citizens might have after they have been able to discuss issues in some depth under good conditions. It asks how we might effectively

reform mass politics and public debate to avoid not only fake news, but also the increasing pressures of narrow-casting in the commercial media, self-sorting into information bubbles on social media, and geographic sorting by ideology as people move to more politically homogeneous communities. It should leave the reader asking: What challenges and critiques are most telling for deliberative democracy? How serious are the ways in which deliberation can go awry? Whatever conclusions our readers reach on these questions, this issue depicts a vibrant area of democratic experimentation at a time when many have lost confidence in the processes of electoral representative democracy.

#### ENDNOTES

\* Contributor Biographies: JAMES S. FISHKIN, a Fellow of the American Academy since 2014, is Director of the Center for Deliberative Democracy, the Janet M. Peck Chair in International Communication, Professor of Communication, and Professor of Political Science (by courtesy) at Stanford University. He is the author of *When the People Speak: Deliberative Democracy and Public Consultation* (2009), *Deliberation Day* (with Bruce Ackerman, 2004), and *The Voice of the People: Public Opinion and Democracy* (1995).

JANE MANSBRIDGE, a Fellow of the American Academy since 1994, is the Charles F. Adams Professor of Political Leadership and Democratic Values at the Harvard Kennedy School. She is the author of *Why We Lost the ERA* (1986) and *Beyond Adversary Democracy* (1983), and coeditor of *Political Negotiation* (with Cathie Jo Martin, 2015) and *Deliberative Systems* (with John Parkinson, 2012).

<sup>1</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma City: University of Oklahoma Press, 1991).

<sup>2</sup> Larry Diamond, "Facing Up to Democratic Recession," *Journal of Democracy* 26 (1) (January 2015): 141–155.

<sup>3</sup> Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (Cambridge: Cambridge University Press, 2010).

<sup>4</sup> Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Row, 1942), 263.

<sup>5</sup> Christopher H. Achen and Larry M. Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton, N.J.: Princeton University Press, 2015).

<sup>6</sup> For the legitimacy of the distortions from economic inequality, see Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (Princeton, N.J.: Princeton University Press, 2014).

<sup>7</sup> The work began with Joseph Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994), followed by Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University

Press, 1996); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton, N.J.: Princeton University Press, 2004); Jürg Steiner, André Bächtiger, Markus Spörndli, and Marco R. Steenbergen, *Deliberative Politics in Action: Analyzing Parliamentary Discourse* (Cambridge: Cambridge University Press, 2004); and further work inspired by this Swiss team and others. James S.  
Fishkin  
& Jane  
Mansbridge

<sup>8</sup> See, for example, Michael A. Neblo, Kevin M. Esterling, Ryan P. Kennedy, David M. J. Lazer, and Anand E. Sokhey, “Who Wants to Deliberate – And Why?” *American Political Science Review* 104 (3) (August 2010): 1 – 18.

<sup>9</sup> On citizens’ juries, see the work of Ned Crosby and Peter Dienel. On binding decisions and other features of a variety of randomly selected mini-publics, see Yves Sintomer, *Petite histoire de l’expérimentation démocratique: Tirage au sort et politique d’Athènes à nos jours* (Paris: La Découverte, 2011).

<sup>10</sup> Bessette, *The Mild Voice of Reason*.

# Referendum vs. Institutionalized Deliberation: What Democratic Theorists Can Learn from the 2016 Brexit Decision

Claus Offe

*Abstract: This essay proceeds in three steps. First, it will briefly outline the often invoked “crisis” of representative democracy and its major symptoms. Second, it will discuss a popular yet, as I shall argue, worryingly misguided response to that crisis: namely, the switch to plebiscitarian methods of “direct” democracy, as advocated, for example, by rightist populist forces in many European Union member states. The United Kingdom’s Brexit referendum of June 2016 illuminates the weaknesses of this approach. Third, it will suggest a rough design for enriching representative electoral democracy with nonelectoral (but “aleatory,” or randomized) and nonmajoritarian (but deliberative and consultative) bodies and their peculiar methods of political will formation (as opposed to the expression of a popular will already formed).*

CLAUS OFFE, a Foreign Honorary Member of the American Academy since 1995, is Professor Emeritus of Political Sociology at the Hertie School of Governance in Germany. He is author of *Europe Entrapped* (2015), *Varieties of Transition: The East European and East German Experience* (1997), and *Modernity and the State: East, West* (1996).

One core question of political theory is how best to make collectively binding decisions: who should make those decisions, and by what rules and procedures? The modalities of decision-making are not just something to be determined at the founding, or “constitutional” moment, of a political community once and for all times by some *pouvoir constituant* (constituent power). The question of whether our rules and procedures are still “good enough” or whether they are in need of amendments and adjustments is an ongoing challenge in the background of any political process, and certainly one that qualifies as democratic.

Yet how should we decide how to decide? The difficulty of any conceivable answer to this question derives from its tricky recursive logic. The answer, in order to be recognized as valid and binding, must itself be decided upon – but how and by whom? If we were able to deduce the “right” mode of decision-making from a robust theory of a divine order, as in an ideal-typical theocratic regime, the problem

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would go away. Conversely, if we had a scientific theory about whose decision-making competencies and methods would yield optimal policy results and rational problem solutions (as was the claim of “scientific” state socialism), the problem of deciding how to decide would also evaporate and the one best way of running a country and its economy would reveal itself beyond any doubt. Given the modern obsolescence of either of these certainties, we need to face the fact that neither constitutional methods of arriving at decisions nor the resulting decisions themselves (that is, policies) are capable of having unquestionable validity. At best, political procedures can be consistent with widely shared normative premises of fairness, and policy outcomes can be regrettable – or not.

Any account of what we mean by liberal representative democracy will, rather uncontroversially, include the following features: Liberal democracy is a political system applying (at least, so far) only to nation-states and their subnational territorial components. The right to rule derives, directly or indirectly, from periodic and contested elections through which the composition of legislative assemblies and governments is determined. It is premised upon the dichotomy between rulers and ruled, or (elected) elites and (voting) nonelites. Citizens, regardless of other resources they control, enjoy equal political rights and freedoms (voting, communication, association) as a matter of constitutional guarantee. Rule of law and division of powers constrain the use of state power and its monopolistic exercise, thus making its use at least minimally accountable. As an empirical generalization, we can add that democracies are constantly challenged and self-scrutinizing political systems that face on-going controversial demands for their own revision, development, and improvement. Democracies are continuously being renegotiated. They

are quintessential political systems “on the move,” driven by the legitimacy of rule and its effectiveness.

In the course of the last forty years of theoretical self-reflection and empirical observation of the stability, modes of operation, and trajectories of change of liberal representative democracies, many propositions have been advanced that converge on the diagnosis of a “crisis,” or the creeping deformation, of liberal representative democracy. This multifaceted crisis exists in the absence of explicitly *nondemocratic* (totalitarian, theocratic, or otherwise authoritarian) countermodels and theoretical doctrines of how political rule should be conducted. To oversimplify: The vast majority of contemporary mankind believes in and endorses (some version of the above) democratic principles and promises.<sup>1</sup> At the same time, large minorities and sometimes majorities of inhabitants of existing liberal democracies are dissatisfied with, and feel left out by or alienated from, the democratic routines and practices they experience. We may thus say that abstract liberal democracy is celebrating its near-global victory, while concrete and existing democracies are widely looked at with discontent and frustration over failures of both the legitimacy and effectiveness of democratic rule.

More specific, liberal democracies of the Organisation for Economic Co-operation and Development have experienced symptoms of stress and malfunctioning over the last generation that have activated a global discourse of political theorists and practitioners to suggest innovative remedies. What are the deficiencies or illnesses to which these remedies are targeted? To generalize, symptoms of this dissatisfaction include the following.

1) Apathy and other forms of nonparticipation and political alienation are on the rise and are undermining the increasingly nominal equality of political rights. The least advantaged strata of populations

(by education, economic, and class status, and also by age, gender, and minority status) show the strongest features of (self-) exclusion. As many people in these categories do not vote or participate through membership in parties and other formal organizations, a vicious cycle is set in motion by which elites of such organizations find little strategic incentive to respond to the interests and values of the marginalized groups. At the upper end of the socioeconomic hierarchy, investors, financial institutions, employers, and a host of organized interests enjoy de facto privileges of shaping political agendas and constraining the resources that elected governments have available for the conduct of policies.

2) Political parties and elites have suffered from a rapid loss of trust concerning both their willingness and ability to respond to nonelites and to promote desired kinds of social and economic change. The “monitor-y” tactics of commercial and social media, with their “gotcha” incentives, further discredit elites. As major socioeconomic problems (such as low growth, precariousness of employment, widening inequality, social exclusion, and international conflicts) have come to be seen as beyond the reach of any conceivable government, the perceived political purchasing power of the ballot declines. In many cases, the parameters set by the political economy of capitalist democracies have enforced a convergence of major political parties that makes them virtually indistinguishable in terms of programs and ideology. The result tends to be restricting competition to the appeal of leading personalities.

3) If political mobilization and contestation occur at all, they do so, to a rapidly growing extent, in rightist populist ways: by appeals not to shared interests or some version of the common good, but to primordial and ethnonational identities and “moral majorities,” and in confrontational opposition to established elites, outside groups,

minorities, and everything “foreign,” including, in the EU context, Brussels as the location of its executive branch. The kind of social protection populists offer derives not from constituted state power to achieve collective goals through policies, but from territorial borders of nation-states. Populist movements and parties are, in many cases, not instrumentally focused on policy, but expressively focused on the politics of protest, obstruction, and the assertion of some kind of identity against a distrusted “establishment” and political class, as well as minorities and foreign or supranational powers. They also focus on “strong” leaders whose space of action must not be unduly constrained by liberal constitutional and other inhibitions, thus giving rise to the oxymoronic phenomenon of illiberal democracy and more-or-less soft forms of electoral authoritarianism. Its preferred form of legitimation (of both leaders and policies) is by reference to plebiscitarian acclamation and referenda, which allegedly are best suited to reveal the true, authentic, unified, and uncorrupted will of the people – a will that, in reality, is often but a mere artifact of media and party campaigns confronting the “establishment,” foreign forces, and minorities.

4) The space left to maneuver for governing elites, and hence the extent to which they can relate at all responsively to popular interests and demands, is increasingly limited by the international political economy (globalization) with its neoliberal imperatives of competitiveness, austerity, debt consolidation, and tax competition, giving rise to a condition now often described as “postdemocracy.” Parameters that determine peoples’ life chances and living conditions – whether in their roles as workers, consumers, savers, or citizens receiving state-provided services and transfers – are set by technocratic supranational elites at places and levels that have largely escaped the reach of national policy-making

and its democratic accountability, while nation-states suffer from a decline of their “governing capacity,” facing conditions in which they by themselves are unable to provide for their citizens’ socioeconomic, civil, and military security and the integrity of their physical environment.

The battle cry of rightist populism is: “Let us, the people decide” and take control out of the hands of untrustworthy national elites and illegitimate supranational forces. The arsenal of plebiscitarian methods (which, to be sure, are sometimes also advocated by some nonpopulist forces) includes referenda on policy issues, citizen initiatives to hold such referenda, and agenda initiatives to force legislatures to address certain policy issues. The use of survey research for identifying popular preferences and then elevating them to the status of policy priorities on leaders’ platforms can sometimes be seen as cases of social science–assisted populism. Thirty-six of the forty-seven member states of the Council of Europe have by now adopted one or all of these direct-democratic devices as part of their constitutional repertoire. In 2012, the EU itself introduced the European Citizen Initiative as a device of supranational direct democracy. In recent years, these instruments of direct democracy have been applied to policies as varied as whether to permit or ban the construction of minarets, restrictions on migration, the public use of a minority language, the acquisition of agricultural land by foreigners, same sex marriage, the (retroactive) imposition of inheritance taxes, and the introduction of a basic income. For example, in the context of the recent failed military coup in Turkey, President Erdoğan has gestured at holding a referendum on reintroducing the death penalty. The target groups of these referendum campaigns may be Muslims, migrants, sexual minorities, wealthy heirs, foreign real estate speculators, European institutions,

criminal enemies of the state, or ethnolinguistic minorities. Although Switzerland has the oldest and most famous tradition of direct democratic legislation in Europe (usually preceded in that country by extensive and reasonably balanced public debates on issues), these practices have spread in more limited forms to other countries in Europe, with hot spots in the rightist populist regimes that have emerged in many of the post-Communist polities. In Hungary, a national referendum on a mandatory EU migrant quota was held (and lost by the government due to insufficient turnout) in October of 2016. Yet probably the most consequential referendum held in Europe to date appeared in precisely the European country where parliamentary representative democracy was born: the United Kingdom.

The Brexit referendum of June 23, 2016, asked citizens to vote on whether the United Kingdom should leave the European Union or remain a member state. Note that this referendum was called for, but not initiated by, a rightist populist political party. To the contrary, it was politically designed by David Cameron, a Conservative yet pro-European prime minister, who intended to curb the growing political influence of the populist United Kingdom Independence Party (UKIP), thus turning, he hoped, the means of populists against their ends. To the surprise of most observers, that plan failed when a narrow majority of voters actually voted Leave. Was it a wise decision to let the question of Britain’s EU membership be decided by referendum? In addressing this question, I shall refrain from discussing the substantive political question of whether Brexit is a “good” move, confining myself to the issue of whether the method used in making the decision was an adequate one.

Here is a rough summary of the events. In the 2014 general elections to the European Parliament, UKIP, the British anti-EU political party, won a relative majority of 27.5

percent of the vote, with most of its votes taken from those defecting from the Conservative Party. Recognition of this growing threat prompted incumbent Conservative Prime Minister Cameron to commit himself in January 2013 to holding a referendum on the Brexit issue by the year 2017 if he were reelected in the national elections of May 2015. His decision was a concession to the rightist populist demand to let “the people” express its will directly, rather than being represented by distrusted elites suspected of being corrupted by their own or other special or “foreign” interests. Populists are to be classified as “rightist” when framing the people in terms of nativist ethnic belonging versus some strange, foreign, and (as such) threatening enemy. Cameron’s promise to hold a referendum was intended to serve the dual purpose of 1) increasing British bargaining power in ongoing negotiations with EU partners (who were seen as averse to further UKIP gains and the prospect of Brexit and hence ready to grant concessions to the British government on the key issues of Euro-mobility and “ever closer” integration) and 2) immunizing the Conservative electoral base against further defections of voters, as Eurosceptic Conservative voters were now offered the option of expressing their Leave preference without having to switch to supporting UKIP.

Both of these purposes were, to an extent, achieved, the second more fully than the first. The turn to plebiscitarian methods (which are foreign to the United Kingdom’s constitutional traditions) came at the price of undermining the authority of Parliament, the members of which opposed Brexit by a large majority. Having won the 2015 elections and being bound by his referendum promise, Cameron initiated the EU Referendum Act, which was passed by the House of Commons in December 2015. When the referendum was eventually held on June 23, 2016, the result

was 51.9 percent Leave versus 48.1 percent Remain, with the citizenry sharply divided along class, age, and regional lines, but not equally sharply along party lines. Given a turnout of 71.8 percent of all eligible voters, roughly 37.3 percent of the electorate will have caused (if it actually comes to that) Britain’s exit from the EU by a margin of just four percentage points.<sup>2</sup>

When making their decision on referendum day, citizens were largely left with their own individual means of will formation (their beliefs and preferences) and without much clear guidance from the political parties as to which of the alternatives, together with their entirely unknown implications, to choose. The two major parties were either openly divided (Conservatives) or deeply ambivalent (Labour) about what to recommend to their voters. Yet the only party that was clear and committed on the issue (UKIP) had no chance of achieving the parliamentary representation through majoritarian British electoral law to follow its option through. The division of pros and cons was almost orthogonal to the major party cleavage. Similarly divided were the media, with some of the tabloid press engaging in a vehement denunciation of the EU, often with little regard for the truth of their claims.<sup>3</sup> Moreover, both camps relied heavily on fear as a negative economic motivation: the Leavers feared losing control over the fates of “our” country to “Brussels” (or of having to compete with foreign migrant labor for jobs),<sup>4</sup> and the Remain camp feared the adverse economic consequences (jobs, trade, investment, exchange rates) of Brexit. Appeals to the advantages, political attractions, prior commitments, hopes, and promises of remaining were rarely advanced, implying that there were few. Left in a state of disorientation and anxiety, and being informed by the media and polling organizations that the contest would be a tight one (suggesting that every vote or abstention could make

a big difference), voters were left to rely on their gut feelings, rather than an informed judgment, on the merits of the two alternatives.<sup>5</sup> The dichotomy of a referendum further induced the voters to ignore the numerous intermediate solutions that might have been worked out through bargaining following the formal declaration of Brexit. One of the damages the reliance on the plebiscitarian method can do stems from its one-sided fixation on voting at the expense of the two other modes of democratic political communication: arguing and bargaining.<sup>6</sup> Plebiscitarian procedures thus impoverish the tool box of democratic politics by eliminating the space for postvoting reasoning and compromise-finding in the institutional framework of representative democracy. They privilege the fast, impulsive snapshot reaction generated by passions and visceral instincts over the more time-consuming balancing of interests and the typically lengthier process of persuasion through argument. As a consequence, consistency is not required: voters can simultaneously opt for lower taxes and greater expenditures, or for cheaper gas and stricter environmental standards.

Not only were the two major parties split in their preferences between Remain and Leave, but voters were also “cross-pressured” at the individual level. Many voters were motivated by the issues of immigration and “sovereignty,” with the support for the Leave alternative fueled by an identity-based opposition to having to adopt “foreign-made” EU laws (“let’s take back control of our country”). Yet, at the same time, many of the same voters “regarded the economic impact of leaving the EU negatively. ... No less than 40 [percent] reckoned that Britain would be worse off economically if it left the EU.... The two central issues of the campaign were seemingly pulling voters in opposite directions.”<sup>7</sup> Fears for the economy, based on socioeconomic interest, provided a reason for voting in favor of Remain.

In this implicit debate of identity versus interest, the elderly and the less-educated considered EU membership both a cultural and economic threat and hence gravitated toward the Leave option, while the best-educated, younger (below age forty-five) voters welcomed diversity within Britain because they could “compete with ease in an internationalised labour market.”<sup>8</sup>

How has the Brexit referendum performed in realizing the democratic principle of equality of political rights to make one’s voice heard? Good democrats know that those affected by the law must have a voice in making the law. Yet voting rights in the Brexit case became effective only by passing three filters: First, in the United Kingdom, you must be a citizen, not just a resident, to be eligible for voter registration in national elections/referenda. Millions of mainland EU citizens residing in the United Kingdom were thus not allowed to register and vote. That would be immaterial had the referendum been on a “purely British” issue. But here the category of people most directly affected by Brexit are exactly those migrant workers from member states residing in the United Kingdom. After Brexit, these migrant workers are likely to be deprived of some or all of their socioeconomic rights as EU citizens.<sup>9</sup>

Second, you must register in order to be admitted to the voting booth. “Many people chose not to register to vote because they feared the debt collection agencies that are allowed access to the electoral register.”<sup>10</sup> As many as seven million eligible adults were not registered to vote in the United Kingdom in 2016, perhaps in part due to that deterrence effect.

Third, you must vote. Thirteen million registered voters did not turn out. They were disproportionately young, renters, members of ethnic minorities, and recent movers. Older people voted in greater proportion. They generally voted for Leave, while among those aged eighteen to twenty-four,

73 percent voted (if they voted) for Remain. But the youngest age groups also had the largest share of abstainers. Again, a paradox shows up in that those affected by the outcome for the longest time span (the young) had the lowest impact on that outcome, and those least affected the greatest impact.

So much for the democratic egalitarianism of voting in referenda. In regular elections, contending political parties provide some guidance to voters and tend to make an effort to mobilize in demographically balanced ways. Now another problem of referenda is that there is no way to make sure that the answer voters give is actually their answer to the specific question they are asked: in this case the question of EU membership or not. Chances are that the answer the Leavers gave was the answer to an entirely different question, such as: “Do you want to seize the opportunity to send a hostile message and cause trouble to the hated political establishment – be it the national or the one in Brussels?”<sup>11</sup> If *this* is the question being actually answered (and answering “yes” is less inhibited because of a widespread belief that the Remain camp would win anyway), there is no reason for voters to stick to their answer for even a single day after the vote. When surveyed immediately after the referendum, “7 [percent] of those who voted Leave feel like they did not make the right choice,” while no less than 29 percent considered their vote instrumentally futile as the two goals of the Leave campaign could not, in fact, both be accomplished in the upcoming Brexit negotiations with the EU: namely, the interest-related goal to stay in the single market and enjoy its economic advantages and the identity-related goal to limit freedom of movement of EU citizens and to “take back control.”<sup>12</sup> Concerns of interest and those of identity seem to have pulled voters in different directions.

Given the vast and highly uncertain short-term as well as long-term repercus-

sions of the largely unanticipated referendum outcome (for Britain and for the geopolitical role of the EU and its prospects for further disintegration), over four million voters signed a petition in the days after the referendum that called for holding a second referendum, thus indicating a widespread sense of regret, as well as alarm, over the outcome. Yet such a repetition would seemingly have required another Referendum Act as its legal basis. It would have opened the horrifying perspective of an endless chain of further referenda on the outcomes of prior referenda: vote until the outcome seems right! If the first is seen by voters as ill-considered and in need of self-correction, why should the second fare better?<sup>13</sup>

How can the decision to let the relative majority of those participating in the referendum decide on a complex, highly consequential yet, at the same time, most unpredictable national issue be justified as the “right” procedural decision – rather than as the (eventually failed) opportunistic calculus of a leading politician to maintain his power over his party and the country? In other words: what is this outcome’s procedural source of validity and normative bindingness? The procedural design of the Referendum Act was ill-considered. It failed to make use of the several safety valves that can be applied in referenda in order to strengthen the normative bindingness, or legitimacy, of the outcome: that is, its prospects of being durably and universally recognized as reasonable and hence valid, rather than as a regrettable collective misstep. For one thing, a *quorum*, or minimally required turnout of voters, could have been stipulated, such as a 75 percent requirement. The stipulation of such a threshold, however, might have provided the opportunity for the Remain side to sabotage the referendum by launching an abstain campaign. Another possibility might be a *supermajority* requirement, such as a 60 percent threshold for the winner.<sup>14</sup> Adopting such a

supermajority rule would avoid deciding a matter of this magnitude by a slim and possibly even accidental and unstable majority. A third safety measure could have been the use of *federal* constraints. Given that the United Kingdom is a multinational political entity, one or more of its constituent nations – Northern Ireland, Wales, and in particular Scotland (where the Remain vote achieved a substantial majority) – could have been procedurally protected from defeat by a (narrow) overall *national* majority by granting Scotland autonomy rights concerning the issue of EU membership. In fact, the referendum result has strengthened Scotland’s claim for national autonomy, thus putting into political jeopardy the very unity of the United Kingdom. Finally, a *test vote* (as sometimes taken in party groups of legislative bodies) could have been provided, the result of which would have informed voters about dispositions of their fellow citizens and encourage them to revise or assert their own dispositions accordingly in the second (and only valid) round.

Applying some or all of these provisions could have been justified by the fact that the Brexit referendum was a one-shot and highly consequential decision, which will create consequences that are certain to be felt in the long term. In contrast, the “normal” democratic procedure of holding contested elections is defined by its periodicity, meaning that governing authority is granted *pro tempore* and that losers of an election will have another chance in four or five years’ time, with both competing parties and members of the general public given a learning opportunity to revise platforms and preferences during the interval. An election constitutes both a government and an opposition of losers, while a referendum constitutes a *fait accompli* that can no longer be challenged.<sup>15</sup> If after an ordinary legislative election, policies are considered to have gone wrong, there is someone to blame (and punish) in the next election,

whereas the voting public can only blame itself (that is, nobody in particular, since the vote is secret and nobody can be held accountable) in case the results of a referendum turn out to be widely seen as mistaken.

A further provision that *was*, in fact, deployed in the Brexit referendum was the procedural stipulation that the government is not strictly bound to implement the result, but can treat it as merely advisory. As sovereignty resides in Parliament, it is, arguably, that representative body that must eventually decide whether or not to endorse and implement, through its law-making, the referendum decision. In theory, the only thing that even the most sovereign body cannot do is abdicate its own law-making powers and transfer them to another body, such as the multitude of citizens voting in a referendum. It seems to follow that a prime minister cannot self-bindingly promise voters that he or she will follow their expressed preferences as if they constituted an act of legislation. Absent a parliamentary or at least executive ratification of the (presumed) popular will as expressed in a referendum, such a referendum cannot be binding. For example, the invocation of Article 50 of the Treaty on the European Union (TEU) – the article that prescribes the first step of the procedures of actually exiting the Union – must be an act of Parliament or at least, if “royal prerogative” were to apply (which is bitterly contested), a decision of the prime minister, who in turn might be seen as in need of winning the legitimacy of her or his decision through an endorsement through regular elections (rather than a nonelectoral accession to office, as in the case of Prime Minister Theresa May). These manifold ambiguities and disputes illustrate the extent to which the “will of the people” is a largely elusive substance contingent on the procedures by which it is being assessed. Holding a referendum has not been, in the instance of Brexit, a way to settle a question, but an in-

advertent move to open a constitutional Pandora's box. The attempt to fight populism by adopting its own plebiscitarian weapon has not only misfired, but has had a destructive impact upon the principle of representative government.

To be sure, a parliamentary validation of the referendum decision might well be the result of principled argument and proper deliberation, weighing the merits of the "advice" the voting public has offered against alternative policies. Yet the sovereignty of Parliament, in the sense of having the last and decisive word, has largely been rendered nominal by the referendum and the legislature's prior decision to hold that referendum. By adopting the EU Referendum Act, thereby (seemingly) passing its legislative responsibilities to the "people," the Parliament has virtually destroyed its recognition as a body to be credited with the capacity to form policy on the basis of informed, considered, and balanced argument. It has eschewed its responsibility to do so, thereby confirming, in a way, the caricature populists paint of members of the "political class." If Parliament abdicates its law-making authority on as weighty an issue as EU membership, what should prevent it from doing so on other issues in the future?<sup>16</sup>

Having unleashed the plebiscitarian forces voicing fear of foreign control and foreign migrants, neither the political parties nor the members of Parliament could henceforth afford to advocate any solutions to future UK-EU relations that could be denounced as defying the referendum's "advice." Politicians cannot be expected to commit electoral suicide by refusing to follow the "will of the people," the expression of which they themselves had allowed for, even if only as part of a power game. These problems (and *not* an electoral or parliamentary defeat) made the committed Remainer David Cameron disappear from the scene of UK national politics in a matter of

weeks, while the most prominent Leave protagonist, Boris Johnson, moved up to the position of Britain's Foreign Secretary. The new prime minister's signature tautology – "Brexit means Brexit," being void of any information about what Brexit means – ratifies the unconditional surrender of representative to plebiscitarian will formation. It also gives *carte blanche* to rulers to define the meaning *ex post*. As constitutional scholars Richard Gordon and Rowena Moffatt have stated with unfathomable yet inconclusive juridical wisdom: "In practice, the ... referendum outcome will bind the government. In theory it is advisory but in reality its result will be decisive for what happens next."<sup>17</sup> At the time of the submission of this essay in December 2016, the answer to this question is by no means settled by the referendum, but remains a pending case before the highest court of the country.

Given all these premises, dilemmas, and consequences, the Brexit referendum must be considered a clear and unambiguous lesson on what democracies ought *not* to do. Holding referenda with a 50 percent majority on important substantive policy issues with substantial yet unknown long-term results is a misguided remedy to the ills of liberal democracy. Referenda encourage the accountability-free expression of poorly considered mass preferences and de-emphasize requirements of consistency, compromise-building, and the reflection on consequences. By inviting citizens to leap into the dark, they create irrevocable facts and preclude learning. They often betray minimal standards of rational policy formation, traces of which are institutionalized in even the most corrupted practices of parliamentary debate, party competition, and mass media reporting. They anonymize the locus of accountability. If these critical generalizations are only partly right, the urgent question is: can we think of better and smarter – more reliably "regret-avoid-



ing” – modes of making highly salient decisions? Otherwise, we may regret decisions that fail to take sufficient account of the future, other people, and the facts.<sup>18</sup> How can we minimize these forms of rational regret while maintaining the basic tenets of liberal democratic theory: namely, equality of civil and political rights, freedom of opinion, and the division of state powers? The remainder of this essay will consist of a short and schematic account of what should be done instead on the basis of deliberative democratic theory.

Apart from large literatures on new social movements, civil society, and social capital, a major conceptual and theoretical innovation in democratic theory over the last generation has been the idea of deliberative democracy. Compared with conventional approaches in democratic political theory, deliberative theory performs a dual shift of emphasis. In one shift that has become increasingly popular among theorists, and even to some degree in practice, deliberation is brought to the public through a partial move from *territorial* representation to *aleatory*,<sup>19</sup> or randomized, representation – an analog to jury selection through sortition in the common law countries. This use of randomly selected citizens also serves to partially dissolve the conventional dichotomy of ruling elites representing voting yet ruled nonelites. Few suggest replacing current political institutions with such bodies; they are intended to complement existing institutions to help correct their known deficiencies.

The second shift moves from an ideal of maximizing the citizens’ expression of political preferences (in participatory democracy, as many people as possible should have a chance to voice their preferences on as many issues as possible and as directly as possible) to maximizing the citizens’ capacity to *form* preferences and judgments on public affairs they will not later regret. How

can preference formation be improved so as to make the citizen preferences that will later be translated into policies by governing elites more regret-proof?

The first of these two major reorientations of democratic innovation involves complementing the universe of the adult permanent legal residents of the territory of a state (or municipal entity or province), who are the ultimate source of popular sovereignty, with a small body (“mini-public” or “deliberative panel”) of persons that is (as accurately as possible) statistically representative of the whole. Constituting active citizenship by lot is an ancient idea, dating back to the times of Athenian democracy (and found, to some degree, in Renaissance Italian city republics), that fell into discredit in the course of the French and American revolutions with the crypto-aristocratic notion that the people can be represented only through elected bodies and leaders.<sup>20</sup> Lotteries as a procedure of recruiting people for public roles are typically regarded as risky because they rely on highly optimistic assumptions concerning both the readiness and the competence of those chosen by lot to perform the needed public roles. Yet both the readiness and competence objections can be dealt with through appropriate institutional precautions.

The readiness of randomly selected candidates to assume the tasks assigned to them by lot can be enhanced through a compensation that follows a rule of thumb such as “no loss, no gain,” with a cap of, say, 150 percent of the median income, depending on the complexity of the issue under consideration. To enhance that readiness, the duration of the time in “office” might also be limited to a maximum of six months, for example. Nevertheless, civic duty to participate in deliberative mini-publics will probably remain hard to enforce, and participants who see themselves as being coerced will likely not properly perform. Techniques of stratified sampling may offer a solution in

case the characteristics of the sample deviate far (by gender, age, socioeconomic, educational, and minority status) from those of the constituency as a whole. The logistical problems of organizing face-to-face deliberation sessions on national legislation in geographically large countries might be alleviated by first selecting (possibly, again, by lot) two municipal units from which the samples are to be drawn. Although in composing that sample a measure of self-selection cannot be avoided, the statistical representativeness of members of the mini-publics thus selected should be much superior to that of the composition of ordinary legislative bodies. The relatively small size of deliberative panels (probably fewer than one hundred candidates) must be big enough to allow for representativeness on all relevant variables, yet small enough to allow for serious and inclusive face-to-face arguing under the supervision of a trained facilitator. The virtue of lottery representation would consist not only in providing a political role to ordinary citizens, but in denying such a role to political parties and organized interests. Unlike the parties and interest groups, randomly selected citizens are unlikely to have the interest or the capacity to entrench themselves in their public role of deliberators.

Even thornier than the issue of readiness to participate is the issue of competence. Members of issue-specific deliberative panels need to acquire a measure of understanding and expertise, as do members of legislative bodies, in order to arrive at minimally reasoned conclusions. Such expertise can be provided by an adequate number and diversity of recognized experts made available to members of a mini-public as providers of information. Concerns about deficiencies in the knowledge and experience of members of deliberative mini-publics are further reduced by the fact that no political decision-making power is vested in them. Deliberative pan-

els would perform a purely consultative function,<sup>21</sup> helping citizens form preferences that they would then express in elections and possibly referenda. And citizens must be provided access to those recommendations through the reporting of print media, brochures, and (public) electronic media. The role of deliberative bodies should be strictly advisory, addressing both elites and voters. That role should also be limited to the specific issue of public policy about which a deliberative panel is commissioned to elaborate a recommendation. The lay policy-makers who jointly author such a recommendation may conclude with a consensual recommendation or with majority and minority positions. In the latter case, a second order consensus on what stood in the way of a consensual recommendation should be provided. The two panels may also disagree in their consensual recommendations. If the recommendation is both consensual within panels and identical between the two locations, this is likely to translate into the highest degree of persuasiveness and impact on electoral outcomes. This impact is due to the enlightened vicarious judgment that “people like us” have formed on the issue at hand. The more consensual the recommendation within and between panels, the stronger its influence ought to be and probably will be on the decisions that voters and elected representatives will make.

The premise from which theorists of deliberative democracy by sortition start is the assumption that citizens do not simply have political preferences and attitudes, including preferences and aversions to particular policies. Rather, they continuously form these preferences in a process of ongoing confirmation, revision, and learning. Most of the time and on most issues, most peoples’ preferences are incomplete, inconsistent, insufficiently informed, contingent, fluid, and subject to relations of trust, as when we adopt the point of view

of others because we happen to feel confident about the adequacy of their judgment. The capacity of forming thoroughly considered judgment can today no longer be vested in individual representatives (as Burke claimed), but must emerge from the discursive confrontation of diverse members of an organized body. The key democratic act of voting is about the expression of preferences, whereas the activity taking place in randomized deliberative panels (as well as, mostly implicitly, in many other theaters, such as peer groups, schools, religious communities, media, the arts, consumption, and not least the political process itself) is that of the formation and (de)consolidation of those preferences through learning. The presence of deliberative panels – and the public perception of the conclusions they arrive at – allows ordinary citizens to get an idea about what happens when “people like us” spend time and energy on refining their preferences, finding out for themselves and others what they hold to be the right position on particular policy issues. The role of the citizen deliberators will be strictly limited to that of an advisory agency assisting citizens (including elected and appointed officials) in the process of their will formation.

For such reflexive preference learning to take place at the level of mass constituencies, deliberative panels need to be institutionalized: that is, made part of the rules regulating the process of legislation. To illustrate, one conceivable institutional design would be the following. A deliberative panel would come into being at the initiative of at least 20 percent of the members of the state or federal legislature. These members would also define the policy issue on which the panel is commissioned to deliberate. The panel would deliberate one year prior to a decision to be taken by the legislature or executive branch on the policy. Such panels would always come in pairs, with both being active in two (according

to some “most different” design) selected subterritorial entities (counties or cities). A statute would regulate the size of the panel, the sampling method, the mode of operation (including a budget for expert assistance and compensation payments), the role of facilitators and moderators, and the scheduling of meetings. Their work of (at most) six months would result in policy recommendations (consensual or otherwise) in the form of an executive summary, together with the reasoning from which the recommendations derive. The identity of members would ideally be kept anonymous through the time of deliberations so as to shield the deliberators from outside influence. Neither governments nor citizens would be pressured to follow those policy recommendations. Governments (and, perhaps, political parties) might, however, be formally required to publish an official statement specifying the reasons why they did *not* follow the advice, in cases in which they decide not to do so.

It is impossible to know whether the outcome of the Brexit decision would have been different if it had been processed through an institutional arrangement of will formation such as the one just outlined. Whatever the answer, British voters and elites would at least have been more certain that they made the right decision than they can possibly be after the experience of the Brexit referendum.

ENDNOTES

- <sup>1</sup> This generalization does not apply to the Chinese case of industrial capitalism presided over by a “Communist” party. But that model is neither intended for export nor appealing to elites or masses of Western societies.
- <sup>2</sup> The day after the referendum, Philip Stephens, chief political commentator of the *Financial Times*, commented in undisguised horror: “Who would have thought pragmatic, moderate, incrementalist Britain would tear down the political temple? This week’s referendum result was a revolt against the status quo with consequences, national and international, as profound as anything seen in postwar Europe.” Philip Stephens, “How a Cautious Nation Came to Tear Down the Political Temple,” *Financial Times*, June 24, 2016, <https://www.ft.com/content/b90a7278-3a02-11e6-9a05-82a9b15a8ee7>.
- <sup>3</sup> The ironic label “post-truth” has been attached by several commentators to populist movement practices. This label is not only deserved by the generous use populist campaigns have made of outright lies, but also, as in the Trump campaign, by their anti-intellectual aversion to expertise and educated intelligence.
- <sup>4</sup> Princeton economist Ashoka Mody has put it well: “Cameron misjudged . . . by making an economic case for remaining in the European Union rather than attempting a serious political argument for Europe – one based on shared values.” Ashoka Mody, “Don’t Panic: Britain’s Economy Can Survive Just Fine Outside the European Union,” *Independent*, July 4, 2016, <http://www.independent.co.uk/news/business/analysis-and-features/dont-panic-britains-economy-can-survive-just-fine-outside-the-european-union-a7118736.html>.
- <sup>5</sup> There is more than a grain of truth in Edmund Burke’s famous claim: “Your representative owes you . . . his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.” In the case of Brexit, it was the plain cowardice of representatives facing a populist challenger that caused this sacrifice. Edmund Burke, “Speech to the Electors of Bristol,” November 3, 1774.
- <sup>6</sup> Jon Elster, “Arguing and Bargaining in Two Constituent Assemblies,” *Journal of Constitutional Law* 2 (2) (March 2000): 345 – 421.
- <sup>7</sup> John Curtice, “Brexit: Behind the Referendum,” *Political Insight* 7 (2) (2016), <http://pli.sagepub.com/content/7/2/4.full.pdf+html>.
- <sup>8</sup> *Ibid.* Wolfgang Streeck has argued that “the losers under neoliberal internationalism [globalization] place their hopes on their nation states.” Wolfgang Streeck, “Where Are We Now? Responses to the Referendum,” *London Review of Books* 38 (4) (July 14, 2016), <http://www.lrb.co.uk/v38/n14/on-brexit/where-are-we-now#streeck>. This causal explanation of the outcome commands a great deal of empirical plausibility. But equally great is the temptation to exclaim, with the words of the great Austrian poet Ernst Jandl, “What an error!”
- <sup>9</sup> A reciprocal loss of socioeconomic status rights applies to British citizens who were economically active in EU member states and, after Brexit, are now relegated to the status of third country nationals.
- <sup>10</sup> Benjamin D. Hennig and Danny Dorling, “In Focus: The EU Referendum,” *Political Insight* 7 (2) (2016), <http://pli.sagepub.com/content/7/2/20.full>.
- <sup>11</sup> This was widely seen by commentators to have happened in a Dutch referendum held on the highly technical as well as politically rather marginal issue of a Dutch Approval Act on a European Union–Ukraine Association Agreement, which was held in The Netherlands on April 6, 2016. The outcome was a turnout of 32.8 percent, with 61 percent voting against the Act. In an interview after the referendum, the members of the rightist nationalist Citizens’ Committee EU that had successfully campaigned for holding it admitted not caring about Ukraine, but rather were just against the EU political system. See Wilmer Heck, “Oekraïne kan ons niets schelen,” NCR, March 31, 2016, <https://www.nrc.nl/nieuws/2016/03/31/oekraïne-kan-ons-niets-schelen-1606419-a969298>.

- <sup>12</sup> See James Crouch, “Voters React to Post-Referendum World,” *Opinium*, July 1, 2016, <http://opinium.co.uk/voters-react-to-post-referendum-world/>. The thought that voting for Brexit means “taking back control” is plainly delusionary, at least in the short and medium term. Article 50, which is still binding for the United Kingdom, stipulates that “the Union shall negotiate and conclude an agreement with [the UK].” In the interest of the Union to prevent the Brexit decision from becoming a template that other member states might follow, the EU is likely to opt for the harshest possible terms in negotiating Britain’s exit arrangement, thus “taking control” over the economic fates of the United Kingdom to an unprecedented extent. The Lisbon Treaty, Article 50 of the Treaty of European Union, December 13, 2007.
- <sup>13</sup> There is, however, a strong argument for having a second referendum at a later point. As the proponents of Brexit had no plan (and could not have one) concerning the many and very different versions of what is going to happen next in re-embedding Britain into the international political economy, the eventual outcome of negotiations with the EU must also be subject to a (dis)approval by voters. As Simon Wren-Lewis has cogently argued: “I cannot see the logic in saying people should have a direct say in whether to leave the EU, but no direct say on what to leave *for*.” Simon Wren-Lewis, “Why We Must Have a Second Brexit Referendum,” *Social Europe*, August 29, 2016, <https://www.socialeurope.eu/2016/08/must-second-brexit-referendum/>. The emphasis is mine.
- <sup>14</sup> As one commentator has noted: “It is highly unusual [in mature democracies] that, particularly on issues of great constitutional significance, a simple majority of those who happened to vote on a particular day should be regarded as binding.” Brendan Donnelly, “After Brexit: The Light at the End of the Tunnel is Several Oncoming Trains,” *Social Europe*, July 18, 2016, <https://www.socialeurope.eu/2016/07/light-end-tunnel-several-oncoming-trains/>.
- <sup>15</sup> “The 48 [percent] of voters . . . who wanted to remain in the European Union now suddenly find themselves substantially unrepresented in the British Parliament.” *Ibid*.
- <sup>16</sup> This question touches on the thorny issue, not to be dealt with in the present essay, of what kind of policy issues are “safe” to be processed by plebiscitarian methods. Referenda on constitutions can arguably enhance the self-binding effect and thus the constitution’s validity and longevity. The adoption of legal rules, the consequences of which are easily understood, predictable, and largely uncontroversial (such as local referenda on opening hours of stores), would also seem unproblematic. The same can surely not be said of the plebiscitarian adoption, now common in several EU countries, of rules that discriminate against moral, ethnic, migratory, sexual, religious, or criminal minorities (as in the current initiative of the Turkish president to hold a referendum on the reintroduction of the death penalty).
- <sup>17</sup> Richard Gordon and Rowena Moffatt, *Brexit: The Immediate Legal Consequences* (London: The Constitution Society, 2016), 7.
- <sup>18</sup> Future-regardingness, other-regardingness, and fact-regardingness can serve, taken together, as a standard of political rationality. See Claus Offe, “Crisis and Innovation of Liberal Democracy: Can Deliberation Be Institutionalised?” in *Citizens in Europe: Essays on Democracy, Constitutionalism and European Integration*, ed. Claus Offe and Ulrich K. Preuss (Colchester, United Kingdom: ECPR Press, 2016), 73–98.
- <sup>19</sup> See Hubertus Buchstein, “Elective and Aleatory Parliamentarism,” in *Parliamentarism and Democratic Theory*, ed. Kari Palonen and José María Rosales (Opladen, Germany: Budrich, 2015), 255–278; and David van Reybrouck, *Against Elections: The Case for Democracy* (London: The Bodley Head, 2016). Some also use the word “sortition” and others “the lot” to describe this feature of representation through random selection.
- <sup>20</sup> Rousseau was still convinced that a democracy must be built on a mix of territorial and aleatory representation. See chapter three of book four of Jean Jacques Rousseau, *Du contrat social*.
- <sup>21</sup> See Patrizia Nanz and Claus Leggewie, *Die Konsultative: Mehr Demokratie durch Bürgerbeteiligung* (Berlin: Wagenbach, 2016). See also Baogang He and Mark E. Warren, “Authoritarian Deliberation in China,” *Dædalus* 146 (3) (2017) for the spectrum between advisory/consultative deliberative panels and empowered ones.

# Twelve Key Findings in Deliberative Democracy Research

*Nicole Curato, John S. Dryzek, Selen A. Ercan,  
Carolyn M. Hendriks & Simon Niemeyer*

*Abstract: This essay reflects on the development of the field of deliberative democracy by discussing twelve key findings that capture a number of resolved issues in normative theory, conceptual clarification, and associated empirical results. We argue that these findings deserve to be more widely recognized and viewed as a foundation for future practice and research. We draw on our own research and that of others in the field.*

NICOLE CURATO is Australian Research Council Discovery Early Career Research Fellow at the University of Canberra.

JOHN S. DRYZEK is Australian Research Council Laureate Fellow and Centenary Professor at the University of Canberra.

SELEN A. ERCAN is Senior Research Fellow at the University of Canberra.

CAROLYN M. HENDRIKS is Associate Professor at the Australian National University.

SIMON NIEMEYER is Australian Research Council Future Fellow at the University of Canberra.

*(\*See endnotes for complete contributor biographies.)*

Deliberative democracy is a normative project grounded in political theory. And political theorists make a living in large part by disagreeing with and criticizing each other. In fact, it is possible to evaluate the success of a political theory by the number of critics it attracts, and the vitality of its intramural disputes. By this measure, deliberative democracy is very successful indeed. Yet if the normative project is to progress and be applied effectively in practice, it needs to lay some issues to rest.

Deliberative democracy is not just the area of contention that its standing as a normative political theory would suggest. It is also home to a large volume of empirical social science research that, at its best, proceeds in dialogue with the normative theory. Indeed, the field is exemplary in this combination of political theory and empirical research. Deliberative ideas have also attracted the attention of citizens, activists, reform organizations, and decision-makers around the world. The practical uptake of deliberative ideas in political innovation provides a rich source of lessons from experience that can be added to theorizing and social science. This combination has proven extremely fruitful. Rather than proving or falsi-

fy key hypotheses, deliberative practice has sharpened the focus of the normative project, showing how it can be applied in many different contexts.

We believe that conceptual analysis, logic, empirical study, normative theorizing, and the refinement of deliberative practice have set at least some controversies to rest, and we provide the following set of twelve key findings that can be used as the basis for further developments.

*Deliberative democracy is realistic.* Skeptics have questioned the practical viability of deliberative democracy: its ideals have been criticized as utopian and its forums have been dismissed as mere experiments, with no hope of being institutionalized effectively.<sup>1</sup>

But skeptics have been proved wrong by the many and diverse deliberative innovations that have been implemented in a variety of political systems.<sup>2</sup> Both state and nonstate institutions demand more deliberative forms of citizen engagement. Policymakers and politicians convene citizens' forums to elicit informed views on particular issues.<sup>3</sup> Studies find that deliberating citizens can and do influence policies, though impacts vary and can be indirect.<sup>4</sup> Deliberative forums are also being implemented in parliamentary and electoral contexts.<sup>5</sup> Outside the state, citizen forums are funded and implemented variously by civil society organizations, think tanks, corporations, and international organizations to advance a particular cause, foster public debate, or promote democratic reform.<sup>6</sup>

The recent turn toward deliberative systems demonstrates that deliberative democratic ideals can be pursued on a large scale in ways that link particular forums and more informal practices, such as communication in old and new media.<sup>7</sup> Deliberative democracy is not utopian; it is already implemented within, outside, and across governmental institutions worldwide.

*Deliberation is essential to democracy.* Social choice theory appears to demonstrate that democratic politics must be plagued by arbitrariness and instability in collective decision. Notably, for political scientist William Riker, clever politicians can manipulate agendas and the order in which votes are taken to ensure their preferred option wins.<sup>8</sup> But if their opponents are also clever, they can do the same. And in that case, there can be no stable will of the people that can possibly be revealed by voting (in, say, a legislature). So, how can meaning and stability be restored to democracy? There are essentially two mechanisms, once dictatorship is ruled out. The first is what rational choice theorist Kenneth Shepsle calls "structure induced equilibrium," under which formal rules and informal understandings restrict strategizing, including the ability to manipulate agendas and the order in which votes are taken.<sup>9</sup> The second is deliberation.

Political theorist David Miller and, later, John Dryzek and political philosopher Christian List have demonstrated formally that deliberation can, among other responses: 1) induce agreement to restrict the ability of actors to introduce new options that destabilize the decision process and 2) structure the preferences of participants such that they become "single-peaked" along one dimension, thus reducing the prevalence of manipulable cycles across alternatives (in which option A beats B in a majority vote, B beats C, and C beats A).<sup>10</sup> Empirical research confirms this effect.<sup>11</sup>

This result explains why all democratic settings, in practice, feature some combination of communication, which can be more or less deliberative, and formal and informal rules. The more deliberative the communication, the better democracy works. Democracy must be deliberative.

*Deliberation is more than discussion.* Deliberative democracy is talk-centric. But talk alone can be pathological, producing wildly mixed results from an ideal deliberative

Nicole Curato,  
John S. Dryzek,  
Selen A. Ercan,  
Carolyn M.  
Hendriks &  
Simon  
Niemeyer

perspective.<sup>12</sup> Resolution here requires distinguishing carefully between deliberation and discussion.

Empirical observation reveals that deliberation is more complex than originally theorized, involving both dispositional and procedural components. The purely procedural rationalist model of deliberation is normatively problematic because it is empirically questionable.<sup>13</sup> Distinguishing between deliberation and discussion introduces an emotional dimension in which dispositional factors, such as open-mindedness, are important.<sup>14</sup>

The overall content of this disposition has more recently been referred to as the “deliberative stance,” which political theorists David Owen and Graham Smith have defined as “a relation to others as equals engaged in mutual exchange of reasons oriented *as if* to reaching a shared practical judgment.”<sup>15</sup> Achieving a deliberative stance in citizen deliberation involves careful facilitation and attention to “emotional interaction.”<sup>16</sup> Its achievement in group settings can be a pleasurable experience and consistent with ideals of human cognition.<sup>17</sup> Scaling these effects up to the wider deliberative system requires careful attention to institutional settings.<sup>18</sup>

*Deliberative democracy involves multiple sorts of communication.* Some democrats have charged deliberative democracy with being overly rationalistic. For political scientist Lynn Sanders, deliberation works undemocratically for it excludes “those who are less likely to present their arguments in ways that we recognize as characteristically deliberative.”<sup>19</sup> Sanders refers to women, racial minorities, and the poor, whose speech cultures depart from “rationalist” forms of discourse that privilege dispassionate argumentation, logical coherence, and evidence-based claims as practiced in the most exclusive kinds of scholarly debates, parliamentary procedures, and judicial argumentation. A similar kind of cri-

tique has been raised by political theorist Chantal Mouffe, who criticizes deliberative democrats for missing the crucial role that passion plays in politics and for emphasizing the rationalism of liberal democratic political thought.<sup>20</sup>

Deliberative democrats have responded by foregrounding the varied articulations of reason-giving and consensus requirements of deliberation. Most have acknowledged political philosopher Iris Young’s conception of “communicative democracy” and have conditionally embraced greeting, rhetoric, humor, testimonies, storytelling, and other sorts of communication.<sup>21</sup> Even the originally somewhat rationalistic criteria of the widely used Discourse Quality Index have evolved to include storytelling as one indicator, recognizing the importance of personal narratives in political claim-making.<sup>22</sup> Recent developments in deliberative theory have begun to recognize the plurality of speech cultures. The turn to deliberative systems has emphasized multiple sites of communication, each of which can host various forms of speech that can enrich the inclusive character of a deliberative system. The increasing attention paid to deliberative cultures is also part of this trajectory, in which systems of meanings and norms in diverse cultural contexts are unpacked to understand the different ways political agents take part in deliberative politics.<sup>23</sup>

*Deliberation is for all.* The charge of elitism was one of the earliest criticisms of deliberative democratic theory: that only privileged, educated citizens have access to the language and procedures of deliberation. However, empirical research has established the inclusive, rather than elitist, character of deliberative democracy.

Findings in deliberative experiments suggest that deliberation can temper rather than reinforce elite power. Political scientists James Druckman and Kjersten Nelson have shown how citizen conversations can vitiate the influence of elite framing.<sup>24</sup>



Simon Niemeyer has shown how deliberative mini-publics, such as citizens' juries (composed of a relatively small number of lay citizens), can see through "symbolic politics" and elite manipulation of public discourse through spin doctoring.<sup>25</sup> Real-world deliberative processes provide considerable evidence on deliberation's potential to build capacities of traditionally marginalized groups. Economist Vijayendra Rao and sociologist Paromita Sanyal's work on *gram sabhas* in South India is a landmark study, demonstrating village-level deliberations' capacity to mobilize civic agency among the poor, counteracting resource scarcity and social stratification.<sup>26</sup> Brazil's National Public Policy Conferences – one of the biggest nationally successful exercises in public deliberation – illustrate how ordinary citizens influence public policy once they acquire the opportunity to take part in consequential deliberation.<sup>27</sup>

These examples illustrate deliberative democracy's record in curtailing, rather than perpetuating, elite domination by creating space for ordinary political actors to create, contest, and reflect upon ideas, options, and discourses.

*Deliberative democracy has a nuanced view of power.* Early critics of deliberative democracy worried about its political naiveté, particularly its neglect of power and strategy.<sup>28</sup> However, deliberative democracy is not naive about power, but rather has a nuanced approach to it.

In the deliberative ideal, coercive forms of power, defined as the threat of sanction or use of force against another's interests, are absent because they distort communication.<sup>29</sup> But deliberative practice reveals that coercive power is ubiquitous: it pervades the very process of argumentation and communication, affects the remit and organization of deliberative procedures, and shapes the broader policy context.<sup>30</sup> Procedural designs can, however, limit coercive power by, for example, selecting

participants that are less partisan, using independent facilitators, or ensuring deliberations are public.

Empowering or generative forms of power are central to the communicative force of deliberative governance.<sup>31</sup> Authoritative power is also necessary for deliberative democracy, which requires leaders who are receptive to the concerns of affected publics and have the legitimate authority to consider and act on the public's preferences and concerns.<sup>32</sup> Actors in and around deliberative processes can also strategize to advance agendas and address inequalities.<sup>33</sup>

Deliberative democrats recognize that coercive power pervades social relations, but understand that certain kinds of power are needed to maintain order in a deliberative process, to address inequalities, and to implement decisions.<sup>34</sup>

*Productive deliberation is plural, not consensual.* A seeming commitment to the pursuit of consensus – that is, agreement on both a course of action and the reasons for it – once provided a target for critics of deliberative democracy, who stressed its otherworldly character and silencing of dissident voices.<sup>35</sup> However, contrary to these arguments, deliberative democrats have rarely endorsed consensus as an aspiration for real-world decision-making (as opposed to one theoretical reference point).

Decision-making in deliberative democracy can involve voting, negotiation, or workable agreements that entail agreement on a course of action, but not on the reasons for it. All of these benefit from deliberation, which can involve clarification of the sources of disagreement, and understanding the reasons of others. Rather than consensus, deliberation should recognize pluralism and strive for metaconsensus, which involves mutual recognition of the legitimacy of the different values, preferences, judgments, and discourses held by other participants.<sup>36</sup>

Nicole Curato,  
John S. Dryzek,  
Selen A. Ercan,  
Carolyn M.  
Hendriks &  
Simon  
Niemeyer

At first sight, this acceptance of pluralism and metaconsensus might seem to contradict the findings of political scientist Jürg Steiner and colleagues that the more consensual a system of government, the better the quality of deliberation that occurs in its legislature. Consensual democracies – notably the Nordic countries, The Netherlands, Germany, and Switzerland – are also arguably the world’s most successful states on a variety of indicators, suggesting a strong correlation between deliberation and public policy success, though correlation here does not necessarily imply causality. However, the concept of *consensual* liberal democratic states (as opposed to *adversarial*) does not imply consensus in the strong sense we identified. Consensual states are still pluralistic, but their pluralism is channeled into workable agreements, not adversarial point-scoring.

*Participation and deliberation go together.* A sharp distinction between participation and deliberation is drawn by political theorist Carole Pateman, who argues that deliberative democrats have shown “little interest in the last thirty years of participatory promotion” and instead focus on mini-publics or “new deliberative bodies.”<sup>37</sup>

This distinction misfires. First, while it is true that a large number of deliberative scholars research mini-publics, these studies are motivated by the desire to better understand how lessons learned from small-scale deliberative forums can be scaled up to mass democracies and enhance the quality of political participation. So, for example, John Dryzek and ecological economist Alex Lo have shown how particular rhetorical moves can increase the quality of reasoning in a mini-public, which has direct implications for how climate change should be communicated in the public sphere (further examples will be provided in our discussions of time, group polarization, and divided societies).<sup>38</sup> Mini-publics, in other words, are not valorized as democratic

practice par excellence, but rather are used as a tool to democratize other facets of political life and deepen the quality of political participation.

Second, the political projects of participatory and deliberative democracy are intimately linked. Pateman’s aspirations for a “participatory society,” in which various aspects of our social and political lives are democratized, are not distinct from deliberative democrats’ vision of a society in which all citizens affected by a decision have capacities and opportunities to deliberate in the public sphere.<sup>39</sup> This has been articulated by “macro” deliberative theorists, whose focus is to improve the quality of political participation in the public sphere, whether online or offline, mediated or face-to-face, such that citizens can affect political processes on issues they care about.

*Deliberative transformation takes time.* Deliberation by definition requires amenability to preference transformation, but such transformation may not be a good measure of the quality of deliberation.<sup>40</sup> While large changes in preferences can occur early in deliberative processes, this change can reflect anticipation of absorbing information and group deliberation as much as the effect of deliberation proper.<sup>41</sup>

The goal of deliberation is for citizens to determine reflectively not only preferences, but also the reasons that support them.<sup>42</sup> As we have already noted, at the group level, this involves the formation of a kind of metaconsensus featuring mutual recognition of the manner in which beliefs and values map onto preferences.<sup>43</sup>

This process takes time and deliberation does not necessarily follow a smooth path. Initial changes to preferences can even be partially reversed. The initial opening up of minds (as part of taking a deliberative stance) and uptake of information represents a dramatic threshold in the transition toward deliberation proper, producing changes that represent catharsis as much as

deliberation. It is subsequent reflection that produces deliberative preferences, only after the stance is achieved.<sup>44</sup> Consequently, reported results from very short deliberative processes may only reflect the path toward, rather than the result of, deliberation. True deliberative transformation takes longer than that.

*Deliberation is the solution to group polarization.* Cass Sunstein has claimed that a “law of group polarization” causes “deliberative trouble.”<sup>45</sup> For if a group is made up of people whose opinions range from moderate to extreme on an issue, after deliberation, the group’s average position will be closer to the extreme. Thus, deliberation leads to unhealthy political polarization. There are three reasons why deliberative democracy does not succumb to this.

First, polarization depends crucially on group homogeneity, in which initial opinions vary from moderate to extreme in a single direction, such as the degree of denial of climate science or the degree of support for public education. For anyone designing a deliberative forum, the solution is simple: make sure there are participants from different sides on an issue. James Fishkin says this is exactly how his deliberative opinion polls resist polarization: a random selection of participants ensures a variety of initial views.<sup>46</sup>

Second, what Sunstein describes as polarization could, in many cases, be described as clarity. This is especially important for oppressed groups struggling to find a voice.<sup>47</sup> Talk with like-minded others can give people, individually and collectively, the confidence subsequently to enter the larger public sphere; enclave deliberation can have positive effects in the deliberative system.

Third, political scientist Kimmo Grönlund and colleagues have demonstrated that polarization only applies under unstructured conversation;<sup>48</sup> polarization is not found when groups are run on standard deliberative principles with a facilitator.

Their experiment involved citizens deliberating immigration in Finland, and after deliberation, a group that was moderately to extremely hostile to immigrants shifted toward a generally more tolerant opinion. After unstructured discussion, a similar group was, on average, more extreme. Deliberation does, then, provide solutions to group polarization, most obviously when it moves beyond unstructured discussion.

*Deliberative democracy applies to deeply divided societies.* Deeply divided societies characterized by mutually exclusive religious, national, racial, or ethnic identity claims challenge any kind of democratic politics, including deliberative politics, which some skeptics believe belongs only in more orderly and less fraught settings. Popular political solutions for deeply divided societies instead involve power-sharing negotiated by elites from different blocs, leaving no space for public deliberation (indeed, communication of any sort) across the divide.<sup>49</sup>

There is, however, growing empirical evidence showing that deliberative practices can flourish in deeply divided societies to good effect, be it in association with, or at some distance from, power-sharing arrangements. Evidence comes from formats ranging from mixed-identity discussion groups located in civil society to more structured citizen forums with participants from different sides.<sup>50</sup> Mini-public experiments on deeply divided societies, for example, generate crucial lessons on how conversations in the public sphere can be organized in such a way that they aid in forging mutual respect and understanding across discursive enclaves. As political scientist Robert Luskin and colleagues have noted, once assembled, conflicting groups in divided societies can “have enough in common to permit meaningful and constructive deliberation.”<sup>51</sup> Such deliberation can promote recognition, mutual understanding, social learning about the other side, and even solidarity across deep differences.<sup>52</sup>

Nicole Curato,  
John S. Dryzek,  
Selen A. Ercan,  
Carolyn M.  
Hendriks &  
Simon  
Niemeier

Deliberative processes have been applied in divided societies such as South Africa, Turkey, Bosnia, Belgium, and Northern Ireland. Given the depth of the disagreement among conflicting groups, deliberative practices do not seek or yield consensus (understood as universal agreement both on a course of action and the reasons for it), but they play a crucial role in terms of “working agreements” across the parties to a conflict. Under the right conditions, deliberation in divided societies can help to bridge the deep conflicts across religious, national, racial, and ethnic lines.

*Deliberative research productively deploys diverse methods.* Standard social science methods, such as surveys and psychological experiments, are often used to study deliberation. However, they do not do full justice to the ability of deliberators to develop their own understanding of contexts, which can extend to the kinds of social science instruments that are appropriate and to questions that should be asked. Standard methods have a hard time capturing these dynamic aspects of deliberative opinion formation, and they tell us nothing about the broader political or social context in which public deliberation occurs.<sup>53</sup>

Innovative quantitative methods have been developed to remedy these shortcomings:<sup>54</sup> they can involve analyzing the content of deliberations to assess deliberative practice against normative standards, to measure the quality of deliberation, and to evaluate the intersubjective consistency of deliberators across preferences and values.<sup>55</sup> Qualitative and interpretive methods have also generated empirical insights into public deliberation, particularly through in-depth case studies. Methods such as in-depth interviews and observation have been used to examine the views and behavior of political actors in and around deliberative forums.<sup>56</sup> Frame and narrative analysis have been used to map discourses and analyze the

communicative dynamics of deliberative systems.<sup>57</sup>

Deliberative democracy scholars deploy multiple research methods to shed light on diverse aspects of public deliberation in practice. Those who insist on using conventional social science methods must recognize that their results should be interpreted in light of this broader array of methods and the breadth of understanding so enabled.

We have surveyed what we believe to be a number of key resolved issues in the theory, study, and practice of deliberative democracy. In a number of cases, we have replied to critics skeptical of the desirability, possibility, and applicability of deliberative democracy. Our intent is not, however, to silence critics. Rather, we hope that their efforts can be more tightly focused on the real vulnerabilities of the project, rather than its imagined or discarded features. However, we suspect that, in practice, our summary of key findings will be more useful to those seeking to advance or study the project, rather than those trying to refute it. For these scholars and practitioners, identifying the resolved issues will leave them free to concentrate on unresolved issues.

ENDNOTES

Nicole Curato,  
John S. Dryzek,  
Selen A. Ercan,  
Carolyn M.  
Hendriks &  
Simon  
Niemyer

\* Contributor Biographies: NICOLE CURATO is Australian Research Council Discovery Early Career Research Fellow at the Institute for Governance and Policy Analysis at the University of Canberra, Australia. She has published articles in such journals as *Policy Sciences*, *Policy Studies*, and *European Political Science Review*.

JOHN S. DRYZEK is Australian Research Council Laureate Fellow and Centenary Professor in the Centre for Deliberative Democracy and Global Governance at the Institute for Governance and Policy Analysis at the University of Canberra, Australia. His recent books include *Democratizing Global Climate Governance* (with Hayley Stevenson, 2014), *Climate-Challenged Society* (with Richard B. Norgaard and David Schlosberg, 2013), and *The Politics of the Earth: Environmental Discourses* (third edition, 2013).

SELEN A. ERCAN is Senior Research Fellow at the Centre for Deliberative Democracy and Global Governance at the Institute for Governance and Policy Analysis at the University of Canberra, Australia. She has published articles in such journals as *International Political Science Review*, *Policy and Politics*, *Australian Journal of Political Science*, and *Critical Policy Studies*.

CAROLYN M. HENDRIKS is Associate Professor at the Crawford School of Public Policy at the Australian National University. She is the author of *The Politics of Public Deliberation: Citizen Engagement and Interest Advocacy* (2011) and has published in such journals as *Politics & Society*, *Political Studies*, and *European Journal of Political Research*.

SIMON NIEMEYER is Australian Research Council Future Fellow at the Institute for Governance and Policy Analysis at the University of Canberra, Australia. He has published articles in such journals as *American Political Science Review*, *Politics & Society*, *Ethical Perspectives*, and *Australian Journal of Politics and History*.

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Nicole Curato,  
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Selen A. Ercan,  
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Hendriks &  
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# Political Deliberation & the Adversarial Principle

*Bernard Manin*

*Abstract: Retrieving an insight dating back to antiquity, this essay argues that the confrontation of opposing views and arguments is desirable in political deliberation. But freedom of speech and diversity among deliberators do not suffice to secure that outcome. Therefore we should actively facilitate and encourage the presentation of contrary opinions during deliberation. Such confrontation is our best means of improving the quality of collective decisions. It also counteracts the pernicious fragmentation of the public sphere. It facilitates the comprehension of choices. Lastly, arguing for and against a given decision treats the minority with respect. This essay proposes practical ways of promoting adversarial deliberation, in particular the organization of debates disconnected from electoral competition.*

In a liberal democracy, the existence of conflicting opinions about the policies the country should adopt is a fact of life. In a democracy committed to the deliberative ideal, it is also a desirable situation. If such oppositions did not appear, the supporters of deliberation would have to encourage them.

In contemporary democracies, there is one institution that requires the presence of opposing points of view: the judicial trial. Here, what we can call the “adversarial principle” obliges the judge to render a decision only after having heard both parties. The maxim *audiatur et altera pars* (“let the other side be heard”), gradually forged by the jurists of the Middle Ages, is today considered a fundamental legal principle. It is at the heart of our conception of a fair judicial procedure.

But a trial and a political deliberation are two different processes. It is not clear that the rules that are appropriate for the settlement of legal disputes are also appropriate for collective reflection about the decisions to take as a polity. In a trial, the judge is, by definition, confronted with two points of view

BERNARD MANIN is Professor at the École des Hautes Études en Sciences Sociales, Paris, and Professor of Politics at New York University. His publications include “On Legitimacy and Political Deliberation” (in *Political Theory*, vol. 15, no. 3, 1987), *The Principles of Representative Government* (1996), and *La démocratie délibérative* (forthcoming).

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that are opposed to each other. But in a political deliberation, the points of view being advanced are not necessarily in opposition. Faced with a collective problem, we often find not only supporters and adversaries of a given solution, but also supporters of solutions that, while different, are not always mutually exclusive. For the injunction to hear the other side of things to apply in these conditions, we must intentionally organize deliberation so that it fosters a confrontation of opposing positions. One could, for example, consider by turns the arguments for and against each proposition advanced, or limit a debate only to propositions that are mutually exclusive. If, in political deliberation, the opposition of different points of view ought to be intentionally organized (as this cannot be simply presupposed), we must show why it is desirable to deliberate in this adversarial, for-and-against manner. Such a demonstration is not necessary in the case of a trial.

Another feature separates a political deliberation from a trial. In a trial, the two parties in conflict bring their disagreement before a third person, the judge, so that she may decide the matter in a manner that is just and in accord with the law. The judge is not a party to the conflict that she is called upon to adjudicate (no one can be a judge in her own cause). Moreover, she is not herself affected by the decision that she imposes on the parties to the suit. We might say that the trial presents a triadic structure in which an exterior arbiter decides upon a conflict between two parties. To fulfill this function, the judge must be impartial. That she must equally hear both parties seems the logical consequence of this demand for impartiality. Political deliberation, on the other hand, does not present such a structure. When citizens or representatives deliberate about decisions to take, they do not decide on affairs that are external to them; rather, they deal with their own affairs. If the question under consideration

is contentious, it will probably divide the body of deliberators. In these conditions, the idea of an obligation of impartiality becomes problematic. To whom are the deliberators supposed to prove themselves impartial, and for what reason? If, in political deliberation, the value of hearing both sides derives from reasons other than the demand for impartiality, we need to discover those reasons.

Thus, the idea of regulating political deliberation according to the adversarial principle raises several questions. It is this idea that I would like to defend in this essay. I will attempt to show why it is desirable that political deliberation be organized as a confrontation between opposing points of view in which the participants conform to the principle that the other side must also be heard.

The idea of organizing collective deliberation as an adversarial debate, a debate for and against a position, is not new. It has its origins, or at least one of its early illustrations, in classical antiquity. Recent conceptions of deliberative democracy and the practices they have inspired (such as Deliberative Polls, citizens' juries, and consensus conferences) have led us to forget an older idea of political deliberation, formulated by Greek and Roman historians and theorists of rhetoric, from Herodotus to Quintilian via Thucydides, Aristotle, and Cicero. Today's conceptions of deliberative democracy put the emphasis on discussion, making it essential that the members of the deliberating group discuss among themselves, engage in dialogue, and exchange arguments with one another. The opposition of points of view, if mentioned, occupies a secondary place. It is viewed either as a precondition to deliberation proper or simply as a natural consequence of pluralistic societies in which the expression of opinions is free. Yet in the ancient idea of deliberation, the opposition of points of view occupied a central place.

To simplify, in the ancient conception, orators advocating opposed policies each presented arguments in favor of their position and against their opponent's. These arguments were presented before an assembly that subsequently decided on the policy. It seems reasonable to assume that members of the assembly also discussed the arguments among themselves. But the opposition of points of view – not mutual discussion – constituted the motor and chief element of deliberation.

It is in this way, for example, that Thucydides presents the major scenes of deliberation in *The Peloponnesian War*: the debate at Sparta about the decision to enter the war, the Athenian debate over the punishment to inflict on the inhabitants of Mytilene between Cleon and Diodotus, and the debate in the Athenian assembly over the Sicilian expedition where Nicias and Alcibiades confronted one another.<sup>1</sup> In these scenes, the orators who advance opposing points of view do not discuss among themselves and do not seek to persuade their opposition. Rather, they seek to convince the assembly to whom they address their speeches. Thucydides presents these scenes as deliberations of the assembly. At various points in his account of the debate over Mytilene, he refers to it as “deliberation.”<sup>2</sup> In such deliberation, the driving element is the *hearing* of *opposed* persuasive speeches.

Similarly, on several occasions in *Politics*, Aristotle indicates that the task of the assembly is to deliberate on common affairs.<sup>3</sup> In *Rhetoric*, we find a more precise description of the assembly's deliberative activity: orators arguing for and against the decisions being contemplated.<sup>4</sup> Here, as well, the orators speak, offering opposed opinions and arguments, but the citizens deliberate.

In a scene of deliberation among the Persians recounted in *The Histories*, Herodotus reflects on the benefits expected from the method of opposed speeches. “If opinions contrary to one another have not been ex-

pressed,” he has Artabanus explain, “it is not possible to choose the one which it is best to adopt.”<sup>5</sup> Note that this argument is purely epistemic: to hear contrary opinions is necessary for discovering the right answer. No consideration of fairness enters.

The importance of the adversarial principle in the ancients appears not only in theoretical writings; we also find its reflection in institutional practices. To wit, after the oligarchical revolutions and the restoration of democracy at the start of the fourth century BCE, the Athenians adopted two institutions that mandated a for-and-against debate: the *graphè paranomon* and the *nomothetai*.<sup>6</sup> The *graphè paranomon* authorized a decision already voted on by the assembly to be brought before the courts (in which the judges were ordinary citizens selected by lot) on the grounds that the decision was contrary to the law or simply harmful to the Athenian people. The plaintiff and the citizen who had proposed the contested decree would then plead their cases before the courts. The decree was annulled if the verdict went in favor of the accusation. Any of the assembly's decisions could thereby be submitted to a sort of second reading before the courts. However, this second reading, which possessed greater authority than the first, needed to include an adversarial debate, while the first examination by the assembly might have proceeded without oppositions.

The institution of the *nomothetai* illustrates even more clearly the benefits expected from the use of the adversarial method in the political realm. Here, the action did not unfold before the courts, and there was neither plaintiff nor defendant. The adversarial form, nevertheless, was maintained. Whenever it seemed desirable to abrogate and replace certain laws, proposals for new laws were put forth and announced in public venues in advance. These proposals were then defended before the *nomothetai* by their initiators. At the same time, five

citizens were elected for the purpose of defending the existing laws whose abrogation had been proposed.

The institutions of the *nomothetai* and the *graphè paranomon* were adopted as means for protecting the newly restored democracy from the impassioned and hasty decisions from which the city had suffered, especially during the Peloponnesian War. To protect against this outcome, Athenian democrats turned to institutions that conferred the most authoritative decisions on groups of citizens who would necessarily have heard the arguments for and against the measures under consideration.

Just because the ancients conceived of political deliberation as a confrontation between opposing views is not, in itself, a reason for adopting their models. All that history can do is open us to perspectives we perhaps would not have otherwise thought of. We must now ask ourselves why it might be desirable to organize political deliberation according to the principle of hearing both sides. I see four principal reasons for doing so:

- 1) Improving the quality of collective decisions
- 2) Counteracting the fragmentation of the public sphere
- 3) Facilitating the comprehension of choices
- 4) Treating the minority with respect.

Let us begin with improving the quality of collective decisions. A long tradition of thought, including, in particular, the reflections of John Stuart Mill and Karl Popper, has highlighted what we can call the epistemic virtues of criticism. Several arguments have shown that to submit an idea to criticism constitutes one of the best means of testing its validity. This holds for practical ideas. A decision is more likely to be of a high quality – whether in factual and

technical terms, or in terms of values – if the proposals for action have been submitted to criticism beforehand. Criticism permits the elimination, or at least the reduction, of proposals involving false factual beliefs, logical errors, or objectionable moral choices. We do not need to repeat here the arguments establishing the epistemic merits of criticism. No one today would deny that criticism is one of the best means at our disposal to test the quality, technical and moral, of practical proposals.

Nevertheless, the conclusion that we generally draw from these arguments is that it is enough simply to establish the freedom to express criticism to produce its benefits. This is without doubt how Mill reasoned. We find an even more striking expression of this position in the famous free-speech dissent of Supreme Court Justice Oliver Wendell Holmes. Men, he wrote, will eventually realize “that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market.”<sup>7</sup> Yet the conclusion that the free exchange of ideas is a sufficient guarantee is not justified. Freedom of speech on its own does not ensure that the right to criticize will be exercised. Furthermore, as we shall see, the fact that criticisms are put forward does not guarantee that they will receive proper consideration.

Several mechanisms can prevent the ability to criticize freely from leading to its exercise. I group these together here under the label of *conformism*. Social psychology has long told us (with elaboration in Rousseau) that people want to be liked. Being esteemed and approved of by others also provides a gratifying image of one’s self. It follows that when people perceive that, in a given social environment, others’ opinions lean in a certain direction, they tend to bend their own expressions in the same direction to gain the approval of their peers. They avoid expressing dissenting or critical

views, reinforcing the mechanism of the “spiral of silence.”<sup>8</sup> Even in the context of discussion, we observe the disposition to conform to what is perceived as the norm within the group. This phenomenon is at the heart of what has been named, since the works of psychologist Serge Moscovici, the polarizing effect of group discussions.<sup>9</sup> Thus, even if criticism is formally free, a powerful social force works to marginalize, or even to stifle, its expression.

Contrary to what liberal theorists often affirm, social or cultural diversity within a group does not suffice to assure a confrontation of opinions critically opposed to one another. Suppose, for example, a deliberating body whose members, while being diverse with regard to social position, education, and beliefs, also share a fear of some danger. Let us imagine, furthermore, that this assembly discusses a measure that would contribute to the reduction of this danger; for example, strengthening the powers of the police. In this context, it is unlikely that collective deliberation will bring forth many arguments against the adoption of this measure, however much social or cultural diversity there may be in the group. Rather, the discussion will produce an accumulation of reasons in favor of increased police power, with various members finding, from within their own particular perspectives, diverse reasons for adopting this course of action that others, differently situated, may not have seen on their own. Yet even if increasing the prerogatives of the police did, in fact, contribute to the realization of the desired end, the measure might *also* present undesirable effects or features in other ways. Collective deliberation should precisely bring to light these potential negative effects and weigh them in the balance against the benefits of the measure. But in our case, the assembly will systematically underestimate these possible negative features even though members of the assem-

bly have the liberty to oppose the measure and criticize one another.

It appears, then, that if one wants to obtain from political deliberation the favorable epistemic effects of criticism, the expression of opposing opinions must be encouraged, not merely permitted.

But there is another reason to ensure that the participants in a deliberation are actually confronted with opposing points of view; it concerns the reception of arguments, rather than their production. Studies in social and cognitive psychology show that, confronted with new information or evidence, people have a systematic propensity to see in it a confirmation of their previous beliefs. In a now-classic experiment, psychologists presented the same ensemble of documents and studies concerning the death penalty and its effects to two groups of subjects selected on the basis of their antecedent opinions: one group composed of subjects favorable to the death penalty, the other subjects who are rather hostile to it. After being confronted with these documents, the group that was favorable to the death penalty became more favorable to it, and the group hostile to it became still more hostile.<sup>10</sup> This phenomenon is particularly marked when the documents presented to the subjects were ambiguous and called for interpretation. The propensity to find support for one’s antecedent beliefs is known as “confirmation bias.”<sup>11</sup>

Research has also shown that group discussion reinforces the effects of confirmation bias. Groups interpret information with more bias than do individuals; and they privilege information that supports their antecedent beliefs to an even greater degree than do individuals.<sup>12</sup> Two mechanisms explain this tendency. First, as noted earlier, group settings accentuate tendencies that predominate among individuals. If privileging information supportive of prior beliefs is already the dominant tendency among individuals, it is not sur-

prising that this tendency should be amplified in group discussion. But a second, and more surprising, mechanism is also at work. It seems that groups tend to discuss principally the information that was already known to all the members before the beginning of the discussion. Within groups, it turns out, discussion turns essentially on shared knowledge. Members of the group are reluctant to discuss those bits of information that are known only to one or a few other members prior to the discussion.<sup>13</sup> Shared information appears to have more weight in the eyes of the group members, and has a greater chance of being mentioned during the discussion, and thus remembered later.<sup>14</sup> Finally, information supporting the position preferred by the greatest number of group members has a greater likelihood of becoming the object of discussion than information supporting the contrary position.<sup>15</sup>

Collective discussion thus tends to produce a disproportionate volume of information and arguments in favor of the already-dominant belief in the group.

If one wishes to check the effects of confirmation bias – a phenomenon to which groups are particularly vulnerable – one must take proactive measures. One can, for example, call special attention to arguments contrary to prior beliefs by highlighting them (literally) or by making them cognitively more salient. Not only is the free expression of a multiplicity of voices not sufficient to assure the confrontation of opposing views, but the mere expression of contrary arguments is not sufficient for others to understand those arguments or consider them objectively.

In the absence of measures that actively induce individuals to pay particular attention to evidence and points of view opposed to their own, collective deliberation will have the greatest likelihood of simply reinforcing antecedent opinions. In a political deliberation, in short, we cannot expect

that the gathering of diverse points of view will spontaneously produce a clash of arguments *pro* and *contra*, nor that it will bring about a balanced consideration of views. Mill was wrong to assume that, in a society or an assembly composed of diverse members, opposing opinions would already be there, waiting to be set against one another once they were allowed to be uttered. Mill wrote: “The most intolerant of churches, the Roman Catholic Church, even at the canonization of a saint, *admits, and listens patiently to, a ‘devil’s advocate.’*”<sup>16</sup> He failed to see that the presence of a devil’s advocate was required, not merely admitted. And through the requirement, the Church secured that objections to the canonization of a given person were aired and considered, even if no individual would otherwise have spontaneously offered them.<sup>17</sup>

The confrontation of opposing opinions also has merit beyond eliciting unshared perspectives. It unifies the field in which opinions are formed and expressed, counteracting the fragmentation of the public sphere. In order to be opposed to an opinion and to contest it, it is necessary that one be cognizant of that opinion and take it into consideration. In a society in which points of view are objectively diverse, the open and explicit clash of opposing ideas is neither the natural state nor the sole possible condition. Another configuration is just as likely: mutual ignorance. The German sociologist Georg Simmel therefore argued that conflict between social groups paradoxically served the cause of social integration: first, by placing the conflicting groups into a relationship with one another and, second, by exerting a pressure for unity among the secondary divisions within each group. We can advance a similar argument in matters of opinion. The clash of opinions unifies the field in which beliefs confront one another, creating a space in which those beliefs are addressed to and respond to one another.

This task of mutual addressing is harder when the space of opinions is fragmented into a multitude of islets, homogenous within themselves but formed in conditions of little communication with outsiders.

Several factors – some older, some of more recent origin – now trend in the direction of this sort of fragmentation. First, we have long known that people are selective in their choice of contacts and social relations. They tend disproportionately to be in contact with people who share their political opinions.<sup>18</sup> Psychologically, many fear the face-to-face expression of political disagreement and want to avoid it as much as possible.

More recent factors also work in the direction of fragmentation: the development of cable television and its thematic stations, the spread of the Internet, and finally the movement toward residential and territorial segregation. Although the effects of these transformations are still difficult to estimate, they all present an analogous structure: people are now offered, in multiple ways, greater opportunities for communicating and coming into contact only with other individuals like themselves.

Cable television and the rise of opinion-based television stations (a phenomenon currently more pronounced in the United States than in Europe) provide viewers with the possibility of receiving a high proportion of their information only from a channel to which they feel ideologically close. Worse still, cable TV allows individuals with little interest in politics to avoid political news altogether and watch only entertainment programs.<sup>19</sup>

For its part, the Internet has dramatically increased the number and types of people with whom one can enter into contact. But studies on the usage of the Web suggest that contacts and links are established primarily through personal affinities, and in particular through ideological affinities

within the political domain. Progressive blogs and forums link to other progressive sites but not to conservative sites, and vice versa. From these islets and networks of like-minded individuals we can expect the increased effects of reinforcement and polarization, because, in general, interacting with people of similar beliefs pushes one more toward the extreme positions of the views common to the group.<sup>20</sup>

Finally, the movement toward residential segregation, which has already progressed in the United States and is at work today in Europe, further contributes to the fragmentation of the public space of communication. If it is true that opinions are strongly correlated with sociocultural and ethnic factors, then in a neighborhood whose inhabitants share the same sociocultural or ethnic profile, each person is likely, for the most part, to encounter neighbors who share the same opinions. A selective exposure to similar opinions emerges de facto.

Faced with these forces of fragmentation, only intentional collective action can be expected to produce a degree of unification of the public political sphere. This second justification for the deliberate encouragement of adversarial political debates is particularly salient today.

**T**True, adversarial debate is by nature reductive. Faced with some political problem, the polity usually has a multitude of possible courses of action, not all of which will be mutually exclusive. Yet the reductive character of the adversarial method is also one of its merits. It simplifies complexity, making the choices easier to grasp. There is no doubt, for example, that the current economic situation in Europe and the United States calls for a range of measures that are more or less intermingled and complementary to one another. To obtain a synoptic view of these measures and their relations and to choose among them would require considerable cognitive effort. There

are cognitive advantages to presenting the policy response as a choice between reducing public deficits now and maintaining or increasing these deficits in the short term to prevent further decline until the economy has regained its normal growth rate. As democrats, we cannot discount the value of such cognitive simplicity. Groups of experts may be able to deliberate without using the adversarial method. But if we want ordinary (or even well-informed) citizens to participate ably in collective deliberation, the simplification achieved by the adversary system is an almost indispensable instrument.

The fourth principle in support of the adversarial method is the value of treating the minority with respect. No matter how conscientiously citizens deliberate, it is likely that disagreement will remain at the end of the process. Decisions will therefore be taken by the majority. The majority of people will get to live with the decision they desired; a minority of people will have to live under a decision they did not support. To be sure, the decision itself formed the minority: it did not exist *per se* before the vote. But the manner of conducting the deliberation before the vote entails consequences for the treatment of those who, after the vote, will make up the minority.

If the deliberation has been conducted as a debate between opposed positions, with each camp presenting its reasons in favor of its position and criticizing those advanced by the opposition, two consequences follow. After a vote has been taken, the minority must obey the decision, but at least the reasons aiming to justify this decision will have been formulated and made public. The minority might still refuse to listen to these reasons seriously and in good faith, but it was given the chance to consider them. The minority members were therefore treated with the respect owed to autonomous beings. Once children have

reached the age of autonomy, parents must justify the orders they give them. When they are not yet autonomous, children must obey orders simply because they are orders. So, too, if the minority members have not had the possibility of hearing the reasons for the decision they must obey against their wishes, they are placed in a situation of having to obey the order simply because it is an order, or simply because it obtained the most votes. I do not mean to imply that the members of the minority will consequently be more disposed to obey the decision. Sometimes justifications exacerbate the opposition. But justifying orders shows greater respect for the autonomy of those receiving them.

On the flip side, the reasons for not taking the decision that ultimately triumphed would also have been put forward. These criticisms and objections did not prevail, but they were at least articulated and made public. From the majority's perspective, because it won, it will naturally think that it was right; but in the process, it had to listen to the opposition explaining their justification. The members of the majority were at minimum forced to see that there were reasons supporting the other side. It seems reasonable to think that, as a result, the majority will be less inclined to consider the minority as unintelligent or ill-intentioned.

Before I proceed to the practical consequences that we can draw from my argument, I must first respond to an objection: that rendering obligatory the presentation of opposing points of view in the public sphere would require constraints on public discourse and encroachments on freedom of speech.

In response to this objection I would first suggest turning to an institution that in the relatively recent past followed just this path: the *fairness doctrine* in effect in the United States from 1927 to 1987. The fair-



ness doctrine, implemented by the Federal Communications Commission, made it obligatory for radio and television stations to give an evenly balanced presentation of “opposing viewpoints on controversial issues of public importance.” The fairness doctrine not only imposed equality in airtime; it also required the presentation of *viewpoints opposed to one another*. The doctrine did not apply to airtime during electoral campaigns, which was regulated on other terms. It applied instead to any question that became the object of public controversy outside of electoral periods. The constitutionality of this doctrine was upheld by the U.S. Supreme Court in the famous 1969 decision of *Red Lion Broadcasting Co. v. FCC*.<sup>21</sup>

The central argument that the Court invoked in support of the constitutionality of the fairness doctrine was that, in regard to liberty of expression on the airwaves, it is “the right of the viewing and listening public, and not the right of the broadcasters, which is paramount.” The Court thus held that listeners and viewers had the *right* to hear conflicting viewpoints in order to make up their mind on the issues: “Speech concerning public affairs is more than self-expression; it is the essence of self-government.”<sup>22</sup>

The fairness doctrine was abandoned for two reasons. First, the doctrine led radio and television stations to avoid controversial subjects for the sake of not exposing themselves to lawsuits claiming they had violated the law. Second, the question of what exactly constituted the opposition of one point of view against another became the subject of repeated litigation, and the FCC proved unable to reduce the insecurity and juridical uncertainty that arose on this front. Despite its eventual abandonment, however, the *Red Lion* decision shows that the obligation for the media to present conflicting viewpoints is compatible with *a certain interpretation* of freedom

of speech in the public sphere, an interpretation that focuses on the rights of the receiving public. That the U.S. Supreme Court has since rejected this interpretation does not mean that the arguments advanced in *Red Lion* were objectively weak. They are, in any case, consistent with the claims of this essay.

What, then, should we do in practice to foster the confrontation of opposing arguments in today’s democracies? Without claiming to provide a complete and detailed response to this question, I will conclude by suggesting two concrete means for promoting the adversarial principle in politics. The first is a practice yet to be invented, which would be implemented outside of electoral periods. The second consists of reinforcing a practice already used in electoral campaigns.

First, my suggestion for the future. Outside of electoral periods, civil-society actors (such as foundations or think tanks) could organize adversarial debates on subjects of public interest. These debates would not be regularly scheduled, but would be organized only when a question sparked significant interest from the public (as with such topics as nuclear energy, assisted suicide, or, in certain countries, the wearing of the hijab) or when a large number of citizens mobilized in favor of a cause. More generally, these public debates would not aim to replace any existing democratic practices (such as electoral campaigns or parliamentary debates), but would complement them.

Neither the exposition of conflicting viewpoints nor communication across ideological divides can be made mandatory. This does not mean that it is useless to try to facilitate them. Indeed, the probability of being confronted with opposing points of view matters: it tends to make one’s thoughts more anticipatory, careful, and subtle.<sup>23</sup> In contemporary circumstances, this probability tends to diminish. The ac-

tive promotion of adversarial debates aims to counteract this pernicious tendency.

Given that the goal of these debates would be to further the formulation and diffusion of arguments for and against a given public decision, they should be guided by the following principle: speakers should defend or criticize a given policy or position only with reference to *its own merits*, and not in response to reasons *external* to the policy or position. The arguments advanced in these debates should concern the advantages or disadvantages – whether technical or moral – inherent in the decision. I call this the *principle of relevant reasons*. This principle has two implications: the first concerns simplifying the debate to one issue; the second concerns choosing the right participants.

In order to encourage citizens to take account of and weigh the reasons for and against a given decision, each question that can be defined objectively and independent from other questions should be debated separately. Multidimensionality and the bundling of different questions undermine the coherence of the arguments.

To be sure, at election time, the voter will vote for a candidate or party that has bundled questions without an objective connection between them. Such grouping may be desirable, because it permits negotiations between different strands of the party. Nevertheless, to understand the bundling and negotiation well enough to cast an informed vote, the voter needs to have thought through the different issues separately, aided by adversarial debate.

It is probably too difficult to completely exclude nonrelevant reasons – that is, reasons not substantively linked to the policy in question – at the moment of organizing a deliberative debate. But the principle remains valid: nonrelevant arguments should be sidelined as much as possible. As a consequence, each debate should focus on a specific theme, rather than on platforms comprising multiple dimensions.

The other implication of the principle of relevant reasons concerns the choice of participants. Speakers should be permitted to defend policies that promote their own interests, but only on the condition that their interests be both publicly declared and linked to the substance of the policy they recommend – not to external interests like advancing their careers or promoting objectives that have no connection with the policy under debate. Speakers should thus mainly be experts, representatives of associations, activists, and persons enjoying a recognized moral authority. Politicians might participate so long as that participation satisfies the principle of relevant reasons: namely, that they address themselves solely to the question under debate, to the exclusion of other themes in the platform of their party. Their professional and career prospects should play no role in these debates.

The divisions that emerge within these debates would not have a depoliticized character, but they would be distinguished from normal partisan divisions in two respects: 1) they would concern each theme taken separately, as opposed to entire programmatic platforms and 2) they would, as much as is possible, be disconnected from the stakes of electoral power and competition.

As mentioned, the speakers should be representatives of associations and of activist movements, as well as experts and personages of recognized authority. The role of these speakers would be to present and defend opposing policies on the topic being debated, in a focused and well-argued way. The presence of experts and persons of moral stature in each debate would help control the quality of the arguments and supporting evidence. A live audience could question the speakers and criticize their positions. In this way, the audience could be engaged and not just confined to a passive role. Afterward, the debate's organizing institution could post video of the event online and open discussion forums, for further conversations.

Second, my endorsement of current practice: televised adversarial debates between the leaders of competing parties or coalitions during electoral campaigns make an important contribution to mass political deliberation. These debates already exist in several countries. One of the oldest democracies in the world, Britain, recently introduced them, for the first time, in the 2010 elections. In general, such debates are successful at drawing an audience: typically several million people follow them. They are thus one of the very rare occasions when large numbers of citizens think about the same subject at the same time and are conscious of so being joined in common attention. This coordination of time and the object of attention makes possible – and even generates – conversations in the places of daily life, like cafés or meetings with friends. Media coverage of debates also puts citizens in contact with conflicting viewpoints without imposing on them the psychic discomfort caused by face-to-face political disagreement. Without doubt, such debates often lack substance and argument. But sometimes they have a good deal of both. And it is possible to arrange such debates so as to make it more likely that the

protagonists will be advancing clear arguments for and against specific policies.

One may object that in-person confrontations between party leaders lend too much weight to the personality of the speakers. But the personalization of electoral competition seems to be a permanent feature of our world. If personalities are going to play an important role anyway, a setting in which the participants are reciprocally encouraged to bring to light the other's defects is preferable to one in which each leader can deploy his personal advantages without contest. Experience shows that plebiscitary leaders have little fondness for contradiction; electoral debates would make avoiding contradiction difficult. Adversarial electoral debates are not an innovation, but they have not taken root everywhere. Leaders sometimes forbid them. So it is not useless to defend the principle that underlies the existing practice. A culture that has accepted the principle of adversarial debate – recognizing that such debate improves the quality of decisions, counteracts fragmentation, facilitates the comprehension of choices, and respects minorities – would discredit any leader who sought to escape the test.

#### ENDNOTES

Author's Note: This essay was originally written in French. I wish to thank Greg Conti for his help in turning the French into English. I am also grateful to Jane Mansbridge and James Fishkin for their comments and suggestions.

<sup>1</sup> Thucydides *The Peloponnesian War* 1.48 – 88, 3.36 – 49, 6.8 – 26. Thucydides also presents other assembly debates using the same structure: for instance, the debate over the war in Syracuse between Hermocrates and Athenagoras (6.33 – 51) and the debate at Camarina between Euphemus and Hermocrates (6.76 – 88).

<sup>2</sup> Thucydides *The Peloponnesian War* 3.36.6, 3.42.1, 3.44.3, 3.44.4.

<sup>3</sup> Aristotle *Politics* 3.1.1275b.18 – 20, 3.6.1281b.31, 4.11.1297b.35 – 1299a.1.

<sup>4</sup> Aristotle *Rhetoric* 1.1.1354b.10 – 1355a.11, 1.2.1358b.3.

<sup>5</sup> Herodotus *The Histories* 7.10.

<sup>6</sup> The *graphè paranomôn* (literally, a “suit against bills contrary to the laws”) was a prosecution against the proposer of a law that was thought to be in conflict with existing law. The *nomothetai* was a board of five hundred that oversaw legal reform. Its members were selected by

lot from a larger pool of citizens aged thirty years or older, themselves selected by lot from among volunteers.

- <sup>7</sup> *Abrams v. United States*, 250 U.S. 630-1 (1919).
- <sup>8</sup> See the Asch experiments in Solomon E. Asch, "Effects of Group Pressure upon the Modification and Distortion of Judgment," in *Leadership and Men*, ed. Harold Guetzkov (Pittsburgh: Carnegie Press, 1951). More recently, see Elisabeth Noelle-Neumann, *The Spiral of Silence: Public Opinion – Our Social Skin* (Chicago: University of Chicago Press, 1987).
- <sup>9</sup> See Serge Moscovici and Marisa Zavalloni, "The Group as Polarizer of Attitudes," *Journal of Personality and Social Psychology* 12 (2) (1969): 125 – 135. See also Serge Moscovici, *Social Influence and Social Change* (London: Academic Press, 1976).
- <sup>10</sup> Charles G. Lord, Lee Ross, and Mark R. Lepper, "Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence," *Journal of Personality and Social Psychology* 37 (1) (1979): 2098 – 2109.
- <sup>11</sup> For an overview, see Matthew Rabin, "Psychology and Economics," *Journal of Economic Literature* 36 (1) (1998): 11 – 46.
- <sup>12</sup> Stefan Schulz-Hardt, Dieter Frey, Carsten Lüthgens, and Serge Moscovici, "Biased Information Search in Group Decision Making," *Journal of Personality and Social Psychology* 78 (4) (2000): 655 – 669.
- <sup>13</sup> The importance of these results ought to be underscored. The fact that group discussion involves primarily already-shared information constitutes a major difficulty for the thesis that discussion promotes the pooling and aggregation of knowledge that is dispersed among the agents. This thesis, often mentioned today, perhaps finds its origin in Aristotle's famous argument: "That is why the many are better judges of music and the writings of poets. Some appreciate one part, some another, and all together appreciate all." Granted, Aristotle does not mention discussion in this context. But extending his argument to discussion settings sounds *prima facie* unproblematic. The experimental findings reported here show that this is not the case. Aristotle *Politics* 3.11.1281b.8 – 10.
- <sup>14</sup> Garold Stasser and William Titus, "Pooling of Unshared Information in Group Decision Making: Biased Information Sampling during Discussion," *Journal of Personality and Social Psychology* 48 (6) (1985): 1467 – 1478; Daniel Giguere and Reid Hastie, "The Common Knowledge Effect: Information Sharing and Group Judgment," *Journal of Personality and Social Psychology* 65 (5) (1993): 959 – 974; and Dennis D. Stewart and Garold Stasser, "The Sampling of Critical, Unshared Information in Decision-Making Groups: The Role of an Informed Minority," *The European Journal of Social Psychology* 28 (1) (1998): 95 – 113.
- <sup>15</sup> Stasser and Titus, "Pooling of Unshared Information in Group Decision Making."
- <sup>16</sup> John Stuart Mill, *On Liberty*, ed. David Bromwich and George Kateb (New Haven, Conn.: Yale University Press, 2003 [1859]), 91. The emphasis is mine.
- <sup>17</sup> The intervention of the "defender of the faith" (such was the title of what in ordinary language was named the "devil's advocate") in the canonization procedure was abolished by Pope John Paul II in 1989.
- <sup>18</sup> For example, see Diana C. Mutz and Paul S. Martin, "Facilitating Communication across Lines of Political Difference: The Role of the Mass Media," *American Political Science Review* 95 (1) (2001): 97 – 114.
- <sup>19</sup> Markus Prior, *Post-Broadcast Democracy: How Media Choice Increases Inequality in Political Involvement and Polarizes Elections* (Princeton, N.J.: Princeton University Press, 2007).
- <sup>20</sup> Cass R. Sunstein, *Republic.com* (Princeton, N.J.: Princeton University Press, 2000).
- <sup>21</sup> *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 – 401 (1969).
- <sup>22</sup> On this argument, see Owen Fiss, *Liberalism Divided: Freedom of Speech and the Many Uses of State Power* (Boulder, Colo.: Westview Press, 1996).
- <sup>23</sup> Mutz and Martin, "Facilitating Communication across Lines of Political Difference."

# Deliberative Democracy as Open, Not (Just) Representative Democracy

*Hélène Landemore*

*Abstract: Deliberative democracy is at risk of becoming collateral damage of the current crisis of representative democracy. If deliberative democracy is necessarily representative and if representation betrays the true meaning of democracy as rule of, by, and for the people, then how can deliberative democracy retain any validity as a theory of political legitimacy? Any tight connection between deliberative democracy and representative democracy thus risks making deliberative democracy obsolete: a dated paradigm fit for a precrisis order, but maladjusted to the world of Occupy, the Pirate Party, the Zapatistas, and other anti-representative movements. This essay argues that the problem comes from a particular and historically situated understanding of representative democracy as rule by elected elites. I argue that in order to retain its normative appeal and political relevance, deliberative democracy should dissociate itself from representative democracy thus understood and reinvent itself as the core of a more truly democratic paradigm, which I call “open democracy.” In open democracy, popular rule means the mediated but real exercise of power by ordinary citizens. This new paradigm privileges nonelectoral forms of representation and in it, power is meant to remain constantly inclusive of and accessible – in other words open – to ordinary citizens.*

HÉLÈNE LANDEMORE is Associate Professor of Political Science at Yale University. Her publications include *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (2013), *Hume: Probabilité et choix raisonnable* (2004), and *Collective Wisdom: Principles and Mechanisms* (ed. with Jon Elster, 2012).

The motivating concern for this essay is the impact that the crisis of representative democracy, widely diagnosed by political commentators and democratic theorists alike, has or should have on deliberative democracy as a mainstream theory of democratic legitimacy. To the extent that the fate of deliberative democracy has become intimately intertwined with representative democracy as both a normative paradigm and a set of particular historical institutions, and to the extent that representative democracy is under attack precisely for being representative and keeping ordinary citizens at arm’s length of the real site of decision and power, deliberative democrats should be worried about the status of their theory. Deliberative democracy risks becoming collateral damage of the problems currently facing representative democracy.

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Deliberative democrats thus need to clarify the relationship between deliberation and representation and, more generally, deliberative democracy as a theory of legitimacy, on the one hand, and representative democracy as a specific institutional instantiation of democracy, on the other. This clarification should reveal that while the connection between deliberation and representation might indeed be essential, at least in mass societies, the relation between deliberative democracy as a theory of legitimacy and representative democracy as a historical paradigm is essentially contingent: it is possible to separate the two. I suggest that deliberative democracy is better seen as an independent theoretical module that is compatible with, and indeed better suited to, a different set of institutional principles than the one called “representative democracy.” I propose that deliberative democracy should be made a central part of a new and more attractive paradigm of democracy, which I call *open democracy*.

The first section of this essay scrutinizes the relation of deliberation and representation in mainstream theories of deliberative democracy and shows the problems that arise when deliberative democracy is confused or too tightly associated with representative democracy. The second section shows that representative democracy cannot be salvaged as a normative model of democracy because it fails at least three basic criteria we should expect a genuinely democratic rule to satisfy (namely agenda-setting, effective participation, and enlightened understanding). The third section sketches out an alternative: open democracy. Open democracy is meant as a more authentically democratic paradigm in which deliberation among free and equal members – the core of deliberative democracy – is made a central institutional principle. As a result, I argue that open democracy offers to deliberative democrats a more hospitable home than representative democracy.

Deliberative democracy is a theory of democratic legitimacy that traces the authority of laws and policies to the public exchange of arguments among free and equal citizens. This theory was developed in the late 1980s and 1990s as an alternative to the then-dominant theory of aggregative democracy, whereby democratic legitimacy stems simply from the proper aggregation of votes in free and fair elections pitting various elites against one another.

The relation of deliberative democracy to representative democracy has always been undertheorized. Early proponents of the theory assumed direct democracy as their base model.<sup>1</sup> Nothing much was supposed to change, normatively speaking, when deliberation took place among elected representatives rather than the people themselves. The legitimacy was simply transferred to the outcomes of the deliberation among representatives, as if it played out as a perfect substitute for deliberation among all citizens. To ensure a seamless translation of democratic legitimacy from the direct to the representative context, most people resorted to the then-dominant theory of representation formulated by political scientist Hannah Pitkin in 1967. At an abstract level, representation is, for Pitkin, the conceptual solution to the problem of “making present” that which is absent. Democratic legitimacy was found at the level of a representative assembly making present and pursuing the interests of people who could not be present all at once.

Given that direct deliberation among all citizens is widely assumed to be impossible on the scale of the modern nation-state,<sup>2</sup> this simplifying premise of the early deliberative democrats was perfectly understandable, and most other deliberative theorists took it onboard. Philosopher Jürgen Habermas, in a way, merely complicated the picture by conceptualizing two kinds of deliberation happening in two distinct

deliberative “tracks.” The first kind of deliberation was meant to be formal and decision-oriented, taking place within the walls of Parliament. The other, taking place among the public, was decentralized, distributed, informal, and diffuse, with the assumed function of setting the agenda for Parliament.<sup>3</sup> Habermas additionally posited a porous demarcation between the two tracks, so as to allow for feedback loops between the two spheres. In so doing, he plausibly extended the early version of deliberative democracy, making it applicable to the actual world of representative democracies.

More recently, however, democratic theorists have modified and tightened the normative link between deliberation and representation to the point that one can hardly be conceptualized without the other. The first move has been to show that representation is, in a nutshell, the essence of democracy. For politics scholar David Plotke, “representation is democracy” in the sense that representative practices are always “constitutive” of democracy.<sup>4</sup> Representation no longer consists primarily in making present the absent, but in constructing the demos and its interests. Similarly, for political theorist Sofia Näsström, representative democracy is a “tautology” because it is only through representative structures and practices that the demos constitutes itself.<sup>5</sup> If the authors behind this so-called constructive turn are right, though, then the task of deliberation among citizens is not delegated to representatives only for reasons of size and convenience. Deliberation *must* become the affair of representatives, rather than directly that of citizens themselves, in order to be truly democratic.

Political theorist Nadia Urbinati’s theory of representative democracy exemplifies a similar view. For Urbinati, deliberation among a smaller number of representatives is not just equivalent but superior to direct deliberation among all citizens. This is because deliberation among representa-

tives allows for a reflexive delay between the expression of raw judgments and preferences, on the one hand, and the crafting of policy outcomes, on the other.<sup>6</sup> Representation also allows a circular process of communication between representatives and the represented. Representative democracy is, for Urbinati, a more accomplished form of democracy than direct democracy precisely *because* it allows for a discursive exchange to occur over time between representatives and represented.

If this account of the link between deliberation and representation in mainstream democratic theory is correct, what happens to the paradigm of deliberative democracy as a theory of political legitimacy when representative democracy itself comes under attack? What happens when the relationship assumed and described by Habermas between representatives and represented no longer seems a plausible or normatively appealing theory of the way things work and ought to work, in particular because it is no longer credible that the informal public sphere can set up the agenda for the more formal one? What happens when representation no longer *is* democracy, as Plotke has it, but becomes instead, as Rousseau warned long ago, its very demise?

There is no question, at this point, that representative democracy is in the midst of a serious crisis, at least if one is to judge by the recent numbers of books and articles on the topic.<sup>7</sup> Institutionally, the symptoms are well-known: voting absenteeism, the decline of parties as vehicles for mass participation,<sup>8</sup> abysmal rates of approval for politicians and legislatures across much of the Western world, the rise of populist movements and the return of calls for more direct forms of democracy – as are some of the causes – in the United States, a near complete lack of correlation between majority preferences and policy outcomes when elite preferences differ from those of the majority,<sup>9</sup> rising economic inequalities across the

Western world, and a sense that democracies have been emptied of their meaning,<sup>10</sup> if not altogether replaced by the rule of experts, bureaucrats, and judges.<sup>11</sup> By contrast, both populist and authoritarian movements are on the rise. These movements have in common an antirepresentative stance that signals the problems with representative democracy and is sometimes meant to hasten its demise.

While it is likely that the crisis of representative democracy is in part due to external factors (such as globalization and technological change or what some see as the crisis of capitalism in the West), it can also plausibly be traced to more fundamental design flaws. To understand what may be wrong with representative democracy *per se*, it helps to look critically at its core principles, a task to which I now turn.

Representative democracy is the paradigm we associate with the form of democracy that emerged in the eighteenth century at the time of the French and American revolutions. It can be defined as a regime centered on the elections of elites who act as trustees of and make decisions on behalf of the larger population.<sup>12</sup> In theory, representation need not involve election (I will return to this point). In practice, however, elections have become part of the very definition of representative democracy, partly because the theories developed to justify it crucially associate popular sovereignty with democratic authorization, and democratic authorization, in turn, with consent expressed through the ballot box.<sup>13</sup> Thus, although democratic representation need not imply elections, representative democracy has come to mean *electoral* democracy.<sup>14</sup> As a result, a core feature of representative democracy is the delegation of agenda-setting, deliberation, and decision-making to a subset of the polity that is distinct from ordinary people and explicitly identified and chosen as a separate elite.

This electoral and elitist character of representative democracy runs deep. It is unsurprisingly evidenced in the way political theorists have captured the institutional principles of representative democracy. These, it turns out, fall short of being democratic. In order to show this, I apply to Bernard Manin and Nadia Urbinati's list of principles of representative democracy the five criteria that Robert Dahl advances in his classic *Democracy and Its Critics* as the benchmarks of authentic democratic associations: 1) effective participation; 2) voting equality at the decisive stage; 3) enlightened understanding; 4) control of the agenda; and 5) inclusion of all adults. These five criteria are, according to Dahl, "criteria that a process for governing an association would have to meet in order to satisfy the requirement that all the members are equally entitled to participate in the association's decision about its policies."<sup>15</sup>

Effective participation means that there must be a direct connection between popular involvement and ultimate decision-making. Voting equality at the decisive stage means, very simply, "one person, one vote" at the stage when decisions are made final. Enlightened understanding means that citizens must be able to pass informed judgment on the matters deliberated or voted on. Control of the agenda means that the set of issues deliberated on should be defined by the citizens themselves.<sup>16</sup> Inclusion of all adults means that all adult members of the demos (itself more polemically defined by Dahl as the people directly affected by the laws and policy outcomes) be given a share of power.

Now, let us use these five democratic criteria to assess the four institutional principles that Manin has articulated as capturing the core of "representative government" (historically the first version of representative democracy): 1) periodic elections; 2) independence of the representatives; 3) freedom of opinion; and



4) trial by discussion.<sup>17</sup> The first principle, periodic elections, is the most central and is the one that most people associate with democracy. It is a principle of the authorization of representatives, renewed at periodic intervals. The periodicity is crucial in that, in theory, it ensures not only renewed consent and thus authorization, but also the accountability and responsiveness of the representatives. Elections thus double as democratic principle and accountability mechanism. The second principle, the relative independence of elites from their constituents, ensures a meaningful space for the exercise of judgment by the representatives, who can depart from their constituents' preferences as needed. The third principle – freedom of opinion – counterbalances the second by ensuring that representatives, despite their freedom of judgment, can be criticized for their decisions and choices. Popular pressure does not jeopardize representatives' independence but supposedly ensures, like periodic election, a form of accountability and responsiveness, including, crucially, in the period between elections. Manin's last feature of representative government is that public decisions are subject to trial by discussion, a feature one may equate with the deliberation at the heart of deliberative democrats' theories.

How does this list of the established practices of representative government fare in light of Dahl's normative criteria? Arguably it satisfies none of them. First, the principle of periodic elections does not specify universal franchise or the principle of "one person, one vote," and is thus fully compatible with voting systems based on a tax threshold and plural voting schemes. As such, representative government can violate both the second and last criteria: namely, voting equality at the decisive stage and inclusiveness. But let us assume that these principles of representative government should today be applied only to a system in

which the franchise is universal and voting rights strictly equal so that, by default, criteria 2 and 5 (equality at the decisive stage and inclusion of all adults) are met. Even then, or so I argue, the principles of what we are now supposed to call (and are used to calling) representative *democracy* still fail three out of Dahl's five criteria.

Indeed, neither effective participation, nor agenda-setting, nor enlightened understanding are credibly ensured by the mere ability to elect one's leaders every four years and, in between, publicly criticize their decisions from outside the sites of decisive power. Representative democracy does not, in theory, require any form of popular participation besides voting and, because it also does not credibly accommodate, let alone commit to, agenda-setting by ordinary citizens, it even weakens voting as a form of effective participation. Access to power is only possible through becoming elected, a path that, even in theory, is open only to people endowed with certain qualities and, in practice, is mostly restricted to people with either money or connections. Nor does representative democracy require or guarantee enlightened understanding on the part of citizens. On the contrary, periodic elections and the independence of representatives are intended to *compensate* for the assumed absence of popular enlightenment about political issues. On certain Schumpeterian or "realist" versions of representative democracy, no room is made for democratic deliberation among ordinary citizens as a vehicle for individual and collective enlightenment, since the latter is seen as either pointless or even counterproductive.<sup>18</sup> Representative democracy, finally, also allows for the possibility of a complete disconnect between the decisions of representatives and the preferences of the represented, at least to the extent that the critical bite of "freedom of opinion" proves insufficient to bind elected representatives to their constituents' preferences.

The only democratic credentials of representative democracy therefore seem to reside with the authorization and accountability supposedly ensured by the principle of periodic elections in a context of universal suffrage and equal voting rights. The argument that authorization at the voting booth and accountability through retrospective voting amounts to genuine rule of the people may have worked in the eighteenth century, when such a promise seemed radical compared with past and existing regimes. But today, at the beginning of the twenty-first century, who can still argue this with a straight face? The reality is that representative government was mostly designed to maintain the people at a safe distance from any actual decision-making power. Manin wrote that representative government, as a set of institutional principles, replaced the ability to hold office that citizens enjoyed in Ancient Athens with the mere ability to consent to power. Expanding the franchise over the last two hundred years has allowed the advocates of representative government to call it representative *democracy* without altering this fundamental and problematic fact.<sup>19</sup>

Urbinati's normative theory of representative democracy arguably elevates this historical substitution (of consent for exercise of power) to the status of normative ideal. Urbinati's list of principles of representative democracy includes all of Manin's, embraced as normatively desirable in their own right, rather than merely recognized as *de facto* historical practices.<sup>20</sup> But she also makes two crucial additions to the list: advocacy and representativity. *Advocacy* could be read as a stronger version of Manin's third principle of freedom of public opinion in that representatives are supposed to listen to the criticisms and views voiced in the public sphere, integrate them into their reflections, and make it their duty to make those claims known and considered. *Representativity* means ensuring that the views,

perspectives, and interests of the population are not only reported on, but also made present in the political sphere in a way that reflects some minimal amount of identification and similarities between represented and representatives.

Because of these two addenda, Urbinati's picture of representative democracy is more democratic and thus more normatively attractive than representative democracy as it can be theorized on the basis of Manin's historical account. Urbinati's theory, however, accepts as a given the premise that democratic representation must be *electoral* and, despite the promise of a participatory model of representation, seemingly limits citizens' possibility for action to judgment, criticism, and deliberation, all of them decoupled from actual decision-making power. As in Manin's representative government, in Urbinati's representative democracy, citizens can protest and criticize all they want, but they are not meant to have any form of direct access to the decision-making process. Similarly, the ability to set the agenda is missing from her model. Citizens can hope to influence the representatives' agenda only through the blunt mechanism of elections and the indirect pressure of public opinion.

Like that of other prominent deliberative democrats, such as Habermas, Urbinati's theory assumes a reflexive and smooth circularity between the sphere of opinion formation through which ordinary citizens exchange ideas and form views in decentralized and unregulated ways and the sphere of the formal will expressed by party representatives and government officials. Yet the dichotomization between the spheres of opinion and will operates as, or at least tolerates, *de facto* closure of government to ordinary citizens. In Habermas, the "sluice" metaphor that is supposed to capture the relation between the two deliberative tracks (the formal and the informal) similarly suggests a filtering mechanism separating

the unstructured deliberations of the people from those of elected elites. In the end, such dichotomies function as a way to close off the sphere of actual power and effective deliberation to ordinary citizens.

The history of representative democracy and its conceptual elevation to a normative ideal reveal that the crucial novelty of this regime is not so much the indirectness of the rule.<sup>21</sup> Rather, the innovation is the regime form's reflexiveness, and the fact that this reflexiveness is ensured by placing agenda-setting, deliberation, and decision-making power in the hands of elected elites as opposed to ordinary citizens. Representative democracy thus marks the passage from a citizen-centric and people-centric model of democracy to an elite-centric and government-centric one. This elitism and government centrality are present in all institutional versions of representative democracy that have evolved since the eighteenth century: parliamentary, party, and now audience democracy. These three iterations marked important expansions of the franchise just as they maintained, and arguably deepened, the rift between the people and the class of law- and policy-makers supposed to represent them. In other words, to put it bluntly, representative democracy as we know it has turned out to be an exclusionary paradigm, not a truly democratic one. It satisfies, at best, only two of Dahl's democratic criteria (inclusiveness and equality at the decisive stage), failing to meet the crucial standards of effective participation, enlightened understanding, and control of the agenda.

If what I just said is true, it has potentially worrying implications for deliberative democracy. Deliberative democrats cannot at the same time claim that proper deliberation is only possible, and indeed desirable, in representative bodies and that their theory of legitimacy is unaffected by the crisis of representative democracy. How can

deliberative democrats ensure that deliberative democracy is authentically democratic if it must also be representative?

One way out is to try and bypass representation altogether by developing models of inclusive deliberation among all citizens, as opposed to just their representatives. The digital revolution has created the hope that the need for representation is now over and that all citizens can and should now deliberate with each other at once, online, in what can be theorized as "mass online deliberation."<sup>22</sup> The recent "systemic" turn in deliberative democracy may perhaps be read as a similar extension of the hope of realizing direct deliberation on a mass scale.<sup>23</sup> Such an approach has to assume either that the people and its interests are self-revealing in immediate ways or can be constructed in nonrepresentative ways.

Another way out – more promising, in my view – is to acknowledge that democracy is always representative but that "representative democracy" as a historical paradigm is but one model of indirect or (more aptly) deliberative and reflexive democracy. But here, too, there are two possible strategies. One is to reclaim the concept of representation and build into it new, more democratic meanings. This is the path currently taken by a number of democratic theorists. Michael Saward, for example, has argued for "making representation strange again" and redefining it away from electoral authorization, as well as one-to-one or one-to-many relationships mediated by voting only, and toward a pluralized understanding of representation as "claim-making." In the same vein, a number of democratic theorists have started advocating for nonelectoral forms of democratic representation.

In theory, nothing precludes us from recovering the term *representative democracy* to mean a truly democratic system. But my sense is that, at this point, we are better off starting fresh, and this is for at least four reasons. The first is semantic. If we accept the

constructive turn and the view that “representation is democracy,” as Plotke has it, then the expression “representative democracy” is largely redundant and uninformative. We need a better, more meaningful name. A second reason to abandon representative democracy is historical. Representative democracy was born as an alternative to democracy: the mixed regime known as “representative government.” It was only slowly and painfully (and only somewhat) democratized over the last two centuries, with exclusionary trends arising to combat each move toward inclusion. Despite theorists’ best efforts, one can only do so much to change a fundamentally elitist and antidemocratic construct into one in which power is exercised by ordinary citizens. The third reason is pragmatic: it is simply too difficult at this point to clear the name of a paradigm that is, the world over, associated with electoral (and thus partly elitist) democracy.<sup>24</sup> Finally, a fourth reason has to do with the de facto association of representative democracy with the nation-state and a narrow understanding of what counts as “political.” In today’s global age, one can argue that our understanding of democracy should be more ambitious, expanding both laterally (to the economic sphere) and vertically (to the international level).<sup>25</sup>

My own suggestion, therefore, is to move entirely past and beyond “representative democracy.” Instead, deliberative democrats should build a new paradigm that places at its core democratic deliberation as a source of political legitimacy, meets basic democratic standards such as effective participation, agenda-control, and enlightened understanding, and accommodates the realities and expectations of twenty-first-century citizens. I offer below what I take to be an attractive version of such a new paradigm of democracy: open democracy.

Let me offer a list of principles for open democracy. But before I do, let me empha-

size that my analysis presupposes the lexical priority of two higher-order principles that should be at the core of any form of democracy: namely, inclusiveness and equality. Inclusiveness means both that every adult member of the demos is entitled to a share of power and that the definition of the demos itself is inclusive.<sup>26</sup> Equality means that this share of power must be equal for all. Concretely, equality will often mean “one person, one vote” where voting (as distinct from elections) is needed. This principle of equality also means that each voice should be given the same ex ante chance of being heard where deliberation is needed. Finally, equality means that each individual has the same opportunity of being a representative where representation is needed. These two higher-order principles, inclusiveness and equality, have to be assumed as underlying (or lexically prior to) any of the other, lower-order principles that follow.

Building on this, I propose that the main five institutional principles of open democracy are:

- 1) Deliberation
- 2) The majoritarian principle
- 3) Complex representation
- 4) Rotation
- 5) Openness.

The first principle, deliberation, forms the core of the theory of democratic legitimacy that deliberative democrats have convincingly developed over the last thirty years.<sup>27</sup> Deliberation applied in the democratic context is usually defined as the public exchange of reasons among free and equals. It is, to some degree, similar to Manin’s and Urbinati’s “trial by discussion” principle, except that deliberation is not assumed to involve ordinary citizens only as members of a diffuse civil society without access to direct decision-making power (as in Manin’s, Habermas’s, or Urbinati’s model). In this paradigm, democratic deliberation, whether direct or performed

through representatives, must involve ordinary citizens. This principle helps ensure that the system meets Dahl's requirement of "enlightened understanding."

The second principle is the majoritarian principle. It is, strangely, the principle that often makes most people recoil in fear of the "tyranny of the majority." Yet above and beyond elections, majority rule or some variant of it (such as majority judgment)<sup>28</sup> is also the principle most widely associated with democracy. To the extent that voting is necessary to resolve disagreements when deliberation does not produce a consensus, a default decision rule must be in place. The most democratic one, barring any good countervailing arguments to posit voting thresholds and minority vetoes, is some version of majority rule, for which both strictly procedural and epistemic reasons can be adduced.<sup>29</sup> The majoritarian principle is the only principle that prevents the domination of any minority.

The third principle, complex representation, acknowledges that delegation of authority is both unavoidable in any reasonably sized polity and desirable on its own, insofar as it allows for the discovery, articulation, and even construction of shared interests. In a democratic context, however, representation should not necessarily (or at all) translate into electoral modes of representation. Thus, the principles of open democracy do not explicitly include the principle of elections because elections, far from being *a*, let alone *the* democratic principle, are merely one selection mechanism among others.<sup>30</sup> Instead, lottery-based representation – or "lottocratic representation" of the kind arguably central to Ancient Athens – becomes the default democratic mode of representation, though not necessarily the only one. In some contexts, self-selection – and perhaps even reinvented forms of electoral representation – may also prove an appropriate form of democratic representation.

Rotation, as a fourth principle, ensures that power be made to circulate and not stay with any subset of the polity for longer than strictly necessary. In the context of randomly selected assemblies characteristic of lottocratic representation, periodic rotation would have the beneficial effect of impeding group-think, corruption, the formation of static coalitions, and the creation of a separate class of rulers. The mandates for randomly selected or elected assemblies could last from a few months to a few years, but this principle makes it clear that the practice of politics as a profession and politicians as a separate caste is not part of this new ideal of democracy. While there should be plenty of room for expert administrators in the machinery of government, the law and policy decisions should ultimately be vetted by ordinary citizens (properly educated for and informed about the tasks at hand), not experts or career politicians. To the extent that open democracy may still accommodate elected politicians, the ideal would ensure a significant turnover of the personnel occupying these elected functions, not just through the periodicity of elections (which, as we now know, may ensure some responsiveness and accountability but does little for actual turnover of the political personnel) but also, for example, through term limits.

Openness, finally, is an umbrella concept for both direct popular participation of different types and transparency.<sup>31</sup> Because representation always creates the risk of robbing the people of the capacity for effective participation, agenda-setting, and enlightened understanding, one needs to introduce the counterbalancing principle of openness, in which, in the ideal, citizens can make their voices heard at any point in time, initiate laws when they are not satisfied with the agenda set by representative authorities, and keep an informed eye on every step of the political process.

Openness thus prevents the closure and entrenchment of the divide between repre-

sented and representative that may accompany representation. Openness means that power should flow through the body politic, rather than stagnate with a few people. Openness should translate into process transparency much of the time (though not always transparency about substance). It should also translate into a citizens' right of initiative and other modes of direct, effective participation. The principle of openness is uniquely enabled by late-twentieth- and early-twenty-first-century technologies, such as the Internet, smartphones, and social media. It is what makes open democracy most distinctive.

These five institutional principles are meant to operate under specific and enabling conditions: liberal and what might more inclusively be termed "empowerment" rights. Such rights constrain from the outside the five institutional principles listed above. They also enable them by ensuring that everyone, including minority members, is given a meaningful voice in the democratic process. Such rights may need to translate into quotas or parity laws ensuring that deliberations take into account minority perspectives, especially in contexts in which systematic minorities are at risk of exclusion. Empowerment rights may also translate into rights of initiative, which allow the discontents to challenge the status quo provided they garner a minimal amount of support. Finally, to counter the oppressive potential of the state, empowerment rights may translate into specific protection rights for whistleblowers. These empowerment rights, however, need not amount to full-fledged countermajoritarian constraints (such as vetoes, supermajority thresholds, or the creation of independent courts and agencies), which would impede, rather than enable the principles of open democracy.

Let us now review the crucial differences between open democracy and representa-

tive democracy. Unlike representative democracy, which is fully compatible with purely aggregative (usually Schumpeterian or "realist") models of democracy, open democracy explicitly places deliberation at its normative core. It also acknowledges the majoritarian principle as pointing to a certain type of democratic default rule when deliberation does not produce a consensus and disagreement subsists. And at least at the theoretical level, open democracy measures up to basic democratic criteria that representative democracy fails to satisfy, including effective participation, agenda-setting, and enlightened understanding. In open democracy, ordinary citizens have a meaningful chance to participate in law- and policy-making. They can be chosen by lotteries to occupy a position in significant political assemblies, something that under the right implementation should happen often enough. Even if they are not selected by the lottery process, citizens can freely access crowdsourcing platforms through which their voice can be heard and can make a difference to the outcome. In open democracy, ordinary citizens are also in control of the agenda, either indirectly via randomly selected assemblies or more directly via procedures such as a constitutionally entrenched citizen's initiative or a right of referral. Having control of the agenda and a say in deliberation early in the process in turn renders voting, typically in a referendum, a genuinely effective form of final say and participation. The principles of deliberation combined with complex representation and openness thus spreads enlightened understanding among citizens.

In open democracy, democracy no longer means merely consenting to power, as it does in our current understanding of representative democracy. It does not always mean holding office, as it did in ancient democracy. But it means being able to access and thus hold power, whether as a simple citizen able to influ-

ence the agenda of the legislative assembly through an initiative, the content of representatives' deliberations through crowdsourcing platforms,<sup>32</sup> and the outcome of a vote in a referendum whose options were shaped by his views; or even more directly, by being chosen to participate in a randomly selected assembly charged with setting the agenda or making the law.

I have not mentioned in this list of principles the nature of the relation between representatives and represented, because in this new paradigm, the representative relationship should be able to take many forms as long as it is broadly democratic (a question that needs a lot more investigation than can be conducted here). Most important, anyone should be able to be a representative. This is what lottocratic representation would ensure by default, though one could envision a reimagined electoral system along the lines of what is sometimes theorized as "delegative" or "liquid" democracy, in which people can give their votes to anyone they like, either for a specified amount of time or just to work on certain issues, with the option of recall at any time and the possibility of retaining the right to direct input throughout.<sup>33</sup>

Open democracy, finally, marks a distinct historical stage in the unfolding of the ideal of democracy, including deliberative democracy. Because it is not as tied down to established practices and institutions (such as

periodic elections, parties, and geography-based constituencies) as is representative democracy, it opens itself to entirely new applications, including in firms, online communities, and at various levels of the international stage. Open democracy allows us to reinvent democratic politics for the twenty-first century.

In order for deliberative democracy to remain relevant in the crisis of representative democracy, its advocates must distance themselves from the paradigm of representative democracy, at least as this essay has reconstructed an important critical reading of it. There are probably many ways to rescue deliberative democracy from the crisis of representative democracy. The strategy pursued here is to break entirely the current association between deliberative democracy and representative democracy by sketching a new paradigm of democracy that maintains deliberation among free and equal individuals as the core of democratic legitimacy, but also complicates our understanding of democratic representation and detaches it from electoral mechanisms. In this new paradigm of open democracy, deliberation, the majoritarian principle, complex representation, rotation, and openness would bring power back to the people, instantiating the ideal of people's rule (*demokratia*) more fully than representative democracy as we know it.

#### ENDNOTES

<sup>1</sup> Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. Alan Hamlin and Philip Pettit (Oxford: Basil Blackwell, 1989). Otherwise anticipated by many other authors from Aristotle to Madison and John Stuart Mill, as well as, in its contemporary version, Joseph Bessette.

<sup>2</sup> One could argue that Bruce Ackerman and James Fishkin's Deliberation Day, as well as constitutional moments, count as direct deliberation on a national scale, but the reality is that they are more akin to deliberation among clusters of individuals occurring across the country, with no evidence that these clusters add up to what genuine mass deliberation should look like: namely, one single, integrated conversation among all individuals gathered in the same room.

- Deliberative Democracy as Open, Not (Just) Representative Democracy*
- <sup>3</sup> Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996).
  - <sup>4</sup> David Plotke, "Representation is Democracy," *Constellations* 4 (1) (1997): 19–34; Sofia Näsström, "Representation as Tautology," *European Journal of Political Theory* 5 (3) (2006): 321–342; Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006), 328; Nadia Urbinati and Mark Warren, "The Concept of Representation in Contemporary Political Theory," *Annual Review of Political Science* 11 (2008): 387–412; and Lisa Disch, "Toward a Mobilization Conception of Democratic Representation," *American Political Science Review* 105 (1) (2011): 100–114.
  - <sup>5</sup> Näsström, "Representation as Tautology."
  - <sup>6</sup> This model departs from traditional views on the role of representatives (such as Madison's or Burke's) in that no assumption is made that the judgments of the representatives are in any way superior to those of the ordinary citizens.
  - <sup>7</sup> Jack Hayward, ed., *The Crisis of Representation in Europe* (Abingdon, United Kingdom: Routledge, 1996); Colin Crouch, *Post-Democracy* (Cambridge: Polity, 2004); Pippa Norris, *Democratic Deficit: Critical Citizens Revisited* (Cambridge: Cambridge University Press, 2011); Donatella della Porta, *Can Democracy Be Saved? Participation, Deliberation, and Social Movements* (Cambridge: Polity, 2013); Yannis Papadopoulos, *Democracy in Crisis: Politics, Governance, and Policy* (London: Palgrave, Macmillan, 2013); and Simon Tormey, *The End of Representative Politics* (Cambridge: Polity, 2015).
  - <sup>8</sup> See Peter Mair, *Ruling the Void: The Hollowing Out of Western Democracy* (New York: Verso, 2013).
  - <sup>9</sup> Martin Gilens and Benjamin Page, "Testing Theories of American Politics: Elites, Interest-Groups, and Average Citizens," *Perspectives on Politics* 12 (3) (2014): 564–581.
  - <sup>10</sup> Colin Crouch, *Post-Democracy* (Cambridge: Polity, 2004); and John Keane, *The Life and Death of Democracy* (New York, London: W. W. Norton & Company, 2009).
  - <sup>11</sup> Frank Vibert, *The Rise of the Unelected* (Cambridge: Cambridge University Press, 2007); and Papadopoulos, *Democracy in Crisis*.
  - <sup>12</sup> Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).
  - <sup>13</sup> *Ibid.*
  - <sup>14</sup> For example, see *ibid.*, 18; and Eric Nelson, "Prerogative, Popular Sovereignty, and the American Founding," in *Popular Sovereignty in Historical Perspective*, ed. Richard Bourke and Quentin Skinner (Cambridge: Cambridge University Press, 2016).
  - <sup>15</sup> Robert Dahl, *Democracy and Its Critics* (New Haven, Conn.: Yale University Press, 1998), 37–38.
  - <sup>16</sup> Political scientists in the twentieth century learned that power involves not only deciding (the most visible "face" of power) but also agenda-setting. See Peter Bachrach and Morton S. Baratz, "Two Faces of Power," *American Political Science Review* 56 (4) (1962): 947–952; and Steven Lukes, *Power: A Radical View* (London: Macmillan Press, 1974).
  - <sup>17</sup> Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997). These four principles are not ideal criteria (like Dahl's) but mere idealizations of established historical practices; thus, their function is essentially descriptive rather than normative.
  - <sup>18</sup> See Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton, N.J.: Princeton University Press, 2016); and Ian Shapiro, "Collusion in Restraint of Democracy: Against Political Deliberation," *Dædalus* 146 (3) (Summer 2017).
  - <sup>19</sup> Manin, *The Principles of Representative Government*, 79.
  - <sup>20</sup> Though she does not list them explicitly in her book, Urbinati mentions that she accepts all of Manin's principles in Hélène Landemore, "Is Representative Democracy Really Demo-



cratic? Interview of Bernard Manin and Nadia Urbinati, New York, April 10, 2007,” <http://www.booksandideas.net/Is-representative-democracy-really.html>. Hélène Landemore

- <sup>21</sup> For example, agenda-setting in Ancient Athens, the classic archetype of “direct” democracy, was done by a randomly selected subset of citizens, the Boule – arguably a representative, rather than direct, assembly.
- <sup>22</sup> Cyril Velikanov, “Mass Online Deliberation,” unpublished article, [https://www.academia.edu/12031548/Mass\\_Online\\_Deliberation](https://www.academia.edu/12031548/Mass_Online_Deliberation) (accessed December 25, 2016).
- <sup>23</sup> John Parkinson and Jane Mansbridge, *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge: Cambridge University Press, 2012).
- <sup>24</sup> Consider the Freedom House definition of democracy as a political system “whose leaders are elected in competitive multi-party and multi-candidate processes in which opposition parties have a legitimate chance of attaining power or participating in power.”
- <sup>25</sup> For a defense of democracy in the firm, see Hélène Landemore and Isabelle Ferreras, “Toward a Justification of the Firm-State Analogy: In Defense of Workplace Democracy,” *Political Theory* 44 (1) (2016): 53 – 81.
- <sup>26</sup> The exact criterion for inclusiveness may be too controversial to specify further, since the “all-affected” principle is often seen as too general and any restriction based on nationality, geography, or ethnicity too arbitrary.
- <sup>27</sup> By itself, deliberation is not a democratic principle. Deliberation becomes democratic when it is constrained by the underlying higher-order principles of inclusiveness and equality. Additionally, deliberation must take place publicly in order to count as democratic. Embedded in the ideal of deliberation as a condition of legitimacy is another principle, orthogonal to that of equality: namely, the principle of substantive merit. Although all should have an equal chance of being heard, arguments should be judged on the merits. It is therefore legitimate that not all voices influence the outcome equally.
- <sup>28</sup> See Michel Balinski and Rida Lariki, *Majority Judgment: Measuring, Ranking, and Electing* (Cambridge, Mass.: The MIT Press, 2011). In this book, Balinski and Lariki suggest substituting the traditional interpretation of majority rule as a collective ranking of the available alternatives with an interpretation of majority rule as a collective judgment or evaluation of these same alternatives (as in, typically, wine competitions).
- <sup>29</sup> I have myself offered an argument for the epistemic properties of democracy based on democratic inclusiveness as a proxy for the cognitive diversity necessary for smart deliberation. See Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, N.J.: Princeton University Press, 2013).
- <sup>30</sup> It is possible to imagine elections falling closer to democracy than they currently do on the continuum between oligarchic and democratic device. Nonetheless, elections are a fundamentally Janus-faced selection mechanism that functions to exclude as well as include. Because their democratic credentials are only partial, elections should not be raised to the level of democratic principle. One could even imagine democracies that would do away with elections entirely, if elections proved too difficult to reconcile with the equality of opportunities to become a representative. For example, see David Van Reybrouk, *Against Elections: The Case for Democracy* (New York: Random House, 2016).
- <sup>31</sup> See the Obama administration’s concept of “open government.” Although the implementation fell short of the promise, the concept remains enticing as an umbrella for democratic values such as transparency, participation, and collaboration.
- <sup>32</sup> For examples of crowdsourcing as a participatory tool in policy processes, see Hélène Landemore, “Inclusive Constitution-Making: The Icelandic Experiment,” *Journal of Political Philosophy* 23 (2) (2015): 166 – 191.
- <sup>33</sup> See Bryan Ford, “Delegative Democracy,” unpublished article (2002), <http://www.brynosaurus.com/log/2002/0515-DelegativeDemocracy.pdf>.

# Inequality is Always in the Room: Language & Power in Deliberative Democracy

*Arthur Lupia & Anne Norton*

*Abstract: Deliberative democracy has the potential to legitimize collective decisions. Deliberation's legitimating potential, however, depends on whether those who deliberate truly enter as equals, whether they are able to express on equal terms their visions of the common good, and whether the forms and practices that govern deliberative assemblies advance or undermine their goals. Here, we examine these sources of deliberation's legitimating potential. We contend that even in situations of apparent procedural equality, deliberation's legitimating potential is limited by its potential to increase normatively focal power asymmetries. We conclude by describing how deliberative contexts can be modified to reduce certain types of power asymmetries, such as those often associated with gender, race, or class. In so doing, we hope to help readers consider a broader range of factors that influence the outcomes of attempts to restructure power relationships through communicative forums.*

ARTHUR LUPIA, a Fellow of the American Academy since 2007, is the Hal R. Varian Professor of Political Science and Research Professor in the Center for Political Studies at the University of Michigan.

ANNE NORTON is Professor of Political Science and Comparative Literature at the University of Pennsylvania.

(\*See endnotes for complete contributor biographies.)

Deliberative democracy seems to offer democracy not only in our time, but in our neighborhoods. People meet as equals and reason together to find their way to a common good. We are not surprised, therefore, that deliberation is an idea with many advocates. Where people meet as equals, democracy is advanced. Where people reason together, democracy is advanced.

Deliberative democracy has the potential to legitimize collective decisions. Deliberation's legitimating potential, however, depends on whether those who deliberate truly enter as equals, whether they are able to express on equal terms their visions of the common good, and whether the forms and practices that govern deliberative assemblies advance or undermine their goals. In this essay, we examine these sources of deliberation's legitimating potential.

Beneath and throughout the evaluation of deliberative democracy are questions about *whether and*

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*how language facilitates communication and whether and how communications inform assent.* In attempts to measure the effectiveness of deliberation, either theoretically or empirically, it is common to reference instances of consensus, compromise, or clarifying sources of conflict as evidence of success. Deliberative endeavors that fail to produce such outcomes are seen as less successful.

The path to such outcomes travels through sequences of communicative acts. These acts entail members of a society describing their lifeworlds to one another. In the deliberative ideal, participants are free to make these descriptions without having to filter them in ways that conform to existing power imbalances. Participants describe their lives as they live and feel them.

In the deliberative ideal, participants are free to express their views on any socially relevant issue. They need not subordinate themselves to dominant views of history, culture, and power. Through listening to these narratives, participants may come to an appreciation of diverse lifeworlds. Through this understanding, communities may come to realize shared norms and shared foundations for legitimate collective action.

Deliberation's potential to create legitimacy lies in its ability to limit the kinds of oppression and power asymmetries present in other means of social decision-making, where these other ways of "legitimizing" social decisions include violence, the edicts of oligarchs, decisions produced by the power structures underlying many modern democracies, and distributional outcomes influenced by the world's myriad systems of markets. For this reason, we focus particular attention on the extent to which deliberative mechanisms mitigate power asymmetries. We contend that even in situations of apparent procedural equality with respect to every individual's basic right to convey their lifeworlds, the legit-

imating potential of deliberative mechanisms is limited by the possibility that they can increase, rather than reduce, normatively focal power asymmetries.

Language and communication themselves entail power relationships. Language gains meaning, and communication becomes an efficient means of communicating ideas, in part because language and communication each build from, build on, and reify existing power imbalances. Language issues from power, language creates power, language is inseparable from power. Deliberative exercises that use language and communication to produce assent and legitimacy cannot help but produce their outcomes on the backs of existing power asymmetries. Even language environments that claim to feature universal inclusion and procedural equality cannot be assumed to be independent of deep and potentially destructive power dynamics.

In what follows, we seek to inform deliberation as a means of producing legitimate social decisions. We focus on the kinds of power imbalances that are present in language and communicative practices. In so doing, we demonstrate how the language and communication that people might use in deliberative settings carry these inequities to new places – even when a deliberator's intention is to reduce their impact. In our examples, language and communication pertain not only to what is formally written or intentionally said, but also to what is read by others when they see our bodies or imagine our backgrounds. We will argue that it is difficult or impossible for participants in a deliberative setting to unsee what they are clearly seeing or unthink the meanings others communicate when they present themselves. These non-verbal communications infuse conversations and affect deliberation's ability to produce legitimate outcomes.

We conclude by describing how deliberative contexts can be modified to reduce

Arthur  
Lupia &  
Anne  
Norton

certain types of power asymmetries, such as those often associated with gender, race, or class. In so doing, we hope to help readers consider a broader range of factors that influence the outcomes of attempts to develop norms or restructure power relationships through communicative acts.

*When communication and language are in the room, so are inequality and coercion.*

Communication. The foundation of human interaction. The principal means by which we express basic emotions. Love. Anger. Fear. The vehicle through which we convey tales of heroes and villains. The medium through which individuals testify about their vulnerabilities and adversities. The means by which oppressed persons seek assurance and plead for assistance.

When seeking to manage problems that we as individuals cannot solve on our own, we seek communicative currencies that allow us to discover shared histories, develop common interests, and build trust. Communication offers a foundation from which we construct social compacts and contracts. These pacts set the stage for all forms of collective action and influence the terms by which such actions are remembered.

Language. The languages and lexicons that we use to communicate with one another are intricate human creations. They help us organize the world for ourselves and describe it to others. Language provides a means for categorizing worlds observed and imagined. Language is, however, our maker as well as our servant. We enter a world language has made for us. Our most intimate experiences are mediated by language.

At all times, language frees and constrains.

Language frees us by allowing us to combine its words and phrases in an infinite number of ways. Language gives us the capacity to express diverse ideas and emotions. The continuity of language over time

gives us access to the past. Language can be used to categorize the present and to propose desired futures. Language enables people to overcome the isolation integral to human experience. People are able to speak of their pain, their pleasure, their needs, their hopes, and their experiences. They are free to make public their sense of things: their interpretation of events, institutions, laws, and customs.

Language also constrains. We enter a world already named, in which meanings are attached to all that we encounter, including our bodies. Language makes us meaningful to ourselves. We know our sex, our race, our ancestry, our faith, and our politics through language. We are often given a race (or two), an ethnicity, a class position, a nation. Each of these comes with a history. Each of these comes with a meaning that predates our awareness of them.

We are governed by language even when we are silent. When we use language we are bound by words whose meanings are already set, by grammatical rules and by other linguistic conventions.<sup>1</sup> Philosopher of language Paul Grice observed that we have incentives to use terms that are easily understood by others.<sup>2</sup> To achieve understanding in the space of a single conversation, we use familiar words. We seek analogies, metaphors, and examples that are likely to be familiar to others. Many of these words are well established with long histories. In our quests for fluidity and speed, we seldom take time to reflect on the origins of these rules, examples, or words. Those who do, Heidegger and Nietzsche among them, enrich our thinking, but they too cannot fully comprehend the infinite and changing richness of a word. The meaning of a word may shift as it travels from one geographic, political, or class site to another. Words change with use. However erudite, however careful we are, we cannot fully control the meanings and connotations of the words that we use.

They have associations that may be unintended by us, even unknown to us.

Our words reflect and extend power in ways that we only partially understand. Some words and rules provide easy ways to inflict cruelty. Some words and rules have a cruelty that is felt by others but hidden from us. Often that capacity for cruelty is available only to some. The sting of racial epithets, for example, is often more severe when voiced by those who occupy a higher position in a racial hierarchy.

We use language to hide, as well as to reveal, our sentiments. The purposes of some of these devices range from saving face to deflecting attention away from unattractive elements of ourselves and toward the unattractive attributes of those who threaten us. We bite our tongues at critical moments not because we are uninjured, but because we hope that such patience will produce its own rewards.

We are made in language – as Wittgenstein and Lacan, Gadamer and Lévi-Strauss (and a host of others) recognized – but we are also the makers of language. We coin new words and phrases. For each new mixture we create, others attend to them or they do not. They derive meaning or walk away confused. They use our words to express their own feelings – or they do not. If they do not, whatever we were trying to express at that moment withers away. In the hands of skilled or privileged communicators, language is an instrument of incredible power, yet even the most eloquent often find language inadequate.<sup>3</sup>

Because we make language, important attributes of language change. Grammar changes. Idioms change. Some changes are willful and deliberate: we choose not to say a host of once common racial and ethnic epithets. Other changes are unconscious. They are the work of practice, representing erosions in the structure of language made by the currents of speech and writing in the everyday. To learn more about

this topic, for example, we can consider “googling” the topic and then “emailing” or “texting” what we find to others. We can ask what has changed in *jihad* as the word has traveled west.

Yet in this march of linguistic “progress,” new meaning sometimes emerges at the expense of old meaning. What is lost in these evolutions may be seen by imaginative interlocutors as rightfully subservient to new expressions. But the old meanings we sacrifice for contemporaneous convenience may be lost to future selves in need of those meanings. The march of meaning as manifest in language is a dialectic between present and past, between the creators of language and those who are made in it.

Most of us don’t think about communication and language in these ways very often, if at all. As long as our words elicit the social and cognitive reactions that we seek, we carry on without thinking about what meaning and power our words have conveyed. We don’t think about these things despite the fact that every time we use language, we transport myriad residues of human relationships to new places and people. We reinforce social and political structures, often without willing to do so. In our use of language, we export broader, fractured elements of history from the past to the present.

In every quest to achieve fast coordination and mutual understanding through communication and language, we necessarily provide new energy to a continuance of the past imbalances and power asymmetries that are part of every widely used language. In so doing, we use words that assert authority. We use terms that can inspire or injure. We do this even when attempting to find common meaning. Even when attempting to mitigate power relationships. Even when we incompletely understand the meaning that others derive from our words – which is to say, almost always.

Language is not only a matter of words, spoken and heard. Language is also written. The written is carried not only in words but also in other signs. The silent body speaks, whether it wills that speech or not. It speaks of its place in the social order: of race, sex, age. The black man must speak as a black man, the white woman as a white woman. The old speak from the shell of age. Some speak from the haze of beauty. The text written on the body, read from the body, may amplify or mute what the speaker says, but it cannot be easily silenced.

Nonverbal communication communicates. Nonverbal expression expresses. Utterances and meanings enter the room with us. They are part of the conversation, whether they are formally recognized, whispered in the shadows, or have emerged in others' consciousness automatically once we are seen. Few speeches have the power of the silent body. Often the texts of race and sex and age operate as supplements; they are, in Derrida's phrase, "that which adds only to replace." The man of the Declaration of the Rights of Man is displaced by blackness, evoking not the triumph of freedom but the legacy of slavery.

We have spoken before we speak, we have been read before we write. The people who enter a room carry not only the inscribed body, but the many texts they have written on that body: when they shaved or didn't shave, when they put on make-up, when they dressed. The people who deliberate do so clothed in texts that speak of their place: of their wealth or poverty, their religion, their level of education, their regions, their preferences and politics. The uniform and the political T-shirt carry messages, but so do headphones and Birkenstocks. The clothes a speaker wears inflect the speech. Speech about policies toward Israel carries different meanings when it comes from a body wearing a kipot or a kaffiyeh. Speech about freedom of re-

ligion will be inflected by the hijab or the habit the speaker wears.

We are often not fully conscious of the texts we write on our bodies as we dress, but we are unconscious adepts at reading them. We see the people that surround us not as naked human beings, not even simply as people inscribed with only race and sex and age. We see them as members of social orders, clothed with information about their positions and their preferences. Policemen and firemen, military officers and security guards wear uniforms. We know where they work. We know the Army lieutenant has taken an oath, that the fireman is willing to risk his life for others. We know the captain outranks the sergeant, though the sergeant may be older. We know the general makes a lot more money than the private, that he may have advised presidents, that he has power. We know the workers at Target and McDonald's make less money than the general, that they almost certainly have less education. We know they have less power. We conclude, on the basis of good evidence, that the woman in the starched cap of the Amish and the Mennonites is unlikely to support abortion or military intervention.

The texts written in clothing have all the power and imperfections, all the strategies and misfires, that one encounters in other uses of language. A person may try to dress unobtrusively and nevertheless boast of wealth, forgetting, for example, the familiar Rolex on the wrist. But clothing – like every other form of speech – does not always tell the truth. One can use clothing to pass: as richer or poorer, man or woman, even as black or white.

The texts written on the body, and those that people write on themselves, enter with those who deliberate. One can, of course, forbid uniforms, but clothing will remain, and the physical signs of race, sex, poverty, age, and certain types of abuse are difficult to erase.

The texts written on the body are not, however, simply problems to be overcome, impediments to be set aside. They can operate – rarely, but with great force – as occasions for questioning and enlightenment. Thinking of the Declaration of the Rights of Man and of the Citizen when the man is black and the citizen is Native American raises questions that can spur deliberation. Sojourner Truth changed the debate when she asked in her blackness “Ar’n’t I a woman?” The visible presence of poverty can alert the well-to-do about relations between luck and skill in the current social order. The vision can induce them to think about how they would want to distribute power and privilege if skill-luck relations turned out to be even a little bit different than they imagined.

Whether carried by language or appearance, inequality is in the room even before the deliberators enter. One can always, must always, ask what the room says. Who is silenced or intimidated by the room?<sup>4</sup> Who feels at home in the room? Is the room in a public building or a church? The ex-convict and the undocumented immigrant enter public buildings on different terms than the policeman and the public official. The union hall may be enemy territory for the businessman; the church an unsettling space for a Jew. Parents walking into a public school will be faced with rooms like those their own children occupy, or with rooms that boast of riches denied to their children, or a poverty that their children do not face. The room will speak of privilege or deprivation, of class and regional identities. There is no neutral, unspeaking space. Perhaps the harshest speech of all would be the clinical sterility of a room with no chairs and white walls.

Which brings us to deliberation. The idea has such promise. The idea of forward-looking individuals. The idea of sharing. Unfiltered descriptions of diverse individual

lifeworlds. Everyone, in principle, having a right to speak. No one having to modify their truths for the sake of going along to get along. Each person obliged to confront, face-to-face, the people with whom they share a caucus, a district, a country. Each person faced with a body that, like or unlike their own, shares a common humanity and with it the whole human complement. These deliberative ideas are seen as a way to mediate and reduce socially damaging power inequities.

Common ideal forms of deliberation build not just from the premise that everyone has a right to speak; they build from the premise that speakers will actually be heard.<sup>5</sup> In other words, participants enter not only with a license to speak but also with an obligation to listen. The obligation is not necessarily to agree, but to actively engage what all the stakeholders feel they need to say.

Hence, many deliberative ideals depend on the implicit assumption that in the ideal, participants would have an unconstrained capacity for attention and listening. This is a problem in practice. Time is scarce. Attention is limited. Sometimes people say things that we have heard a hundred times before. We tune them out. Or they repeat themselves. We tune them out. Or they offend us. We tune them out. There is also prejudice. Not just what we think about when we see certain types of people, but also what we think about when we hear certain types of words spoken in certain types of ways. In many cases, we tune those words out.

A considerable scholarly literature on attention tells us what our experience has already shown: we ignore almost every piece of information to which we are exposed, we pay fleeting attention to almost every piece of information to which we pay any attention, and most of the phenomena to which we do pay attention leave no lasting impact on our subsequent feelings or memories.<sup>6</sup>

In other cases, we have the ability to pay attention, but we are so self-focused that

we “listen” only for an instrumental reason: to set up our own awesome response. Here, we are constantly thinking of how to shore up our positions. How to expand or protect our self-esteem. How to elevate our social position. How to arrange the moment in a way that will help others appreciate our virtuousness in the stories that we will later tell others about this exchange. So we listen as tacticians, plotting the next move in a game we think we already know how to win.

Even when we are not consciously using a conversation for the purpose of self-inflation, we can be led astray by our attempts to place another’s words in a context that we feel comfortable contemplating. When the black woman speaks, the white woman may think “she is a woman like me, she will be an ally” or “the black woman is speaking, will she reproach me?” The black woman may speak unwillingly of blackness, willingly of her wealth and privilege, or vice versa. The white woman may be so distracted by her concern with her own standing in the black woman’s eyes that she fails to listen, fails to hear, what the black woman actually says. She may listen, but only to hear the voice of the race while ignoring a person caught in a particular mesh of structures and constraints of which race is only a part. She may hear the voice of the race, but if she fails to hear the voice of the speaker, she will have heard a message quite different from the one the speaker intended to convey. When we listen to others, we may listen for the voice of the race and fail to hear the voice of poverty or the wisdom of age. We may listen for the guidance of the educated and fail to hear a more refined bigotry. We may work to hear difference and fail to hear an invitation to make common cause. We may fail to hear the voice of one person, like and unlike all others.

With these communicative dynamics in mind, what can we say about the con-

sensuses, compromises, or agreements reached after a deliberative session? Can we say that everyone reached an identical understanding about the entirety of the testimony that their setting allowed? No, we cannot say that or, indeed, anything close to it unless the deliberation was remarkably short and its content was the type to which people could devote undivided attention. In all other cases, physical limits of attention and memory prevent people from recalling all elements of a sustained communicative interaction. Even if people remember many such elements, there would be questions about how heavily they should weight them in any post-deliberative conclusions that they draw. Should people weight all aspects of all utterances equally? Should they realize that some people take longer than others to “get to the point” and perhaps discount utterances of excessively wordy individuals? Should they account for the fact that some people may be speaking strategically in order to achieve a certain outcome where others’ utterances are more heartfelt?

There are limits to what deliberative outcomes can tell us about what thoughts and feelings its participants share.<sup>7</sup> If a deliberative proceeding goes on for too long, people may lose hope about their ability to be heard. Others may be more likely to become tired and less likely than others to recall a particular moment in a conversation. Some may be hungry, have children waiting at home for dinner or bedtime, or even have to go to the bathroom and “assent” to a particular proposition to facilitate a speedy exit. Others may be physically or intellectually attracted to a person in the room and assent to a particular proposition to increase the likelihood of subsequent interactions. None of these forces can be kept from a deliberative context.

In some theories of deliberation, constraints to interpreting a post-deliberative consensus, compromise, or agreement



would themselves be limited by the idea that deliberation is not a discrete event. In some theories, perpetual openness to new information is a key part of the device's normative appeal. So agreements made for the purpose of a fleeting convenience can be undone. A practical problem, however, is that undoing agreements that were alleged to represent the broad assent of deliberative participants takes time to do. If such "do-overs" were to happen often, they could reduce confidence in the future force of a current agreement. Why invest one's heart and soul into a deep conversation about how we should live if we are repeatedly asked to "reconsider" any consensus, compromise, or agreement that we might reach?

To avoid attaching to deliberative outcomes interpretations that limits of memory and forces of identity cannot sustain, people should enter fully conscious of their fallibility, unsure that they understand – or even could understand – the experiences of their fellow participants. They should distrust their knowledge, their capacity for empathy, and even their values.

They should realize that if consensus is the object, certain outcomes are foreclosed at the outset. If agreement is the end, certain positions are delegitimated at the outset. Consider a meeting that asks Scottish nationalists to join an effort to reach a consensus on how to maintain the United Kingdom. The Scottish nationalist would be better served by a call to deliberate over "whether the United Kingdom should continue in its present form" than a call to "find common ground for the United Kingdom."

They should realize that if compromise is a desired outcome of deliberation, those who reject compromise are excluded. Yet rejection and refusal may be the most useful and honorable forms of action in some instances. Consider the Missouri Compromise. That compromise was predicated on the imperative to maintain the Union. That construction excluded secessionists,

but it also excluded abolitionists. Refusal to accept a compromise of that kind can be politically and morally defensible. Should we commend efforts to reach a compromise over segregation or apartheid? Those who value peace, order, and the rule of law very highly may say yes. That hierarchy of political values is not without its defects and dangers. The civil rights movement in the United States depended on a willingness to disturb the peace. King called for civil disobedience and defiance of the laws that maintained an unjust racial order. Decolonization required more aggressive, even violent confrontations with law and order. Even a tacit assumption that compromise is what deliberation seeks can undermine the larger democratic end of seeking common understanding and the common good.

In all interpretations, moreover, we are also apt to overestimate our capacities for empathy. Consider, for example, Hannah Arendt's "Essay on Little Rock." In her rejection of forced desegregation, Arendt speaks for and as "the Negro mother." Arendt's confidence in her capacity for understanding and sympathy misleads her. The passage is cited now not as an instance of empathy or solidarity, but as evidence of the limits of her thinking.

Efforts to reach common ground or a common understanding are seductive, particularly for Americans. We often believe these are easier to reach than our history indicates. We retain a commitment in principle to the idea that "all men are created equal," that they are endowed with a common set of rights, needs, and desires. Yet even if we all have the right (and the need) for life and liberty, even if we all have the right (and the desire) to pursue happiness, we differ profoundly on what these objects are and how we should be permitted to pursue them. The belief that we understand the rights, the needs, and the interests of those we join in discussion is un-

reliable at best. It may lead – it has led – to efforts to impose compromises that have held us back: the three-fifths clause being an early and shaming example. Common ground can be rocky and shifting. History and memory may come to reproach us for decisions we reach together. We cannot completely avoid error and, therefore, we must regard any common ground we reach not as where we end, but as a resting place along the way.

Deliberation is a liberal enterprise. It expresses the liberal commitment to order and procedure. Deliberative meetings are governed by rules, procedures, and norms of practice. These mechanisms aim at ensuring equality and giving everyone a hearing. Those who follow the rules and observe the conventions appear to be showing a greater willingness to advance the deliberative process, to engage with others and to find common ground, but it is also possible that they are simply better served by the rules in place. Those who are most willing to search for common ground may be those who hold a strategic advantage on that ground.

Liberalism is, however, not always conducive to liberal values, and it can be very much at odds with democracy. If those who deliberate and subsequently decide make their decisions only for themselves, the enterprise may capture, in its form, valuable elements of liberal democracy. That is, deliberation linked with decision is an instance of people governing themselves within a set of procedures (ideally, ones they make themselves) and a commitment to using reason to advance democracy. If those who deliberate decide for others, the enterprise is troubled as all representation is troubled.

Deliberation also reflects the liberal ease with democracy. Liberalism, like so much of political thought before it, regards democratic power as a force to be managed.

Democratic passion and will are problems to be solved. The liberal answers to the problem of democracy have been rules and representation.

Many observers fear that the great masses of people are incapable of deliberation. Most people, they conclude, are prone to irrational fears, hatreds, appetites, and hopes. Rules are necessary to rein them in. Representation moves the most important decisions, the most technical decisions, and perhaps any decision requiring reason away from the masses toward a smaller group. The few, it is argued, can reason as the many cannot.

In liberal democratic systems, the legitimacy of the decisions of the representatives is grounded in democratic right. The answer to the question “who gave them the right to decide for the people?” is “the people.” That claim is far less tenable for any deliberative group making decisions for others. It is still less tenable for any deliberative group not chosen by those they are supposed to represent. Legitimacy is further compromised with any deliberative group impeded by unseen power asymmetries in communication. The advocates of deliberative endeavors are not always attentive to these matters. How those who deliberate are chosen and how they view one another determine whether the assembly will be liberal, liberal-democratic, or neither, in relation to the people for whom they speak.

This matters because deliberation values rationality in both its forms: as reason and as order. For many deliberation advocates, the commitment to reason is explicit, profound, and made with conviction. In this advocacy, those who deliberate are called not only (and perhaps not primarily) to share their lifeworlds with one another. Participants are called to reason together. The language of reason is always appropriate and welcome in such meetings. The language of passion is not.

We believe, however, that politics requires more than reason alone; politics requires passion. It is passion that enables people to endure the “slow drilling through hard boards” that is the work of politics. It is passion that enables people to endure the frustration of listening to views they find tedious or abhorrent. It is passion that enables people to convey not just the facts, but the subjective experience of a lifeworld. It is passion that enables people to challenge settled beliefs and political conventions that they believe are unjust. If deliberation is to produce shared understandings with legitimating potential, if it is to produce shared assent that reflects the life experiences of the diverse people whom such endeavors are meant to represent, deliberation requires passion as well as reason. Jane Mansbridge’s distinction between first- and second-generation deliberative theory marks this recognition among deliberative theorists themselves. Second-generation deliberativists have recognized that emotion and passionate intensity contain truth as well.<sup>8</sup>

With these and related challenges in mind, what can we read from a deliberative outcome that can legitimate a collective decision? To answer this question, suppose that a major goal of deliberation is to convey legitimacy to some socially relevant propositions and withhold such legitimacy from others. Suppose, moreover, that the form of deliberation is an ideal version that entails a universal right to participation.

Let’s start with what we know. The communicative acts that precede the outcome will use language that conveys power. They will be used by people who are more and less skilled in using language to acquire power. If participants are not paying close attention to these skill imbalances, and if the deliberative rules are not built to mitigate deleterious effects of such imbalances, participants are likely to be swayed by the

skilled. Any resulting consensus, compromise, or agreement will not simply emanate from equal consideration of all relevant lifeworlds, it will also reflect different abilities to use language in quests for influence.

Moreover, the acts in question, both the speaking acts and the listening acts, will be made by people. These people will be seen before they speak and they will be interpreted before they attempt to convey any meaning. We will know who enters marked with signs of privilege. We will know who lacks those signs. We will know who enters a familiar place and who enters a foreign one. Appearance and words will interact. Some appearances will help deliberative participants recognize the diversity, glory, and pain of different lives. Other appearances will lead deliberative participants to ignore what is being said or to substitute their own privileged narrative for the one that the speaker is attempting to convey.

We will know things about the process. We will know who is likely to be advantaged by its procedures. We will know that assent may be the product of people holding back. People may not reveal their true motivations. People may give in to power out of desperation, fatigue, or fear. People may choose to remain silent in the face of history-bound and institutionally reinforced asymmetries.

For these reasons and more, we will know that a deliberation-generated consensus, compromise, or agreement that represents a deeply shared understanding to a clearly stated set of principles will often be observationally equivalent to a deliberative outcome that is the result of all of the asymmetric and oppressive factors described above. So a deliberatively generated outcome can be normatively desirable, it can represent real intellectual exchange, and it can be legitimating – but it is none of these things automatically.

As a result, now is an opportune moment to reevaluate claims about deliber-

ation that gauge its effectiveness by referencing instances of opinion movement, opinion convergence, or language-based consensus. Such outcomes represent the normative desires that have led many to be interested in deliberation. The forces described above allow language to carry power asymmetries to new destinations. They allow seemingly open and equal communicative domains to be dens of oppression. Language-based consensus, compromise, or agreement, in the presence of such forces, becomes a limited means of conferring legitimacy to collective decisions in modern societies.

Deliberation takes place in a communicative forum. In such forums, participants engage in speech acts with the possibility of converging on shared meaning. Deliberation is endorsed on the basis of theories and beliefs about how these shared meanings provide individuals and societies with a stronger and broader moral, ethical, and technical foundation for improving quality of life. But communication and language carry inequality, and the limits of human attention, patience, and self-love create or reinforce coercive conversational norms.

The promise and the principal challenge of deliberation is that language is a weapon that can be wielded with great force. There is no way to construct a deliberative environment in which asymmetry, power, and potentially coercive flashpoints do not contribute to the outcome. If deliberation is to be justified on the basis of its ability to mitigate power imbalances, the domain of deliberative interactions must be constrained.

Many people who advocate for deliberation take for granted that deliberation is preferable to violence. But what if deliberation simply reinforces the experience of oppression? Given the examples and factors raised in this essay, such outcomes are imaginable. Do some uses of speech justi-

fy violent responses? Are there some statements to which a society's best response is to, at minimum, stop the conversation? What if deliberation reveals insurmountable oppositions? This discovery might not require violence, but it might well call for secession or partition. For any number of reasons, deliberative situations can be as coercive as violence, with the added insult that the coerced are presumed to consent, or to have been overcome by reason. In extreme cases, this outcome, while not entailing physical violence, would be attempting to generate legitimacy on the basis of dishonest claims about what language-based consensus, compromise, or agreement actually means.

Having now raised questions about *whether and how language facilitates communication* and *whether and how communications inform assent*, we turn to two final questions that scholars and practitioners can use to reconcile their motives for seeking deliberative activities with likely outcomes of those attempts:

- 1) What outcomes can we actually expect from deliberation?
- 2) Are there any conditions that would make these outcomes more tolerable from the perspective of persons or populations who are otherwise run asunder by the wheels of political and social institutions?

To address these questions, we begin with the recognition that deliberation is another way of allocating power. It privileges some interests at the expense of others. It is not generally neutral with respect to who wins and who loses.

When the social project motivating deliberative democracy is to reduce a particular set of social imbalances, the question becomes when and whether it is possible for deliberative participants to recognize these imbalances and design subsequent interactions to diminish them. The power imbalances that deliberation proponents believe they are stopping at a deliberative

chamber's front door will storm in through the back and take over the proceedings.

To take such concerns seriously, a sufficient number of deliberative participants must share a set of values that induces them to be aware of the imbalances, to try to mitigate them procedurally, and to seek measures of progress that the affected participants would recognize as valid. If there is not a sufficient values consensus on the need to protect a particular population or point of view, there will be little or no motive to pursue procedural change or to measure the effects of these procedures on the affected. In such cases, claims of having achieved legitimacy or advanced democracy would not reflect actual circumstances. If deliberation is to be legitimating from the broadest set of perspectives, then the expectation must be that the weak can receive justification from their own perspectives and on their own terms.

One of the redemptive possibilities of language is that it enables people to transform status; to take a lower status position and use it as a claim to power. Such transformations can produce situations when formerly (or presently) less powerful people control the conversation (or seem to). Thus the many complaints about political correctness. One may respond: "So what? It is the turn of the less powerful to exercise a control that once silenced them." While this type of response may dismay some deliberation advocates, it should not be lightly dismissed. Deliberate changes in who controls communication can reveal new foundations of justice that would otherwise go unspoken.

Another proposal that could make deliberation's outcomes more tolerable from the perspective of persons or populations whom political and social institutions otherwise diminish is that *consensus, compromise, or agreement should not always be the aim*. If differences arise, perhaps they should remain: open and acknowledged. Rather

than seeking to overcome differences, it might be better to enshrine them institutionally (for example, through federalism or concurrent majority) or to develop a *modus vivendi* that preserves the differences. In this stance, we echo the second generation of deliberative theorists who see clarifying conflict as an important goal of deliberation and extend their view by asking for further introspection about how agreement is or is not a product of the coercive power of language described above.

Politics entails deep value conflicts, monumental struggles for power, and real questions about quality of life. To manage these dynamics and facilitate efficient social interaction, communities seek to discover shared values and build agreements from these discoveries. If it is important that political communities are built from honest assessments of what their members actually share, then it is important to be cognizant of how deliberative outcomes are manufactured. In such inquiries, we can come closer to understanding whether deliberative outcomes are meaningful or illusory, sustainable or ephemeral, and, hence, whether they are capable of securing legitimate decisions and advancing a common good.

\* Contributor Biographies: ARTHUR LUPIA, a Fellow of the American Academy since 2007, is the Hal R. Varian Professor of Political Science and Research Professor in the Center for Political Studies at the University of Michigan. He is the author of *Uninformed: Why People Know So Little about Politics and What We Can Do about It* (2016) and *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* (with Mathew D. McCubbins, 1998) and editor of *The Cambridge Handbook of Experimental Political Science* (with James N. Druckman, Donald P. Green, and James H. Kuklinski, 2011).

ANNE NORTON is Professor of Political Science and Comparative Literature at the University of Pennsylvania. She is the author of *On the Muslim Question* (2013), *Leo Strauss and the Politics of American Empire* (2004), *95 Theses on Politics, Culture, and Method* (2004), *Republic of Signs: Liberal Theory and American Popular Culture* (1993), *Reflections on Political Identity* (1988), and *Alternative Americas: A Reading of Antebellum Political Culture* (1986).

<sup>1</sup> For a summary and discussion with extensive references, including those in this and the following paragraphs, see Anne Norton, *95 Theses on Politics, Culture, and Method* (New Haven, Conn.: Yale University Press, 2004), 12–27.

<sup>2</sup> Paul Grice, “Logic and Conversation,” in *Syntax and Semantics, Volume 3: Speech Acts*, ed. Peter Cole and Jerry L. Morgan (New York: Academic Press, 1975), 41–58. See also Arthur Lupia, *Uninformed: Why People Know So Little about Politics and What We Can Do about It* (New York: Oxford University Press, 2016).

<sup>3</sup> The literature on the politics of language is vast and rich. For a summary and discussion with extensive references, see Norton, *95 Theses on Politics, Culture, and Method*, 12–27.

<sup>4</sup> Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, trans. Richard Nice (London: Routledge, Kegan & Paul, 1984).

<sup>5</sup> Arthur Lupia, Yanna Krupnikov, and Adam Seth Levine, “Beyond Facts and Norms: How Psychological Transparency Threatens and Restores Deliberation’s Legitimizing Potential,” *Southern California Law Review* 86 (3) (March 2013): 459–493. The authors link normative theories of deliberative democracy to empirical literatures on attention limits and communication dynamics.

<sup>6</sup> For example, see Alan Baddeley, “Working Memory: Theories, Models, and Controversies,” *Annual Review of Psychology* 63 (1) (2012): 1–29; and Earl K. Miller and Timothy J. Buschman, “Working Memory Capacity: Limits on the Bandwidth of Cognition,” *Dædalus* 144 (1) (Winter 2015): 112–122.

<sup>7</sup> Iris Marion Young, “Communication and the Other: Beyond Deliberative Democracy,” in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, N.J.: Princeton University Press, 1996), 120–135.

<sup>8</sup> Jane Mansbridge, “A Minimalist Definition of Deliberation,” in *Deliberation and Development: Rethinking The Role of Voice and Collective Action In Unequal Societies*, ed. Patrick Heller and Vijayendra Rao (Washington, D.C.: World Bank, 2014).

# Collusion in Restraint of Democracy: Against Political Deliberation

*Ian Shapiro*

*Abstract: Recent calls to inject substantial doses of deliberation into democratic politics rest on a misdiagnosis of its infirmities. Far from improving political outcomes, deliberation undermines competition over proposed political programs – the lifeblood of healthy democratic politics. Moreover, institutions that are intended to encourage deliberation are all too easily hijacked by people with intense preferences and abundant resources, who can deploy their leverage in deliberative settings to bargain for the outcomes they prefer. Arguments in support of deliberation are, at best, diversions from more serious threats to democracy, notably money’s toxic role in politics. A better focus would be on restoring meaningful competition between representatives of two strong political parties over the policies that, if elected, they will implement. I sketch the main outlines of this kind of political competition, differentiating it from less healthy forms of multi-party and intraparty competition that undermine the accountability of governments.*

Advocates of political deliberation usually defend it as a collaborative activity motivated by the possibility of agreement. Even when agreement proves elusive, deliberation helps people come to grips with one another’s views, draw on their different experiences and expertise, and better understand the contours of their enduring disagreements. People’s views will be better informed, and the decisions they make will be of higher quality than if they had not deliberated. When study after study reveals most people to be appallingly ill-informed about much public policy, deliberation’s appeal seems obvious. Two minds are better than one, three better than two, and so on. Democracy will be improved if its decision-making can incorporate, and build on, the benefits of deliberation. Or so it is frequently claimed.<sup>1</sup>

Deliberation should not be confused with argument. When people argue, there is an expectation that one of them will, or at least should, win. Even when we speak of one person making an argument,

IAN SHAPIRO, a Fellow of the American Academy since 2000, is the Sterling Professor of Political Science and Henry R. Luce Director of the MacMillan Center at Yale University. His recent books include *Politics against Domination* (2016) and *The Real World of Democratic Theory* (2011).

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we see this as something that stands until it is contradicted, or challenged and beaten by a better argument. Like the deliberationists, proponents of argument believe it will enhance understanding and improve the quality of decisions. This was the essence of John Stuart Mill's defense of the robust clash of opinions in *On Liberty*: it would lead people to hold better-informed and more accurate views. Mill even went so far as to worry – needlessly, it turned out – that as advancing science expanded the realm of settled knowledge, people would be deprived of argument's benefits. No longer forced to sharpen their wits by defending their views in the marketplace of ideas, they would become mediocre dullards; less able to think for themselves and more easily manipulated by others.<sup>2</sup>

My claim here is that the argumentative and deliberative ideals should be more clearly distinguished than they usually are. They support different and incompatible institutional arrangements. I also maintain that the argumentative ideal is superior because, when appropriately institutionalized, it helps hold governments accountable for their actions. By contrast, the deliberative ideal cannot easily be institutionalized – and perhaps cannot be institutionalized at all – because people who prefer to bargain can easily abuse rules designed to promote deliberation. But deliberation's difficulties run deeper. Its defenders fail to appreciate that, in politics, deliberation and the search for agreement are – to borrow an antitrust analogy – unhealthy forms of collusion in restraint of democracy. They should worry less about voter ignorance, which, as Anthony Downs noted long ago, might well reflect sensible budgeting of scarce time, and worry more when office-seekers fail to engage in robust public debates over the policies that, if elected, they will enact.<sup>3</sup>

Joseph Schumpeter's competitive model of democracy, in which governments ac-

quire power by prevailing in a "competitive struggle for the people's vote," gives institutional expression to the argumentative ideal.<sup>4</sup> This was perhaps best exemplified in the Westminster system as it existed from 1911, when the Parliament Act stripped the House of Lords of its real powers, until the late 1990s, when the Lords was reformed to enhance its legitimacy as a second chamber and the Commons began ceding authority to European and other courts, the Bank of England, and independent agencies. The twentieth century's middle eight decades were the heyday of Parliament's supremacy within the British political system and of the Commons' supremacy within Parliament. Epitomized at Prime Minister's Questions, the sometimes overwrought weekly gladiatorial clashes over the famous wooden despatch boxes, it thrives on the ongoing contest between opposing policies and ideologies.

Schumpeterian democracy depends on alternation between two strong parties in government. The party that wins the election exercises a temporary power monopoly, but the loyal opposition – a government-in-waiting whose leaders hope to take power at the next election – continually challenges its policies. This system depends on combining first-past-the-post single member plurality (SMP) electoral systems with parliamentary democracy. The SMP electoral system produces two large parties, so long as the political makeup of the constituencies more or less reflects the political makeup of the national population.<sup>5</sup> Parliamentary systems ensure that the parties will be strong because the leader of the majority party is also the chief executive. Government and opposition clash across the aisle continually, and compete during elections by offering voters the different programs they plan to implement.

The deliberative model, by contrast, calls for institutions that create incentives to seek agreement rather than victory – or



at least agreement as a condition for victory. Rules that require concurrent majorities in bicameral chambers force representatives to find common ground when they can, and compromise when they cannot. Executive vetoes and supermajority provisions to override them create similar incentives. Proponents of deliberation often find proportional representation (PR) congenial for comparable reasons. Instead of two catchall parties that must submerge their disagreements in order to win elections, PR leads to party proliferation, bringing a more diverse array of voices to the political table. In addition to the left-of-center and right-of-center parties characteristic of SMP systems, in PR systems, liberals, religious groups, Greens, separatists, and nationalists, among others, can all elect representatives to the legislature to be part of the conversation. Because one party seldom wins an absolute majority, coalition government, which forces parties to seek and perhaps even manufacture common ground, is the norm.

The U.S. system is a hybrid. The SMP electoral system produces two large parties, but the independently elected president weakens them, and the system of checks and balances forces consensus-seeking and compromise to the extent possible. The American founders intended the Senate, in particular, to be a constraining body made up of what Jefferson would later refer to as an “aristocracy of virtue and talent.” It has been heralded as such by commentators dating back at least to Alexis de Tocqueville.<sup>6</sup> The idea that the Senate is the world’s greatest deliberative body, which first gained currency with Daniel Webster’s three-hour soliloquy in defense of the Union in 1850, has been repeated to the point of banality, no matter how scant its connection with reality.<sup>7</sup> I will have more to say about the kind of competition the U.S. system fosters shortly. As a prelude to this, notice that, unlike the Westminster model,

which gives temporary control of the government’s power monopoly to the majority party and relies on alternation over time as its main mechanism of accountability, the U.S. model divides up the control of power on an ongoing basis. Madison’s slogan was that “ambition must be made to counteract ambition.”<sup>8</sup> The checks and balances force the players in the different branches to accommodate themselves to one another; hence its affinities with the deliberative ideal.

Up to a point. A major limitation of institutions that encourage deliberation is that they can produce bargaining instead. Juries, for example, are traditionally subject to unanimity requirements that put pressure on their members to talk out their differences until they reach agreement. When this works well, it produces thorough exploration of all the arguments and evidence provided by the contending parties: a poster child for the benefits of deliberation. But a jury can also be held hostage by a recalcitrant crank who has nothing better to do when everyone else wants to go home. His superior bargaining power and stubbornness might enable him to extract agreement from the others, but this will not be deliberative consensus on the merits of the case. What holds for juries also holds for other institutions that we might hope will induce deliberation. When they produce bargaining instead, those with the most leverage will prevail. So it is that small parties often exert disproportionate influence over coalition governments, U.S. Senators can use holds and filibuster rules to thwart the will of the majority, and various other supermajority and concurrent majority rules can be deployed to similar effect.

In short, deliberation requires people to act in good faith, but it is not possible to design institutions to induce good faith. “If men were angels,” Madison wrote, “no government would be necessary.”<sup>9</sup> In-

deed, when power is at stake and representatives must answer to constituents, the impulse to bargain will likely overpower even genuine desires to reason collaboratively. In 2009, a number of centrist Republican Senators showed an interest in working with the Obama White House for “cap-and-trade” legislation on toxic emissions control. They soon bolted, however, when confronted with Tea Party–orchestrated threats of primary challenges in their constituencies, should they choose to persist.<sup>10</sup> Since power is endemically at stake in politics, it seems unlikely that there will be much genuine deliberation or that politicians will resist the impulse to exploit rules that might maximize their leverage instead.

An exception that proves the rule is the British House of Lords. It functioned most effectively as a deliberative body after it lost most of its real powers in 1911. Peers who participated were mainly public-spirited individuals who specialized in particular areas and were often nonpartisan or cross-benchers. But the Lords has become more partisan and assertive since the 1999 reforms restored a measure of its legitimacy as a somewhat democratic institution, albeit one at a considerable distance from the ballot box.<sup>11</sup> What the Lords has gained in legitimacy has come at the price of diminished effectiveness as a deliberative institution.<sup>12</sup>

The various deliberative institutions that have been tried out or proposed in recent years are exclusively consultative. Deliberative Polls and citizens’ juries have no authority to decide anything. They might affect how people vote, but it is the voting that will be decisive. Objects of theoretical conjecture like ideal speech situations are even more radically divorced from politics, since they depend on armchair speculation about what people would decide in settings that are devoid of power relationships. Questions can and have been raised about whether such speculations add up to anything we should believe, or wheth-

er the changes in people’s views produced by Deliberative Polls and other consultative mechanisms tried thus far are really improvements on their pre-deliberative views or simply changes.<sup>13</sup> These issues need not detain us here, however, since my present point is that – whatever its merits – institutionalizing deliberation turns out to be an elusive endeavor. If it is purely consultative, it is not clear why anyone will or should pay attention to it. Yet if rules are created to institutionalize deliberation and give it real decision-making teeth, they can all too easily undermine political competition and empower people with leverage to appropriate them for their own purposes.

Schumpeter’s competitive model of democracy trades on analogies between the political marketplace of ideas and the economy. Political parties are the analogues of firms; voters mirror consumers. Schumpeter treats the policies that parties propose to enact if they become governments as the political analogues of the goods and services that firms sell, and the votes that politicians seek as analogues of the revenues that firms try to earn. Democratic accountability is the political equivalent of consumer sovereignty: the party that does best at satisfying voters wins their support.

Schumpeter’s illuminating analogy is nonetheless strained in several ways, two of which matter here. One is that political parties are vying to control a monopoly, a fact that constrains competitive possibilities. As I argue below, the best option is competition between two large, centrally controlled parties. The Schumpeterian analogy also falters because there is no unproblematic equivalent of a firm’s shareholders for political parties. Some will single out party members or activists as the appropriate political shareholders, but parties that empower them run into trouble. Membership in political parties is typically free or very cheap, rendering them susceptible to hos-

tile and anomalous takeovers, like that perpetrated by Donald Trump in the 2016 Republican primaries, or that which occurred in the British Labour Party in the summer of 2016. Party leader Jeremy Corbyn lost a confidence vote in the Parliamentary Labour Party by 172 to 40 in June, triggering a leadership challenge, but an easily augmented membership nonetheless reelected him as leader with 61.8 percent of the vote three months later.<sup>14</sup> As this example underscores, grass roots activists tend to be unrepresentative of a party's supporters in the electorate. This imbalance can be especially pronounced in two-party systems, which, as I argue below, are nonetheless best from the standpoint of robust public debate.

Representation should be geared to maximizing the chances that public debate will center on the policies that parties, if elected, will implement as governments.<sup>15</sup> This is why SMP beats PR, and why strong, centralized parties are better than weak, decentralized ones. Supporting a party in a multiparty system can help voters feel better represented because their representatives' views are likely closer to their ideals than would be the case in a two-party system. But this is an illusion. What really matters is the policies that governments will implement. That cannot be known until after the coalition is formed, post-election. Coalition governments decrease accountability, since different coalition members can blame one another for unpopular policies.<sup>16</sup> Americans got a taste of this when unusual conditions produced a cross-party coalition to enact the Budget Sequestration Act in August 2011, putting in place \$1.1 trillion of automatic spending cuts over eight years split evenly between defense and domestic programs, unless Congress passed an alternative by January 2013. The Sword-of-Damocles proposal was widely said to be sufficiently draconian that the representatives would be forced to find a compromise. In the event, they did not and

the sword fell, with each side blaming the other for intransigence. Perhaps it was a cynical way for both parties to achieve cuts without being savaged by their electoral bases. Whether due to blundering or collusive cynicism, the result was that everyone had an alibi and no one was undeniably responsible for the outcome. Coalition governments live perpetually on such ambiguous terrain, undermining accountability for what governments actually do.

Competition enhances political accountability, but some kinds of competition are better than others. As we have seen, competition between representatives of two parties, one of which will become the government, enhances accountability because they run on the platform they will be judged on as governments. Moreover, the need to sustain broad bases of voter support gives them strong incentives to advocate policies that will be good for the country as a whole, or at least for large swaths of the population. Smaller parties represent more narrowly drawn interests: business, organized labor, and ethnic and religious groups. This loads the dice in favor of clientelism, because politicians know that they will be held accountable for how effectively they advocate or bargain for their group's interests in a governing coalition. It is better for parties to compete over what is best for the country as a whole than to bargain over the rents they can extract for their clients. This contrast can be overdrawn, to be sure, because large catchall parties consist of different interests among whom implicit bargains must be struck to keep them in the party. But that bargaining is constrained by the need to propound and defend platforms that can win support from other groups as well, otherwise they cannot hope to become the government.

The sequester episode underscores the fact that the weakness of U.S. political parties is only partly due to republican institution-

al arrangements. Another source of party weakness is decentralized competition, an artifact of the wrongheaded idea that local selection of candidates somehow makes the process more democratic. In reality, because of their comparatively high rates of participation, activists, whose beliefs and preferences tend to be both more extreme and more intensely held than the median voter in their constituencies, dominate primaries and caucuses. This enables them to force representatives to pursue agendas that the median voter in their district abjures, or to serve the median voter only with the kind of subterfuge that might have been at work behind the Budget Sequester Act. The same is true of referenda, which sound democratic – “hooray for direct democracy!” – but which also enfranchise intense single-issue voters who turn out at disproportionately high rates. Thus it was with the Brexit referendum in June of 2016, when a majority of those who voted produced the result to leave, even though polling indicated that the median British voter favored the UK’s remaining in the European Union, as did substantial majorities of both major parties in the House of Commons.<sup>17</sup>

Some will say that making the system responsive to voters with intense preferences is a good thing. There is, indeed, a strand of democratic theory dating back to James Buchanan and Gordon Tullock’s *Calculus of Consent* in 1962 whose proponents defend vote trading and vote buying on the utilitarian ground that it improves the overall social utility.<sup>18</sup> But democracy’s purpose is to manage power relations, not to maximize social utility. The contrary view would suggest that it was right for the U.S. government to abandon Reconstruction when Southern whites opposed it with greater intensity than most voters favored it, and that it was right for the intense preferences of neoconservatives who wanted the United States to invade Iraq in 2003 to override those of more numerous but less-fervent skeptics.<sup>19</sup> This

is to say nothing of the fact that in politics, preferences are always expressed subject to budget constraints. The intense antiregulation preferences of the multibillionaires Charles and David Koch are massively amplified because their budget constraints differ vastly from those of the typical voter.<sup>20</sup> In short, there are good reasons for the rules of democratic decision-making to reflect how many people want something, rather than how intensely they want it.

People have theorized about democracy for millennia, yet it is only in the past few decades that the idea has gained currency that democracy depends on, or at any rate can be substantially enhanced by, deliberation. I have sought to show here that this is a dubious proposition. It is hard, if not impossible, to create institutions that will foster deliberation in politics, and institutions designed to do so are all-too-easily hijacked for other purposes. But deliberation is in any case the wrong goal. Competition is the lifeblood of democratic politics, and not just because it is the mechanism by which governments that lose elections give up power. Institutions that foster competition also structure politics around argument, which Mill was right to identify as vital to the advancement of knowledge and good public policy.

But not any competition. The contestation over governing ideas that Mill prized is best served when two large parties are constrained to compete over potential governing programs. It is compromised by multi-party competition that encourages clientelism, as we have seen. And it is damaged even more by competition within parties, which empowers people with local agendas and intense preferences who participate disproportionately in primaries and caucuses. This can render parties vulnerable to the ideological capture of candidates by well-funded groups, as has happened with the Tea Party in Southern and Mid-

western Republican primaries since 2009. But a more general problem is associated with local control of selection processes, in which candidates find themselves compelled to compete by promising to secure local goods. Once elected, they face powerful incentives to engage in pork barrel politics with other similarly situated politicians, protecting public funding for sinecures and bridges to nowhere in their districts. This problem is worse in districts – the vast majority in the United States – that have been gerrymandered to be safe seats, so that the primary is the only meaningful election. It is better for party leaders to seek candidates who can both win in their districts and support a program that can win nationally. The leaders, in turn, are held accountable by the backbenchers who remove them when they fail to deliver winning platforms. In sum, two large, centrally controlled parties are most likely to foster the programmatic competition that is best for democratic politics. By contrast, multi-party competition encourages wholesale clientelism, and intraparty competition encourages retail clientelism.

Deliberation can be rendered harmless and perhaps, occasionally, beneficial for

democratic politics by relegating it to a purely consultative role; but in that case, it is hard to see what the hype surrounding deliberation amounts to. Regardless, the most pressing political challenges in the United States do not result from lack of deliberation. Rather, they stem from the increasing subversion of democracy by powerful private interests since the Supreme Court's disastrous equation of money with speech in *Buckley v. Valeo* four decades ago, and the subsequent playing out of that logic in *Citizens United* and subsequent decisions.<sup>21</sup> As politicians have become increasingly dependent on countless millions of dollars to gain and retain political office, those with the resources they need undermine the process by manufacturing – and then manning – huge barriers to entry, by contributing to both political parties in ways that stifle competition, by capturing regulators and whole regulatory agencies, by giving multimillionaires and billionaires the preposterous advantage of running self-funded campaigns, and by doing other end-runs around democratic politics. Unless and until that challenge can be addressed, debating what deliberation can add to politics is little more than a waste of time.

#### ENDNOTES

<sup>1</sup> For example, see Jane J. Mansbridge, *Beyond Adversary Democracy*, 2nd ed. (Chicago: University of Chicago Press, 1983); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, 1996); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy* (Princeton, N.J.: Princeton University Press, 2009); James S. Fishkin, *The Voice of the People* (New Haven, Conn.: Yale University Press, 1995); James S. Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford: Oxford University Press, 2011); Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, N.J.: Princeton University Press, 2012); Jürgen Habermas, *Communication and the Evolution of Society* (Boston: Beacon Press, 1975); and Jürgen Habermas, *The Theory of Communicative Action* (Boston: Beacon Press, 1984). There are, of course, major differences among these and other theorists of deliberative democracy that do not concern me here.

<sup>2</sup> John Stuart Mill, *On Liberty*, ed. David Bromwich (New Haven, Conn.: Yale University Press, 2003 [1859]), 86 – 120.

<sup>3</sup> See Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957), 244 – 246, 266 – 271.

- <sup>4</sup> Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (London: George Allen & Unwin, 1942), 269.
- <sup>5</sup> Where there is substantial regional variation, by contrast, as in India, SMP systems can produce party proliferation.
- <sup>6</sup> Tocqueville described the Senate as peopled by America's "ablest citizens"; men moved by "lofty thoughts and generous instincts." By contrast, the House of Representatives consisted of "village lawyers, tradesmen, or even men of the lowest class" who were of "vulgar demeanor," animated by "vices" and "petty passions." Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer (New York: Anchor Books, 1969 [1835, 1840]), 200–201.
- <sup>7</sup> Terence Samuel, *The Upper House: A Journey behind Closed Doors* (New York: Palgrave MacMillan, 2010), 68.
- <sup>8</sup> James Madison, "Federalist No. 51," in *The Federalist Papers*, ed. Ian Shapiro (New Haven, Conn.: Yale University Press, 2009 [1787–1788]), 264.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> Jane Mayer, *Dark Money: The Hidden History of the Billionaires behind the Rise of the Radical Right* (New York: Doubleday, 2016), 198–225.
- <sup>11</sup> The House of Lords Act of 1999 reduced the membership from 1,330 to 699 and got rid of all but ninety-two of the hereditary peers, who were allowed to remain on an interim basis, and an additional ten who were made life peers. On the recent evolution, see Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013), 13–35, 258–284.
- <sup>12</sup> For elaboration, see Ian Shapiro, *Politics against Domination* (Cambridge, Mass.: Harvard University Press, 2016), 73–78.
- <sup>13</sup> See Ian Shapiro, *The Real World of Democratic Theory* (Princeton, N.J.: Princeton University Press, 2010), 266–271.
- <sup>14</sup> James Lyons and Sanya Burgess, "Corbyn Reelected as Labour Leader with Increased Mandate," *The Times*, September 24, 2016, <http://www.thetimes.co.uk/edition/news/corbyn-re-elected-as-labour-leader-with-increased-mandate-c7jqjgm7>.
- <sup>15</sup> The argument in this and the next two paragraphs will be developed more fully in Frances Rosenbluth and Ian Shapiro, *Democratic Competition: The Good, the Bad, and the Ugly* (New Haven, Conn.: Yale University Press, forthcoming 2018).
- <sup>16</sup> Kathleen Bawn and Frances Rosenbluth, "Short versus Long Coalitions: Electoral Accountability and the Size of the Public Sector," *American Journal of Political Science* 50 (2) (2006): 251–265.
- <sup>17</sup> Charlie Cooper, "EU Referendum: Final Polls Show Remain with Edge over Brexit," *The Independent*, June 23, 2016, <http://www.independent.co.uk/news/uk/politics/eu-referendum-poll-brexit-remain-vote-leave-live-latest-who-will-win-results-populus-a7097261.html>; and Anushka Asthana, "Parliamentary Fightback against Brexit on Cards," *The Guardian*, June 26, 2016, <http://www.theguardian.com/politics/2016/jun/26/fightback-against-brexit-on-cards-remain-eu-referendum-heseltine>.
- <sup>18</sup> James Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962). Robert Dahl flirted with the notion that attending to intensity might be desirable from the standpoint of political stability, though he was skeptical that it could be measured. Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), 90–123.
- <sup>19</sup> For discussion of the dangers inherent in catering to intense preferences, see Shapiro, *Politics against Domination*, 46–61.
- <sup>20</sup> See Mayer, *Dark Money*, 120–158, 226–270, 354–387.
- <sup>21</sup> See *Buckley v. Valeo* 424 U.S. 1, 59 (1976); *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010); and *SpeechNow.org v. Federal Election Commission* 599 F.3d 686, 689 (D.C. Cir. 2010).

# Can Democracy be Deliberative & Participatory? The Democratic Case for Political Uses of Mini-Publics

*Cristina Lafont*

*Abstract:* This essay focuses on recent proposals to confer decisional status upon deliberative mini-publics such as citizens' juries, Deliberative Polls, and citizens' assemblies. Against such proposals, I argue that inserting deliberative mini-publics into political decision-making processes would diminish the democratic legitimacy of the political system as a whole. This negative conclusion invites a question: which political uses of mini-publics would yield genuinely democratic improvements? Drawing from a participatory conception of deliberative democracy, I propose several uses of mini-publics that could enhance the democratic legitimacy of political decision-making in current societies.

There is a difference between a sample of several hundred speaking for the nation and the entire citizenry actually speaking for itself.<sup>1</sup>

– James Fishkin, *The Voice of the People*

CRISTINA LAFONT is Professor of Philosophy at Northwestern University. She is the author of *Global Governance and Human Rights* (2012), *Heidegger, Language and World-Disclosure* (2000), and *The Linguistic Turn in Hermeneutic Philosophy* (1999) and coeditor of *The Future of Critical Theory: Transforming the Global Political and Economic Order* (with Penelope Deutscher, 2017) and the *Habermas Handbuch* (with Hauke Brunkhorst and Regina Kreide, forthcoming).

In recent decades, deliberative democracy has become increasingly popular.<sup>2</sup> One of the reasons for its popularity is that it offers an attractive interpretation of the democratic ideal of self-government. According to the ideal of deliberative democracy, citizens must justify to one another – based on reasons that everyone can reasonably accept – the coercive policies with which they must comply. To the extent that citizens can mutually justify the political coercion they exercise over one another, they can see themselves as colegislators or political equals in precisely the way the democratic ideal of self-government requires.<sup>3</sup> The essential contribution of public deliberation to democratic legitimacy is that it enables citizens to endorse the laws and policies to

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which they are subject as their own. In the absence of a commitment to mutual justification, citizens cannot meaningfully see themselves as participants in collective self-rule, but instead come to see themselves as coerced into compliance by others. Indeed, by adding a requirement of public justification, the deliberative model provides a way in which citizens might prevent political domination by consolidated majorities. They can engage in public deliberation in order to show that their proposals are supported by better reasons and hold out hope that the force of the better argument may move other citizens to change their political preferences.<sup>4</sup> The claim that better reasons (and not just a higher number of votes) lend legitimacy to the outcomes of democratic decisions is crucial to the idea of mutual justification as a criterion of democratic legitimacy, distinguishing deliberative democracy from other conceptions of democracy.

The idea of mutual justification helps in understanding the internal connection between the different political values essential to deliberative democracy. On the one hand, given that the epistemic quality of political deliberation has a direct impact on the legitimacy of its outcomes, improving the quality of deliberation is a nonnegotiable aim for the realization of deliberative democracy. The more informed, impartial, mutually respectful, and open to counterarguments participants are in deliberation, the more likely it is that they will reach substantively better political decisions, such as those supported by the better reasons. On the other hand, since the justification of political decisions to those subject to them has a direct impact on their democratic legitimacy as well, it is not sufficient that political decisions be substantively good according to someone or other. They must be endorsed by those who will be bound by them: that is, the citizenry in question.<sup>5</sup> The point of *democratic* deliberation is not

only reaching better outcomes but, above all, convincing those who will be bound by them that this is indeed the case by providing mutually acceptable reasons. Therefore, improving the quality of deliberation in the processes of opinion and will formation in which citizens participate is an equally non-negotiable aim for the realization of deliberative democracy. Institutional proposals for realizing deliberative democracy must be assessed by their promise to enhance the democratic legitimacy of the political system in which they will be implemented from both the deliberative and the participatory perspective.<sup>6</sup>

Taking this double criterion as a guide can be helpful in examining proposals for democratic innovation that focus on political uses of deliberative mini-publics, including citizens' juries, consensus conferences, Deliberative Polls, and citizens' assemblies.<sup>7</sup> Many deliberative democrats enthusiastically endorse the proliferation of mini-publics as a way to lead current democratic societies closer to the ideal of a deliberative democracy.<sup>8</sup> Some authors are more daring than others: among current proposals there is a split between those who endorse conferring decisional status on mini-publics directly, so that their recommendations would be taken up by the relevant political authorities without any need to ask for ratification by the citizenry (such as through elections or a referendum) and those who hesitate to go as far as to hand over actual political power (like of legislation or constitutional interpretation) to mini-publics.<sup>9</sup> It is easy to see what drives the push toward the most ambitious option. A key reason to favor the institutionalization of deliberative mini-publics is that their recommendations are of better deliberative quality and thus would lead to better outcomes. They reflect the deliberative transformation of raw, unformed public opinion into considered public opinion. However, if the citizenry must ultimately



accept or reject the mini-publics' recommendations, and (as may often be the case) they are not aware of the mini-publics' deliberations or reasons, then the decision will in fact be based on their raw, uniformed opinions, canceling out the potential gains of using mini-publics. If giving mini-publics some decisional status is normatively desirable at all, then they should be allowed to make the decisions in question. There does not seem to be a lot of space for hesitation at that point.

In light of the general enthusiasm among deliberative democrats about the potential benefits of inserting mini-publics in the political process, it is becoming increasingly harder to see the motivations of those who hesitate. In what follows, I would like to contribute to this debate by offering some arguments from the other side. First, adopting a participatory perspective, I argue that, whatever the benefits of conferring decisional status on mini-publics may be, they are unrelated to democratization. Whether or not they would increase the deliberative quality of the political system as a whole, they would diminish their democratic legitimacy.<sup>10</sup> However, the point of the argument is not to reject the use of mini-publics altogether or to claim that they cannot genuinely contribute to democratization. To the contrary, showing that conferring decisional status on mini-publics would not be a democratic improvement is only a first step in addressing the question of when and how mini-publics could be used to lead to such improvement. I address this question in a second step by exploring different uses of mini-publics that could improve the democratic legitimacy of current societies.

Among the many political innovations developed in recent decades, deliberative mini-publics are particularly attractive to deliberative democrats. The reasons have to do with two features of mini-publics that are of special significance to the ideal of a

deliberative democracy: namely, their high deliberative quality and their democratic representativeness. Deliberative mini-publics provide a space for high-quality face-to-face deliberation in which participants receive balanced information on some important political issue, are exposed to a variety of relevant social perspectives, and have the opportunity to weigh the pro and con arguments in order to reach a considered judgment. Participants are randomly selected among ordinary citizens and, as a consequence, their initial raw opinions on the issues in question can be quite uninformed, perhaps even biased or manipulated. However, the filter provided by the deliberative experience enables them to reach considered judgments on the issues in question. In fact, their views are often significantly transformed. Thus, it is plausible to assume that inserting mini-publics into the political process would lead to substantively better outcomes. Still, quality deliberation has nothing to do with democracy per se. It is the representativeness of mini-publics that makes them democratically significant, as compared with other deliberative forums. Participants in mini-publics are randomly selected among ordinary citizens precisely with the purpose of getting a representative sample of the population. Although different types of mini-publics reach that goal to different degrees, I will focus on Deliberative Polls, since it is generally considered the gold standard in terms of achieving representativeness.<sup>11</sup>

As with all other types of mini-publics, the idea behind Deliberative Polling is to take a relatively small group, which everyone had an equal chance to be a part of, and provide it with good conditions for deliberating over some relatively short period of time.<sup>12</sup> The techniques of stratified random sampling used in Deliberative Polling offer scientific support for the claim that the ordinary citizens who participate in the deliberative experience are an accurate mirror

of the population as a whole; consequently, their views, interests, and values reflect those of the people. What is so interesting in recreating a microcosm of the people is that precisely to the same extent that their initial judgments reflect the raw and uninformed public opinion that can be captured by regular polls, it is plausible to claim that their judgments after the deliberative experience reflect what the public would think if they were informed and had the opportunity to deliberate about the matter. As James Fishkin has put it, “deliberative polling has a strong basis for representing the considered judgments of the people.”<sup>13</sup>

This explains why mini-publics are so fascinating for deliberative democrats, for they offer precisely the combination of deliberative filter and democratic mirror that the ideal of a deliberative democracy requires. In endorsing this political innovation, deliberative democrats can avoid having to choose one or the other as alternative conceptions of democracy do. Elite conceptions of democracy choose the filter over the mirror. They promise better political outcomes, but at the price of taking decision-making away from the people and placing it in the hands of experts and political elites. By contrast, pluralist conceptions of democracy choose the mirror over the filter. They promise to leave decision-making in the hands of the people, but at the price of endorsing majoritarian procedures that are insensitive to the quality of citizens’ preferences and can therefore lead to unreasonable outcomes (whenever those preferences are uninformed, self-interested, biased, manipulated, and so on). The contrast to these unattractive alternatives explains the motivation behind proposals to confer decision-making authority to mini-publics. Since mini-publics combine the deliberative filter with the democratic mirror, conferring decisional status on them seems to offer a unique opportunity to simultaneously improve the

epistemic and the democratic quality of political outcomes.

Unfortunately, I think that this impression is an illusion. Here is the argument in a nutshell. Proposals to confer decisional status on mini-publics can be justified by epistemic considerations concerning the better quality of their outcomes. However, this line of argument, which is based on the filter claim, offers no basis for justifying the mirror claim. Alternatively, proposals to confer decisional status on mini-publics can be justified by democratic considerations concerning their representativeness. However, this line of argument, which is based on the mirror claim, offers no basis for justifying the filter claim. Since defending the ideal of deliberative democracy requires justifying both claims, neither of these lines of argument is viable for vindicating deliberative democracy. If one follows the first line of argument, the proposal collapses into a special version of elite conceptions of democracy (that is, a more egalitarian version of blind deference to experts than the standard variety), whereas if one follows the second line of argument, the proposal collapses into a special version of pluralist democracy (that is, a stronger version of procedural majoritarianism than the standard variety).

The first of two possible defenses of empowered mini-publics is the *epistemic defense*. Following this line of defense, proposals to confer decisional status on mini-publics must justify the choice of this particular institution vis-à-vis other alternatives on epistemic grounds. Whether mini-publics in particular are preferable to potential alternatives depends on whether their peculiar feature of “mirroring the people” has some superior epistemic value over other features of alternative institutions that, precisely because they do not have to mirror the people, may yield higher epistemic payoffs. It is always possible that, by offering high-

er levels of expertise, diversity, or impartiality (whichever features matter most in each case from a substantive point of view), alternative institutions could lead to even better outcomes. On complex political issues, it would seem that actual experts with deep knowledge about the issues in question would be a better option than a random group of laypeople who had a few days' worth of training to form their opinions. Almost any other group of experts would often have stronger epistemic credentials. At the very least, it would seem to be an open, empirical question which group of experts would be best in each particular case, depending on the issue at hand. But setting aside technocratic alternatives, let us focus on possible variations in the configuration of mini-publics.

If what matters is the epistemic quality of their outcomes, why limit the pool of participants to citizens of the polity in question? Why not add epistemic diversity to the sample by including some foreigners (whether laypeople or experts) if that would lead to better outcomes?<sup>14</sup> Or why not increase impartiality by excluding from the sample any citizens likely to be biased with regard to the political issue at hand? This is the normal procedure in jury selection, for instance, where no attempt is made to "mirror the people" precisely in order to reach better outcomes (more impartial decisions). There are endless variations for improving the quality of the deliberative filter. The point is simply that it would be extraordinarily serendipitous if "mirroring the people" would invariably be the superior option among all possible alternatives from the strictly epistemic point of view of the quality of outcomes.

Proving this claim seems like a tall order. But even assuming for the sake of argument that the challenge could be met and that mini-publics would always turn out to be epistemically superior to other alternatives, this line of argument should still be

worrisome to democrats. For if decisional status should be conferred to mini-publics in virtue of the better epistemic quality of their considered judgments when compared with the raw opinions of the actual people, then it is not clear how one follows the argument up to precisely that point of better epistemic quality and then avoids drawing the full consequences that seem to follow. Whether or not deliberative mini-publics deserve a special hearing in the political system, the biggest concern with this line of argument is the obvious implication that the raw voice of the actual people "is not a voice that by itself deserves any special hearing."<sup>15</sup> If this is the case, then one wonders what justifies democratic elections, which give the strongest possible hearing to that voice by letting the actual people make crucial political decisions with no deliberative filter whatsoever (by secret ballot). If the voice of the actual people does not deserve any special hearing, why let them vote? Indeed, it is upon the basis of precisely this line of argument that defenders of elite conceptions of democracy conclude that the actual people should never be allowed to make substantive political decisions; they should only be allowed to elect officials among the competing political elites and keep them accountable through the threat of removing them from office.<sup>16</sup> Taking this line of argument seriously would suggest more ambitious proposals for reform. Why not use deliberative mini-publics to make all political decisions that are currently made by the actual people in democratic societies (such as general elections, referenda, and popular initiatives)? If institutionalizing mini-publics for making some political decisions is a net improvement in the deliberative quality of the political system as a whole, then it would seem to follow that the more decisions made by mini-publics and the fewer by the actual people, the more the political system would improve.

Now, for those who might find these consequences worrisome, the alternative line of defense, the *democratic defense*, may seem more promising. Instead of focusing on the filter claim and thereby jeopardizing the ability to hold on to the mirror claim, from a democratic point of view, it is more appealing to focus on the mirror claim and see whether the filter claim can be retained as well. Proposals to confer decisional status on mini-publics could be defended on the basis of democratic considerations of representativeness while also getting the extra boost that their deliberative quality provides for free, so to speak. It could be argued that, even if some alternative institutions could offer a better deliberative filter and thus lead to better outcomes, since they will be less democratically representative than mini-publics, the latter win by default simply by virtue of the democratic value expressed by the mirror claim. But even if conferring decisional status on mini-publics is not the highest epistemic improvement possible, so the argument goes, whichever modest improvement over the status quo their deliberative filter offers is an additional benefit that also counts in their favor. To show why this line of argument does not work, we need to examine the mirror claim in depth.

As mentioned, one of the most interesting features of mini-publics is their statistical representativeness. In particular, Deliberative Polls seem most able to avoid the problems of self-selection that plague other types of mini-publics. Many authors therefore consider them to be strongest in representativeness. This is not to deny that from an empirical perspective the actual accuracy of the stratified random selection techniques used in Deliberative Polling can be called into question in specific cases.<sup>17</sup> But for the purposes of my argument, let's assume that methodological improvements could satisfactorily solve these problems and we can grant Fish-

kin's mirror claim. After all, for all their deficiencies, no one questions that participants in mini-publics are more representative of the people as a whole than participants of other political institutions (including judges, experts, political elites, and bureaucrats). This is why many authors assume that conferring decisional status on mini-publics would be a net democratic improvement for the political system, at least compared with the alternative of limiting that status to less representative institutions.<sup>18</sup>

These considerations point to the second line of argument mentioned above. The case for conferring decisional status on mini-publics can be based on democratic considerations of representativeness. It can be argued that citizens should trust mini-publics' decisions, but not because their participants would always be the most reliable group to make the best decision – a claim most likely to be false. Rather, citizens should trust mini-publics' decisions because their participants are like them.<sup>19</sup> They should trust mini-publics precisely because they are a mirror of the people. Therefore, their considered opinion is likely to reflect what they themselves would have concluded had they participated. This view is often associated with a selection model of representation in contrast to a sanction model.<sup>20</sup> Within the sanction model, representatives are expected to accurately track the attitudes and views of their constituents or face the sanction of not being reelected, whereas in the selection model, constituents choose representatives with views and objectives largely aligned with their own, giving representatives self-motivated, exogenous reasons to do what their constituents want. As political scientists Warren Miller and Donald Stokes put it, they choose representatives who “so share their views that in following their own convictions they do their constituent's will.”<sup>21</sup>

Let's examine the mirror claim in detail. As just mentioned, the argument supporting the mirror claim is that we should confer decisional status on mini-publics because their participants are like us. There are several claims involved in this argument. Participants in mini-publics are like us in the sense that they are ordinary citizens and thus, in contrast to politicians, lobbyists, and other political actors, are unlikely to have hidden agendas or conflicts of interest in their deliberations about the public interest. We can trust them as our representatives in the sense that we do not need to monitor them or threaten them with sanctions because they are independently motivated to figure out what is best for the polity. But, in line with the selection model of representation, participants in mini-publics are supposedly like us in a stronger sense: namely, they share our interests, values, and policy objectives.<sup>22</sup> This is why we are supposed to trust them. Not only do we not need to threaten them with sanctions to keep them accountable, but we can also assume that their recommendations coincide with what we would have thought if we had participated. For that reason, we should endorse their recommendations as our own, for example, when we decide how to vote on referenda.<sup>23</sup>

Now, whereas the first mirror claim seems plausible, the second seems problematic. Given how much ethical and political disagreement there is among citizens in pluralistic societies, the stronger mirror claim can hardly be true of a genuinely representative sample of the population. The more diverse evaluative perspectives (concerning need interpretations, value orientations, comprehensive views, and so on) are included in the sample, as they should be, the less sense it makes for nonparticipant citizens to assume that their interests, values, and political objectives will invariably coincide with those of the majority of the sample regardless of the issue. Nonpartic-

ipants cannot assume that the conclusions reached by the mini-public reflect what they would have thought if they had participated. For, in principle, the opposite is equally possible. After all, the participants in the minority have reviewed the same information and deliberated as much as the others while reaching the opposite conclusion. Even if citizens can trust that all participants were genuinely interested in figuring out what is best for the polity, they know that in pluralistic democracies there is ongoing contestation over a variety of social, moral, ethical, religious, and economic views and values, which bears significantly on political questions and policy objectives.

The selection model of representation seems plausible at a smaller scale. Citizens can trust some political party, civil society organization, or individuals who share their interests, values, and policy objectives. But for that same reason, it would not make sense for them to also trust those political parties, organizations, and individuals that defend the contrary views, values, and policy objectives. If I trust Oxfam's recommendations on poverty relief, I cannot also trust the opposite recommendations of, say, the Chamber of Commerce. If I trust Planned Parenthood's recommendations on women's reproductive health, I cannot also trust the opposite recommendations of the Pro-Life Action League. Since I cannot simultaneously trust the conflicting views, values, and policy objectives of all these different actors, I cannot trust the recommendations of the majority of the sample without first knowing whether they have taken the side in the political spectrum that I would have taken if I had participated.

Of course, if the materials and deliberations are made public, citizens can always find out whether this is the case. But once they do, they will no longer be trusting the mini-public. They will be trusting themselves. More important, many of them will find out that the majority of the sam-

ple is *not* like them, since they actually oppose their views, values, and policy objectives on the issue in question. At this point, the line of argument based on the mirror claim predictably collapses. For the fact that the random sample is a microcosm of the people taken collectively means that, for contested issues, there will be a majority defending one view and a minority defending the opposite view, and therefore it cannot be true of all people taken individually that the majority of the sample is like them. But if they are not, in which sense are they their representatives? If the majority of the sample is neither like them nor accountable to them, why should those citizens trust them? It seems that the argument is not that citizens should trust the majority of the sample because they are like them, but because they are like the majority of the people.<sup>24</sup> But are they? At this point, it becomes clear why this line of argument cannot get the filter claim for free. In fact, the filter claim undermines the mirror claim.

The key question here is whether the *counterfactual* or the *actual people* should rule. One of the main attractions behind the proposal of conferring decisional status on mini-publics is precisely that their considered opinions are often different (and presumably better) than the raw opinions of the actual people. If they were not, there would not be much of a point in conducting Deliberative Polls instead of regular polls. As Fishkin has argued:

The thoughtful and informed views created in the experiment [of Deliberative Polling] are *not widely shared* because the bulk of the public is still, in all likelihood, disengaged and inattentive precisely because it is subject to all of the limitations... that routinely apply to the opinions of citizens in the large-scale nation-state. Deliberative Polling overcomes those conditions, at least for a time, for a microcosm, but *leaves the rest of the population largely untouched*.<sup>25</sup>

This is precisely the problem: the disconnect between the views of the mini-public and those of the actual people, induced by the effective intervention of the deliberative filter, undermines the mirror claim at the post-deliberative stage. As political scholar John Parkinson points out, by becoming better informed and having reasoned about the issues in question, participants in the mini-public have become more like experts on those issues than ordinary citizens.<sup>26</sup>

Before the deliberative experience, the mirror claim could plausibly be granted. Assuming the selection process were successfully conducted, it seems trivially true to claim that participants in the mini-public were like the people in the sense that the views of the random sample would accurately reflect the views of the population as a whole. This is why regular polls can be used (more or less reliably) to track the views of the people despite the fact that only a handful of randomly selected citizens are actually interviewed. However, once the deliberative filter is added, which is the very purpose of organizing deliberative mini-publics, the views of participants undergo significant, at times drastic, transformations. But, precisely for that reason, it would be a clear case of usurpation to claim that the voice of the mini-publics' participants is the voice of the people at the post-deliberative stage, especially in those cases when they are on record as dissenting from the people. The populist temptation to speak for the people is common among political actors of all kinds, but the dissimilarity between them and the people in reality helps to undermine such claims. By contrast, the similarity between mini-publics' participants and the people at the initial stage makes their dissimilarity at the empowered stage harder to spot. As such, they could become the ultimate usurpers!<sup>27</sup>

Deliberative democrats simply cannot have it both ways. If the voice of the mini-

publics deserves a special hearing, it is precisely because it is *not* the voice of the actual people. But because it is not, proposals to confer decisional status on them cannot be justified on grounds of democratic representativeness. Democracies are stuck with the people they have, so political improvements can count as democratic only if they take the people along instead of trying to bypass them by appealing to some favored proxy. Political innovations can count as democratic only if they aim to transform the interests, views, and policy objectives of the actual people, so that the people can continue to identify with the policies to which they are subject and endorse them as their own, instead of being simply coerced into compliance. This is what the democratic ideal of self-rule requires. But before I analyze possible democratic contributions of mini-publics in that participatory sense, let me add some argumentative support to the participatory case against empowered mini-publics with the help of an example.

In his paper “Depoliticizing Democracy,” political theorist Phillip Pettit discusses an interesting example in support of one of his proposals for institutionalizing mini-publics.<sup>28</sup> We are asked to imagine a polity in which a relatively mild sentencing regime is working so well that imprisonment is not often imposed. But it could happen that some convicted offender who received a light sentence (like community service) commits some horrific crime that would not have happened if the offender had been put in prison. In that context, politicians looking for reelection can take advantage of the passions of the citizenry and ask for tougher sentencing in order to make their political opponents look weak and not sufficiently concerned, even if tougher sentencing would not serve the common good at all (it might increase rather than diminish the crime rate or be too expensive). Pettit explains:

We can easily see why such a politician or a party, particularly one out of government, can have political advantage to make from denouncing the existing, relatively lenient pattern of sentencing, calling for heavier sentences, even perhaps for capital punishment. They can activate a politics of passion in which they appear as the only individual or the only group really concerned about the sort of horrible crime in question. They can call into existence what Montesquieu called a tyranny of the avengers, letting loose a rule of kneejerk emotional politics that works systematically against the common good. How might this sort of affront to deliberative democracy be rectified? Once again, the only hope would seem to lie in depolitization. It would require parliament to appoint a commission representative of relevant bodies of expertise and opinion, as well as of the people as a whole, to oversee criminal sentencing.<sup>29</sup>

In the example, Pettit assumes that access to information about the adverse consequences of higher sentencing would move participants in the mini-public to reject manipulative proposals of politicians, whereas nonparticipants would be easily manipulated to embrace higher sentences, even to endorse capital punishment. This is why he proposes the shortcut of mini-publics as the best solution to the problem. Instead of taking the long road of providing the information to the citizenry so that they eventually make up their minds on whether to oppose higher sentences, he proposes institutionalizing a mini-public as part of a commission in charge of overseeing criminal sentencing. It seems to me that the example is plausible only if one assumes that there is no such thing as settled political views in a polity. Whereas it is easy to see how the example would work in a country like the United States, where the death penalty is not a settled issue, it is hard to imagine that it would work in a European country. To the extent that rejection of the death penalty is

a settled political view for an overwhelming majority of European citizens, it seems that no amount of political manipulation exercised upon an allegedly inattentive citizenry would succeed in bringing it back.<sup>30</sup> If we compare these two hypothetical cases, it seems to me that, contrary to Pettit's conclusion, informing the citizenry about the political issue in question so that it becomes settled is the only way a polity can successfully shield itself from political manipulation. By contrast, taking the shortcut of informing the members of a mini-public while bypassing the citizenry as a whole would only delay the settling of the issue and thereby leave an open flank for political manipulation, backlash, and resentment. In sum, the shortcut to better outcomes is the long (participatory) road.

Now, in order to take this participatory perspective for evaluating proposals to institutionalize mini-publics seriously, we have to enlarge the scope of analysis in both the temporal and spatial dimensions. We need to adopt a diachronic perspective in order to assess their potential effects, not just at the particular moment in which a policy decision is made but over time as well. And we need to adopt a holistic perspective that takes into account the effects of using mini-publics in the deliberative system as a whole.<sup>31</sup> However, since the participatory perspective is citizen-centered, not system-centered, the potential effects in the ongoing public debate among the citizenry are of special normative significance to the analysis.<sup>32</sup>

As we have seen, the mirror claim is an essential element in democratic defenses of proposals to institutionalize mini-publics. However, in order to avoid the problematic ambiguities we analyzed in the previous section, it is important to avoid identifying mini-public participants with "the people."<sup>33</sup> Speaking of "the people" in the singular is always problematic, but particularly

in pluralistic democracies. The collectivist use of the expression suggests a kind of homogeneity among the citizenry that neither exists nor is desirable in democratic societies committed to the maintenance of free institutions. Mini-publics are no exception. Their members tend to disagree in their considered opinions. Thus, even at their best, what the outcomes of mini-publics reflect is not the considered opinion of the people, but the considered opinion of the majority of the people. This is particularly clear in the case of Deliberative Polls. Since participants are under no pressure to come to an agreement on some collective opinion or recommendation, Deliberative Polling reflects the real-world composition of majority and minority opinions on the political issue in question. But even if one recognizes that mini-publics' outcomes only reflect the considered opinion of the majority of the people, it is still easy to see what is special about them. They reflect what the majority of the citizenry would think if they were informed and had the opportunity to form a considered opinion on the political issue in question.

If we adopt a participatory perspective, what possible use could this information have for the citizenry? There are two aspects of this information that are democratically significant: namely, that these are "considered judgments" and not just raw preferences or uninformed opinions, and that they are the considered judgments of "the majority of the population." But before I analyze these features of mini-publics, let me mention that in order to be of any use to the citizenry, citizens would need to be familiarized with the mini-publics' workings, so that they would understand the political significance they reveal. Different types of deliberative mini-publics have different characteristics, but for simplicity of exposition, I will take Deliberative Polls as the paradigmatic example. My analysis of possible functions that mini-publics could



perform in the political system does not assume that citizens would need to know all the details about the workings of different types of mini-publics, but it does assume that citizens would have become sufficiently familiar with them as to be aware of at least the following features:

1) The techniques of stratified random sampling help ensure diversity and inclusion (that is, presence and voice of marginalized social groups). This gives a higher level of representativeness to mini-publics than almost any other political forum in which the presence and voice of powerful social groups tend to predominate.

2) The random selection of participants among ordinary citizens prevents co-optation by politicians or capture by organized interest groups. It helps ensure the political independence and impartiality of participants and increases the chances that their deliberations are oriented toward the public interest.

3) The provision of information helps secure balanced briefing materials as well as the inclusion of all relevant social perspectives. The presence of trained moderators facilitates mutual deliberation, helps weigh the pros and cons of different proposals, and prevents collective deliberation from being hijacked. This allows participants to reach considered judgments on the political issues in question.

This special combination of features justifies the claim that the conclusions of mini-publics reflect the considered judgments of the majority of the population. Now, citizens do not need to believe that the considered judgments of the majority are always right in order to appreciate the political significance of the majority opinion in democratic societies. For any political issue that can be legitimately decided by majority rule, the opinion of the decisional majority determines the policies to which all citizens are subject. Since majority opinion and actual policies are supposed to be

aligned, the stakes could not be higher in political struggles for shaping what counts as the majority opinion in a political community. It is in the context of this struggle that the information provided by mini-publics acquires its political significance.

The alignment or misalignment between majority opinion, public policies, and mini-publics' recommendations offers a way of organizing the potential political uses of the latter so that their benefits or drawbacks can be better assessed. I distinguish the following four general categories under which the many potential uses of mini-publics can be subsumed: contestatory, vigilant, anticipatory, and empowered. My brief analysis, however, does not aim to cover the innumerable applications of mini-publics currently under discussion in the vast empirical literature on applied deliberative democracy or to answer empirical questions of institutional design for each type of mini-public use.<sup>34</sup> My aims are more modest: I analyze some possible political uses of mini-publics from the perspective of a participatory conception of deliberative democracy in order to identify the specific democratic values that could be served in each case, while offering a few examples of how the relevant political actors could best engage them.

First is the *contestatory* use of mini-publics. One reason to insert mini-publics into the political process is the expectation that the majority opinion reached after deliberation by the mini-public will differ from the majority opinion of the population on the political issue at hand. Discussions of this type of mismatch tend to focus on the difference in the deliberative quality of the outcome. However, in my view, the fact that the difference concerns the majority opinion has even greater significance. To the extent that the political decisions in question are supposed to be made by majority rule, showing that considered majority opinion differs

from current majority opinion gives minorities a powerful tool to challenge consolidated majorities in their own terrain. It is one thing for a minority to simply claim that they are right and the majority is wrong. It is quite another to provide some independent evidence indicating that the majority of a representative sample of the population came to endorse their view after having been properly informed. The fact that the minority view became a majority view under these circumstances can be a powerful political tool. In the context of a political struggle on the contested political issue in question, the independent evidence provided by mini-publics could help minorities challenge consolidated majorities and hold them to account. The use of mini-publics for political and legal contestation can thereby serve the important function of protecting the democratic value of “non-tyranny,” to use Fishkin’s expression.<sup>35</sup>

As mentioned above, a distinctive and valuable feature of mini-publics is the better ability to secure effective inclusion of marginalized voices and social perspectives. By virtue of achieving higher statistical representativeness, mini-publics offer a mirror of the people that is unmatched by mirrors offered by other institutions in the political system (from the judiciary to the legislature, the media, and the public sphere, among others), which tend to be highly exclusionary and therefore reflect back a distorted image of the people. Even in democratic societies, it is hard to ensure effective inclusion in public political debate or in voting, given the disenfranchisement of marginalized groups and the difficulties of providing a proper hearing to their interests and views.<sup>36</sup> Even if new venues for citizen participation are created, self-selection, which tends to favor the wealthy and educated, can worsen rather than improve the underrepresentation of the powerless and marginalized.<sup>37</sup> Thus, even democratic political systems lack venues for finding

out what would happen if the general public or the powerful groups that define the majority culture could actually listen to the needs, views, and arguments of minorities and marginalized groups.

Assuming the general public is aware of the unique features of the venue that mini-publics provide, mini-publics could be used by organized social groups in their political struggles to contest the views of consolidated majorities on specific political issues. The more the mini-publics’ opinions differ from actual majority opinion, the more this should signal to the public the need to examine the available information and the relevant perspectives so as to scrutinize their soundness and their potential need for revision. This could lead to more nuanced positions on polarizing issues or it could prompt a general reconsideration of popular but unjust views held by consolidated majorities. However, this is not to suggest that the public should take the evidence provided by the mini-publics’ opinions as decisive or authoritative. The function of mini-publics should not be to shut down political debate but, to the contrary, to reignite and facilitate the ongoing public debate on contested political issues.<sup>38</sup> Mini-publics can enrich those wider debates by enhancing the voices of silenced or marginalized groups and perspectives in the public sphere. Precisely because the recommendations of the mini-public differ from actual public opinion, the distinction signals the need to transform public opinion accordingly. This means that political actors must address the mini-publics’ recommendations to both officials and the public with the aim of shaping ongoing political debate in the public sphere.

Mini-publics could be inserted in the political process not only for the purposes of political but also legal contestation. Of the many possibilities here, let me mention two. Civil society groups could include the recommendations of mini-publics when fil-

ing *amicus curiae* briefs to the Supreme Court as independent evidence for challenging the assumption that raw public opinion actually reflects views “deeply rooted in the country’s history and traditions.”<sup>39</sup> The evidence in question should not be taken as authoritatively settling the issue. Still, the special features of mini-publics (their independence, impartiality, representativeness) confer on their recommendations a status of independent evidence that no other evidence that parties may provide from like-minded sources (interested groups or organizations) can match. If mini-publics are working as intended, outside parties can do nothing to influence the outcome.

Stronger forms of institutionalization could also be beneficial. For example, it could become standard practice that, in cases involving suspect classifications of groups with a history of discrimination, which trigger a higher level of scrutiny, some form of mini-public is routinely convened to provide the Supreme Court with additional information on what the considered majority opinion of the country may be at a given time. Again, there is no need to claim that this information should be authoritative about the right way to interpret constitutional rights. The considered opinion of the majority may still be unduly hostile toward protecting the rights of unpopular minorities. But the information may nonetheless be valuable as an indication of how far the considered judgment of the majority is moving in a particular direction.<sup>40</sup> Precisely because mini-publics would not have decisional status, the political contestation that is likely to surround the interpretation of their opinions by different political groups would not be detrimental, especially if it manages to spark a broader debate in the public sphere as well, which important Supreme Court cases tend to do.

I now turn to the *vigilant* uses of mini-publics. The analysis of contestatory uses of

mini-publics was based on cases when the mini-publics’ recommendations differed from the actual majority opinion on some political issue. The driving idea was that the more mini-publics’ recommendations differ from actual public opinion, the more this should signal to the public the need to re-examine the available information and re-consider the soundness of the views and arguments supported by the majority culture on the issue in question. But perhaps even more significant are cases when the mini-public’s recommendations coincide with the majority opinion but *differ* from existing policy. This mismatch should signal to the public the need to scrutinize the political system. The more mini-publics’ recommendations are aligned with public opinion, but differ from the actually enacted policies, the more this signals to the public that the political system is not properly responsive to their views, interests, and policy objectives. The evidence provided by mini-publics could draw additional support from the general public toward social and political groups mobilized against which-ever forces are impeding the proper flow of influence between the enacted policies and the processes of citizen opinion and will formation in which citizens participate. By enhancing the responsiveness of the political system to the interests, views, and policy objectives of the citizenry, such critical or vigilant uses of mini-publics would serve the important political function of enhancing democratic control. Whereas the contestatory uses would strengthen political equality in the horizontal dimension (between socially powerful citizens and less powerful or marginalized citizens), the vigilant uses of mini-publics would strengthen political equality in the vertical dimension (between ordinary citizens and political officials).

One could also use mini-publics to enhance the agenda-setting power of ordinary citizens, giving them more effective

influence in the selection of policy objectives to which the political system must respond. Citizens could be regularly polled to rank important political issues that need to be tackled, and then mini-publics could be convened to make recommendations concerning the top-ranked issues. This process would provide public visibility to the issues in question, and this would be particularly helpful concerning political issues that elected officials may see as intractable or not worth confronting.<sup>41</sup> Because officials have little incentive to tackle such issues, they are therefore likely to remain forever unresolved, even if the overwhelming majority of citizens agree on what the right political solution would be. Think of the policy proposals for enforcing background checks on gun sales in the United States, which are supported by 85 percent of the population, but cannot make it through the legislature.

Situations of political gridlock or the capture of political institutions by powerful interest groups provide one of the key motivations behind proposals to confer decisional status on mini-publics: they can get done what the legislature (perhaps even the judiciary) is demonstrably unable to do. In the context of his proposal to create a popular branch of government modeled on mini-publics, law scholar Ethan Leib has argued that empowered mini-publics could make an essential contribution in situations when citizens are frustrated by the legislature's unwillingness to take action or when legislatures find themselves unable to reach a reasonable compromise.<sup>42</sup> Mini-publics without decisional status would seem to make no contribution at all. If the citizenry already overwhelmingly endorses some political solution, organizing a mini-public is likely only to reinforce the opinion the citizenry already holds, and thus would seem to fulfill no function at all.

However, the fact that the mini-public offers a considered majority opinion can be

extremely powerful to the citizenry. It can effectively counteract arguments to the effect that the majority's support for some popular policy is due to the citizenry's lack of information or familiarity with the complexity of the problems involved; or that it is due to irresponsible wishful thinking that fails to take into account the potential consequences, legal constraints, or any other relevant dimensions that only experts (but not ordinary citizens) can fully grasp. Popularity for self-defeating policy objectives is not unheard of, as when citizens favor both expanding public services and lowering taxes at the same time. When this is the case, following the political will of the majority could be extremely harmful. In such public political debates, the contribution of a mini-public could be invaluable to the citizenry. It would force the political system to provide the needed information so that participants in the mini-public could engage in an independent examination of the soundness of the arguments in question. Whatever the mini-publics' conclusions may be, the public availability of these arguments would be a great improvement over the status quo. Indeed, for ordinary citizens, it would be a win-win situation. If the arguments were right, they would have independent evidence that might lead them to change their political opinions accordingly instead of having to blindly trust the bare assertions of potentially self-interested parties. If the arguments were wrong, this would strengthen the ability of ordinary citizens to pressure the relevant political actors into action by removing their demonstrably unsupported excuses for inaction.

Let's turn to anticipatory uses of mini-publics. So far I have considered two different forms of misalignment between majority opinion, public policies, and mini-publics' opinions. But another form of misalignment can be even more worrisome from a democratic perspective: when the

public has no opinion at all about the political issues in question. This type of disconnect does not have to be problematic. For low-stakes issues that are technical in nature or serve merely an administrative purpose, there may be no need at all for citizens even to form an opinion on the policies in question. But it is worrisome when the public does not know anything about policies or legal developments that can negatively impact their well-being or their fundamental rights.

Such public ignorance can have various roots. The policies in question may concern technological innovations with unpredictable consequences, with the public unaware of what may be at stake. For example, think of new gene editing technologies such as CRISPR, which may permanently alter the human genome.<sup>43</sup> Or the public may be ignorant because the political decisions in question are migrating beyond national borders. International trade agreements are a paradigmatic example. Although they can have a tremendous impact on the domestic economy of a country and its ability to protect the fundamental rights of its citizens, they are negotiated beyond national borders, often by the executive branch of government, without strong oversight by the legislature, under the unilateral influence of powerful lobbies, and surrounded by secrecy. In the absence of public political debate and proper media coverage, most citizens do not even know that they *should* know about the political decisions in question, given what is at stake. Disguised as remote foreign relations matters, transnational agreements are not perceived by the citizenry as affecting domestic policy, with potentially severely harmful consequences that would be quite hard to reverse, given the number of countries involved. Transnational negotiations lack the visibility in the domestic public sphere needed to generate a political debate in which citizens could either endorse or reject such policies.<sup>44</sup>

Under current conditions of globalization, inserting *anticipatory* mini-publics into transnational political processes could have, in my opinion, the highest democratizing impact.<sup>45</sup> From a participatory perspective, the function of mini-publics would not be to directly shape the policies in question, but instead to enhance the visibility of what is at stake so as to enable public debate among citizens. Their primary role would not be to recommend some policies over others, but rather to acquire sufficient information so as to be able to identify, among the various policies under consideration, those whose potential impact on citizens' well-being, fundamental rights, and interests is so high that the public needs to know about them in order to collectively determine in public debate which priorities, interests, and values should guide the political decisions in question. By anticipating what citizens would think if they knew more about what is at stake in political decisions that, for a variety of reasons, fall under the radar of the public sphere – and by providing public visibility to those decisions in which the stakes are so high that the citizenry should not remain ignorant – mini-publics would fulfill the crucial political function of enhancing democratic control.<sup>46</sup> Instead of becoming another shortcut for bypassing the citizenry, mini-publics could be deployed against many of the existing shortcuts in order to force the political system to take the long road of properly involving the citizenry.

Finally, let me briefly address whether a participatory conception of deliberative democracy can ever endorse the use of *empowered* mini-publics. This is a complex issue that I cannot properly take on here. But to avoid possible misunderstandings, let me clarify that I do not take my argument to the conclusion that all uses of empowered mini-publics would necessarily be democratically suspect or illegitimate. Empow-

ering mini-publics in connection with or in the form of an institution, like Bruce Ackerman and James Fishkin's Deliberation Day, could be highly desirable from a participatory perspective.<sup>47</sup> I also do not rule out the possibility of legitimate uses of empowered mini-publics that may not be directly tied to referenda or some other form of citizen ratification. Indeed, empowered mini-publics could be inserted in the political process to share power with other polit-

ical institutions that, for good reasons, are not themselves tied to direct forms of citizen ratification (such as the judiciary). In such a case, although the inclusion of empowered mini-publics may not increase the democratic quality of the political system as a whole, it may not decrease it either.<sup>48</sup> And if their use were recommended on other grounds, then for all I have argued here, there may be no reason to oppose them.

#### ENDNOTES

<sup>1</sup> James S. Fishkin, *The Voice of the People* (New Haven, Conn.: Yale University Press, 1997), 44.

<sup>2</sup> For surveys, see James Bohman, "Survey Article: The Coming of Age of Deliberative Democracy," *Journal of Political Philosophy* 6 (4) (1998): 400–425; and Simone Chambers, "Deliberative Democratic Theory," *Annual Review of Political Science* 6 (2003): 307–326. For recent collections that include different theoretical approaches, see Seyla Benhabib, ed., *Democracy and Difference* (Princeton, N.J.: Princeton University Press, 1996); Samantha Besson and José Luis Martí, eds., *Deliberative Democracy and its Discontents* (Aldershot, United Kingdom: Ashgate, 2006); James Bohman and William Rehg, eds., *Deliberative Democracy* (Cambridge, Mass.: The MIT Press, 1999); Jon Elster, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998); James S. Fishkin and Peter Laslett, eds., *Debating Deliberative Democracy* (Oxford: Blackwell, 2003); and Stephen Macedo, ed., *Deliberative Politics* (Princeton, N.J.: Princeton University Press, 1999).

<sup>3</sup> As Amy Gutmann puts it, "the legitimate exercise of political authority requires *justification to those people who are bound by it*, and decision making by deliberation among free and equal citizens is the most defensible justification anyone has to offer for provisionally settling controversial issues." See Amy Gutmann, "Democracy, Philosophy, and Justification," in *Democracy and Difference*, ed. Benhabib, 344. For similar renderings of this basic idea by other deliberative democrats, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. Alan Hamlin and Philip Pettit (Oxford: Blackwell, 1989), 17–34; Joshua Cohen, "Reflections on Deliberative Democracy," in *Philosophy, Politics, Democracy*, ed. Joshua Cohen (Cambridge, Mass.: Harvard University Press, 2009), 330; Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1996), 110; John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 227; John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 137; and Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997), 184. I analyze the intricacies of the commitment to mutual justification at the center of the ideal of deliberative democracy in Cristina Lafont, "Is the Ideal of Deliberative Democracy Coherent?" in *Deliberative Democracy and its Discontents*, ed. Besson and Martí, 3–26.

<sup>4</sup> See Cohen, "Deliberation and Democratic Legitimacy"; Jon Elster, "The Market and the Forum," in *The Foundations of Social Choice Theory*, ed. Jon Elster and Aanund Hylland (Cambridge: Cambridge University Press, 1986), 103–132; Bernard Manin, "On Legitimacy and Political Deliberation," *Political Theory* 15 (3) (1987): 338–368; David Miller, "Deliberative Democracy and Social Choice," *Political Studies* 40 (1) (1992): 54–67; Cass Sunstein, "Preferences and Politics," *Philosophy and Public Affairs* 20 (1) (1991): 3–34; and John S. Dryzek, *Deliberative Democracy and Beyond* (Oxford: Oxford University Press, 2000).

<sup>5</sup> As Dryzek puts it, political "outcomes are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question." John S. Dryzek, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford Uni-

versity Press, 2010), 23. See also Habermas, *Between Facts and Norms*, 110; and James S. Fishkin, *When the People Speak* (Oxford: Oxford University Press, 2009), 46. Cristina Lafont

<sup>6</sup> Proposals must be democratically legitimate from both the participatory and the deliberative perspective. This does not mean that they must always improve the political system in both dimensions, only that they cannot threaten one dimension of legitimacy for the sake of enhancing the other. I analyze the tensions between deliberation and participation in different conceptions of deliberative democracy in Cristina Lafont, "Deliberation, Participation, and Democratic Legitimacy: Should Mini-Publics Shape Public Policy?" *Journal of Political Philosophy* 23 (1) (2015): 40–63.

<sup>7</sup> On citizens' juries, see Anna Coote and Jo Lenaghan, eds., *Citizens' Juries: Theory into Practice* (London: Institute for Public Policy Research, 1997); Ned Crosby and Doug Nethercut, "Citizens Juries: Creating a Trustworthy Voice of the People," in *The Deliberative Democracy Handbook*, ed. John Gastil and Peter Levine (San Francisco: Jossey-Bass, 2005), 111–119; and Graham Smith and Corinne Wales, "Citizens' Juries and Deliberative Democracy," *Political Studies* 48 (1) (2000): 51–65. On consensus conferences, see Peter Dienel, *Die Planungszelle. Der Bürger als Chance* (Wiesbaden, Germany: Westdeutscher Verlag, 2002); and Simon Joss and John Durant, eds., *Public Participation in Science: The Role of Consensus Conferences in Europe* (London: Science Museum, 1995). On deliberative polls, see James S. Fishkin, *Democracy and Deliberation* (New Haven, Conn.: Yale University Press, 1991); Fishkin, *The Voice of the People*; and Fishkin, *When the People Speak*. For a detailed catalog of the different institutional innovations currently available, see Gastil and Levine, eds., *The Deliberative Democracy Handbook*. For an analysis of different types of mini-publics, see Matthew Ryan and Graham Smith, "Defining Mini-Publics," in *Deliberative Mini-Publics: Involving Citizens in the Democratic Process*, ed. Kimmo Grönlund, André Bächtiger, and Mija Setälä (Colchester, United Kingdom: ECPR Press, 2014), 9–26.

<sup>8</sup> The view is too popular to provide an exhaustive list, but for a few examples, see endnote nine below. For some critical voices, see Simone Chambers, "Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy?" *Political Theory* 37 (3) (2009): 323–350; Lafont, "Deliberation, Participation, and Democratic Legitimacy"; Carole Pateman, "Participatory Democracy Revisited," *Perspectives on Politics* 10 (1) (2012): 7–19; and John Parkinson, *Deliberating in the Real World* (Oxford: Oxford University Press, 2006).

<sup>9</sup> For examples of the first kind, see Hubertus Buchstein, "Reviving Randomness for Political Rationality: Elements of a Theory of Aleatory Democracy," *Constellations* 17 (3) (2010): 435–454; James S. Fishkin and Robert C. Luskin, "Broadcasts of Deliberative Polls: Aspirations and Effects," *British Journal of Political Science* 36 (1) (2006): 184–188; Archon Fung, "Minipublics: Deliberative Designs and Their Consequences," in *Deliberation, Participation, and Democracy*, ed. Shawn W. Rosenberg (New York: Palgrave Macmillan, 2007), 161, 165; Eric Ghosh, "Deliberative Democracy and the Counter-majoritarian Difficulty: Considering Constitutional Juries," *Oxford Journal of Legal Studies* 30 (2) (2010): 327–359; Robert E. Goodin and John S. Dryzek, "Deliberative Impacts: The Macro-Political Uptake of Mini-Publics," *Politics and Society* 34 (2) (2006): 225; Ethan Leib, *Deliberative Democracy in America: A Proposal for a Popular Branch of Government* (University Park: Penn State University Press, 2004); Sanford Levinson, "Democracy and the Extended Republic: Reflections on the Fishkian Project," *The Good Society* 19 (1) (2010): 66; Philip Pettit, "Depoliticizing Democracy," in *Deliberative Democracy and its Discontents*, ed. Besson and Martí, 93–106; Philip Pettit, *On the People's Terms* (Cambridge: Cambridge University Press, 2013); and William Talbott, *Human Rights and Human Well-Being* (Oxford: Oxford University Press, 2010). For examples of the second kind, see James S. Fishkin, "Deliberation by the People Themselves: Entry Points for the Public Voice," *Election Law Journal* 12 (4) (2013): 496–507; and Christopher Zurn, *Deliberative Democracy and the Institutions of Judicial Review* (Cambridge: Cambridge University Press, 2007). For an intermediate option that would leave it up to citizens whether to blindly trust the mini-publics' recommendations, see Michael MacKenzie and Mark Warren, "Two Trust-Based Uses of Minipublics in Democratic Systems," in *Deliberative Systems*, ed. Jane Mansbridge and John Parkinson (Cambridge: Cambridge University Press, 2012), 95–124. For the sake of simplicity, I will refer to mini-publics with the power to make binding political decisions as "empowered mini-publics."

<sup>10</sup> My argument here focuses on democratic representation and builds on a more general analysis of democratic legitimacy that I offer in Lafont, “Deliberation, Participation, and Democratic Legitimacy,” but cannot reproduce here.

<sup>11</sup> See Jane Mansbridge, “Deliberative Polling as the Gold Standard,” *The Good Society* 19 (1) (2010): 55–62.

<sup>12</sup> See Fishkin, *Democracy and Deliberation*; Fishkin, *The Voice of the People*; and Fishkin, *When the People Speak*.

<sup>13</sup> Fishkin, *When the People Speak*, 28.

<sup>14</sup> For instrumental justifications of democracy based on the value of epistemic diversity, see, for example, Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton, N.J.: Princeton University Press, 2013).

<sup>15</sup> Fishkin, “Deliberation by the People Themselves,” 504.

<sup>16</sup> For classic defenses of this view, see Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row, 1942); and William H. Riker, *Liberalism Against Populism* (Long Grove, Ill.: Waveland Press, 1982). For a recent defense, see Richard A. Posner, *Law, Pragmatism, and Democracy* (Cambridge, Mass.: Harvard University Press, 2003).

<sup>17</sup> I discuss this issue in Lafont, “Deliberation, Participation, and Democratic Legitimacy” 49.

<sup>18</sup> This assumption is particularly visible in proposals to institutionalize mini-publics for constitutional review. For example, see Ghosh, “Deliberative Democracy and the Counter-majoritarian Difficulty”; Horacio Spector, “Judicial Review, Rights, and Democracy,” *Law and Philosophy* 22 (3) (2003): 285–334; Horacio Spector, “The Right to a Constitutional Jury,” *Legisprudence* 3 (1) (2009): 111–123; and Christopher Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora: Rights, Democracy and Law,” *Theoria: A Journal of Social and Political Theory* 58 (127) (2011): 63–94. Not to mention proposals for creating a “popular” branch of government modeled on mini-publics; see Leib, *Deliberative Democracy in America*.

<sup>19</sup> It is important to notice that this line of argument does not fit well with the epistemic strategy that focuses on outcome considerations. From a strictly epistemic point of view, there is no reason to assume that “the people” are always or even often likely to reach the substantively best decisions. Think of all the important decisions, including the judicial, medical, economic, and scientific, that no one would propose being made by democratic referendum. So even if mini-publics reliably indicate the considered opinion of the majority of the population (and assuming they do), that still says nothing about whether those opinions are likely to be substantively correct. Indeed, given the drastic differences in considered public opinion on contested political issues among all countries of the world, they cannot all be right. If we take into account the temporal dimension, it is even more obvious how much considered public opinion on contested political issues has changed over time in all countries. Adopting this expanded perspective makes it entirely clear that the justification of the mirror claim depends on democratic, not epistemic, considerations. It assumes that the citizenry as a whole in each country is the constituent power: that is, has the legitimate authority to make the decisions in question regardless of whether it makes the right or wrong decisions. Under the democratic assumption of the right to self-government, the question then becomes whether the people should defer their decisional authority to mini-publics in some cases and, if so, why.

<sup>20</sup> For an in-depth analysis of the selection model of representation, see Jane Mansbridge, “A ‘Selection Model’ of Political Representation,” *Journal of Political Philosophy* 17 (4) (2009): 369–398. For the contrast between the selection and sanction models regarding mini-publics such as Deliberative Polls, see Mansbridge, “Deliberative Polling as the Gold Standard.” For an analysis of the contrast between these two models of representation under the rubrics “responsive” and “indicative,” see Philip Pettit, “Representation, Responsive and Indicative,” *Constellations* 17 (3) (2010): 426–434.



- <sup>21</sup> Warren E. Miller and Donald E. Stokes, "Constituency Influence in Congress," *American Political Science Review* 57 (1) (1963), as quoted in Mansbridge, "A 'Selection Model' of Political Representation," 371. Cristina Lafont
- <sup>22</sup> As Mansbridge indicates concerning the alignment of objectives between agent and principal according to the selection model, "the alignment of objectives can take place not only on the high ground of similar understandings of what is best for the nation as a whole but also on what is best for particular individuals or communities such as farmers, miners, or inner city residents." See Mansbridge, "A 'Selection Model' of Political Representation," 380.
- <sup>23</sup> For a defense of such trust-based uses of mini-publics, see MacKenzie and Warren, "Two Trust-Based Uses of Minipublics in Democratic Systems."
- <sup>24</sup> I cannot think of any interpretation of the selection model of representation in which it would be plausible to claim that citizens should trust the considered opinion of a majority of random others. I analyze the difficulties of this claim in Lafont, "Deliberation, Participation, and Democratic Legitimacy," 54 – 57. But whether or not this view of representation could be considered plausible, the problem in our context is that the modified mirror claim on which it is based is false.
- <sup>25</sup> Fishkin, *When the People Speak*, 28. The emphasis is mine.
- <sup>26</sup> See Parkinson, *Deliberating in the Real World*, 82.
- <sup>27</sup> See David Owen and Graham Smith, "Deliberation, Democracy and the Systemic Turn," *Journal of Political Philosophy* 23 (2) (2015): 213 – 234.
- <sup>28</sup> See Pettit, "Depoliticizing Democracy," 54 – 55. Pettit's proposal leaves open whether to confer decisional status on mini-publics or to leave the ultimate control over them to Parliament. Either way, the innovation would bypass the citizenry, which is my focus here.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Since nothing turns on the specific example of a settled political issue, those with doubts about how settled the death penalty is in European countries can substitute it with any other example they consider settled, like burning offenders at the stake.
- <sup>31</sup> For an overview of different versions of the deliberative system approach, see Mansbridge and Parkinson, *Deliberative Systems*.
- <sup>32</sup> For an analysis of the differences between a system-centered and a citizen-centered interpretation of the deliberative systems approach, see Owen and Smith, "Deliberation, Democracy and the Systemic Turn," 213 – 234.
- <sup>33</sup> This tendency is particularly visible in Leib's proposal for a popular branch of government modeled on mini-publics, in which the voice and will of "a group of stratified random samples of laymen" is routinely identified with the voice and will of "the people." See Leib, *Deliberative Democracy in America*, 72, 66.
- <sup>34</sup> For overviews of empirical applications of mini-publics, see Grönlund, Bächtiger, and Setälä, eds., *Deliberative Mini-Publics*; and Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge: Cambridge University Press, 2009), 72 – 110. For a comparative empirical analysis of the potential impacts of mini-publics in different kinds of states, see Dryzek, *Foundations and Frontiers of Deliberative Democracy*, 155 – 176.
- <sup>35</sup> See Fishkin, *When the People Speak*, 60 – 64.
- <sup>36</sup> See Iris Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).
- <sup>37</sup> See Jane Mansbridge, *Beyond Adversary Democracy* (Chicago: Chicago University Press, 1980).
- <sup>38</sup> For a defense of this claim in the context of an interesting analysis of different uses of mini-publics, see Nicole Curato and Marit Böker, "Linking Mini-Publics to the Deliberative System: A Research Agenda," *Policy Sciences* 49 (2) (2016).

<sup>39</sup> I am using here the formulation of the “deep roots test” that the U.S. Supreme Court uses as its substantive due process standard. For a critical analysis of that standard, see John C. Toro, “The Charade of Tradition-Based Substantive Due Process,” *New York University Journal of Law & Liberty* 4 (2) (2009): 172 – 208.

<sup>40</sup> The level of empowerment of mini-publics in this context could be increased. For example, it could be required that the Supreme Court takes up their recommendations in the legal reasoning justifying its decisions and offers an explicit, reasoned justification whenever it rules against them. I mention this intermediate possibility not as a proposal I endorse, but simply to indicate that political empowerment comes in degrees; so for any possible use of mini-publics, the level of empowerment can range from the weakest option of conferring upon them a merely nonbinding and advisory role to the strongest possible option of conferring upon them the binding power to make final decisions unchecked by the citizenry or by any other political institution. Opposing the strongest form of empowerment, as I do, does not require endorsing the weakest form as the only legitimate option.

<sup>41</sup> The latter include political issues in which elected officials have a clear conflict of interest, such as choosing among electoral systems or drawing electoral boundaries. Regarding these kinds of questions, vigilant uses of mini-publics would strengthen popular oversight of public officials especially if they were empowered to require public officials to appear before them to testify. See Goodin and Dryzek, “Deliberative Impacts: The Macro-Political Uptake of Mini-Publics,” 235 – 236; Dryzek, *Foundations and Frontiers of Deliberative Democracy*, 169; and John Ferenjohn, “Conclusion: The Citizens’ Assembly Model,” in *Designing Deliberative Democracy*, ed. Mark E. Warren and Hilary Pearse (Cambridge: Cambridge University Press, 2008), 192 – 213.

<sup>42</sup> See Leib, *Deliberative Democracy in America*, 62.

<sup>43</sup> See, for example, Jeffrey Perker, “CRISPR/CAS Faces the Bioethics Spotlight,” *BioTechniques* 58 (5) (2015): 223 – 227.

<sup>44</sup> Visibility should not be confused with transparency. Even when the information in question is publicly available, this may still be useless to the citizenry if its importance is not visible in the public sphere so that it can generate public awareness and political debate. On the crucial difference between transparency and visibility, and the special importance of the latter, see Stefan Rummens, “Staging Deliberation: The Role of Representative Institutions in the Deliberative Democratic Process,” *Journal of Political Philosophy* 20 (1) (2012): 29 – 41.

<sup>45</sup> Many different institutional processes could accomplish these ends. One would require legislative standing committees overseeing major transnational agreements to convene some form of mini-public in advance of important binding decisions. Their empowerment could vary from merely indicating whether or not public debate is needed to setting the agenda on the specific issues in need of public debate (such as identifying specific environmental or ethical concerns and establishing proper priorities in light of significant trade-offs).

<sup>46</sup> I take the idea of anticipatory uses of mini-publics from MacKenzie and Warren, “Two Trust-Based Uses of Minipublics in Democratic Systems.” However, my participatory interpretation of this use differs from theirs in that I do not consider it to be a trust-based use. Rather than the public simply entrusting mini-publics with the task of reaching a considered public opinion on the political issues in question so that these opinions may then be communicated to executive agencies or other public officials, from a participatory perspective, the function is instead to *identify* the issues about which the public needs to collectively form a considered public opinion, and *communicate* this information to both public officials and the citizenry.

<sup>47</sup> See Bruce Ackerman and James S. Fishkin, *Deliberation Day* (New Haven, Conn.: Yale University Press, 2004). However, this is not to say that all such uses would always be desirable, since other considerations may speak against them. For example, Christopher Zurn proposes to empower mini-publics for certifying popular amendment proposals and to require Deliberation Days for ratification or rejection by the citizenry. See Zurn, *Deliberative Democracy and the Institutions of Judicial Review*, 336; and Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora.” This type of proposal may have impeccable participatory creden-

tials, but it may raise concerns regarding political stability because it offers no criteria to limit what can and cannot be up for amendment. For a criticism along these lines, see Fishkin, *Cristina Lafont* “Deliberation by the People Themselves,” 506.

<sup>48</sup> I am thinking here of proposals for empowering mini-publics in the context of constitutional review. See, for example, Ghosh, “Deliberative Democracy and the Countermajoritarian Difficulty”; Spector, “Judicial Review, Rights, and Democracy”; Spector, “The Right to a Constitutional Jury”; and Zurn, “Judicial Review, Constitutional Juries, and Civic Constitutional Fora.” I have serious doubts that any of the proposals currently under discussion meet these criteria, but it cannot be ruled out *a priori* that some modified proposal could meet them.

# Deliberative Citizens, (Non)Deliberative Politicians: A Rejoinder

*André Bächtiger & Simon Beste*

*Abstract: Are citizens or politicians (more) capable of deliberation, and when should they be willing to do so? In this essay, we first show that both politicians and citizens have the capacity to deliberate when institutions are appropriate. Yet high-quality deliberation sometimes collides with democratic principles and ideals. Therefore, we employ a “need-oriented” perspective, asking when and where citizens and the political workings of democracy need high-quality deliberation and when and where this is less the case. On this account, we propose a number of institutional interventions and reforms that may help boost deliberation in ways that both exploit its unique epistemic and ethical potential while simultaneously making it compatible with democratic principles and ideals.*

When political scientists and political analysts are asked whether there is potential for deliberation in our contemporary political systems, the answer is usually negative. The standard argument is that politicians do not want to deliberate and citizens are not able to do it. Some deliberative democrats have given this argument a slightly different spin, claiming that although we should not hold high hopes for deliberation in the power-riddled realm of electoral politics, citizens have a latent deliberative potential that appropriate institutions (especially deliberative mini-publics) can unleash.

In this essay, we argue that both answers are wrong. Empirical research shows that both politicians and citizens have the capacity to deliberate when institutions are appropriate. Under optimal institutional conditions, politicians can score relatively high on measures of discourse quality derived from the ideals of deliberation as envisaged in Habermasian rational discourse. A good fraction of citizens can also approach these standards. Yet deliberation is not the only goal or the only desirable means in politics.

ANDRÉ BÄCHTIGER is Chair of Political Theory at the Department of Social Sciences at the University of Stuttgart, Germany.

SIMON BESTE is a Ph.D. candidate at the University of Lucerne, Switzerland.

(\*See endnotes for complete contributor biographies.)

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Sometimes the institutions that further deliberation also undermine the democratic goods of responsiveness and accountability. And sometimes the institutions that allow citizens to deliberate at high-quality levels may not – and some argue should not – produce significant effects on policy outcomes.

Taking these possible trade-offs into consideration, we propose a “functional” approach to deliberation that takes the goals of deliberation in specific contexts more seriously and allows for a more nuanced reading of the empirical results. Such an approach does not see deliberation as a panacea for the ills of democracy. Rather, it takes a “need-oriented” perspective, asking when and where citizens and the political workings of democracy most need high-quality deliberation and when and where they need it less. Based on such a functional understanding of deliberation, we propose a number of institutional interventions and reforms that may help boost deliberation in ways that both exploit its unique epistemic and ethical potential and simultaneously make it compatible with other democratic goods and ideals.

Before we take a stab at the deliberative potentials of politicians and citizens, we first need to charter some conceptual territory. Drawing from a common metaphor in institutional theory, we shall distinguish between “old” and “new” deliberation.<sup>1</sup> “Old” deliberation (frequently denoted as “classic” deliberation) incorporates the standards of rationality in argumentation, listening, reflection (weighing), respect, and “authenticity” in the sense that actors are oriented toward sincere understanding of others rather than toward strategic goal attainment. An underlying assumption in old deliberation is that the various deliberative ideals are fixed and work in tandem. This vision is “unitary” in that it assumes that all of the deliberative virtues will complement one another in a cohesive whole.

It also assumes that these deliberative virtues will, in practice, produce an array of desirable outcomes, including epistemic advancement, ethical goals (such as mutual understanding and accommodating diversity), and individual transformation.

The “new” approach to deliberation that we propose takes a functional perspective, emphasizing that the various forms that deliberation can take should depend on the goals of that deliberation and the contexts in which it takes place. For instance, to reach deliberation’s epistemic goals, a high level of justification rationality may be a key procedural requirement, whereas respect may play only a subordinate role. By contrast, if you want to achieve deliberation’s ethical goals, respectful interactions likely play a larger role than rational argumentation.

The approach of new deliberation resembles political scholar Michael Saward’s “shape-shifting” approach to representation.<sup>2</sup> Rather than thinking that deliberators play one distinct deliberative role at a time, we should understand them as creative actors who make productive and flexible use of various forms of deliberation depending on goals and context.

Finally, the new approach to deliberation assumes that deliberation cannot and should not play a major role in all stages of a democratic system.<sup>3</sup> Although deliberation may be critical for producing epistemically sound policy or mutual agreement, it may be counterproductive for achieving other democratic goods, such as responsiveness, accountability, or consequentiality. As a result, new deliberation takes a need-oriented perspective on deliberation: rather than claiming that more deliberation is always good, it analyzes contexts and situations to determine where deliberation is most needed and functional for a particular democratic system.

Applying the approaches of the old and new to an analysis of deliberation among

politicians and citizens leads to different evaluations of its viability and functionality. We start with deliberation in the realm of politics and then turn to deliberative potentials among citizens.

That “politics” is by its nature not deliberative is a common theme in the literature of political science. In a programmatic article, Ian Shapiro holds: “Enough of deliberation: Politics is about interests and power.”<sup>4</sup> According to Shapiro, a deliberative reading of politics fails to consider conflicting interests and powerful players who have no incentives to deliberate, but will pursue their goals with coercive means. Deliberative democrats often have similar views about the possibilities for good deliberation in politics. James Fishkin and Robert Luskin, for instance, have argued that political elites tend to focus on negotiation rather than deliberation, so that their changes of position are the product of changing circumstances rather than the product of the better argument.<sup>5</sup>

The criticisms may be partially misplaced. Much of the criticism against the possibility of deliberation in politics is based on an analysis of Anglo-American politics and Westminster systems. It is easy to identify major deliberative failures in contemporary U.S. politics and in Westminster democracies, but different institutional setups – in combination with issue types and partisan strategies – may bring about higher levels of deliberative action in politics. Empirical findings from legislative deliberation underline that under appropriate institutional, contextual, and partisan conditions – namely, coalition settings, second chambers, secrecy, low party discipline, low issue polarization, and the strong presence of moderate parties – genuine deliberation is possible in parliaments.<sup>6</sup> If favorable institutional and issue factors combine – that is, when a less-polarized issue is debated in a nonpublic second chamber of a consensus

system with low party discipline – we find debates that resemble “ideal” deliberation with highly reasoned, respectful, reflective, and open-minded actors.<sup>7</sup>

Even with this more nuanced and differentiated reading of deliberation’s potential in politics, a number of challenges persist. First, a deep-seated analytical challenge claims that the very nature of politics is conflict rather than cooperation through deliberation. This “adversarial” reading of politics, which has been dominant in democratic thinking since the seventeenth century, makes any claim for deliberation in politics – even if supported by empirical data – a dubious affair.<sup>8</sup>

Second, compounding this analytical challenge, we lack any straightforward test that might differentiate clearly between fully deliberative actions (oriented toward the common understanding of common goals) and strategic actions (oriented only toward self-interested and conflicting goals). Assume that we find a political actor who scores high on all deliberative indicators: that is, provides extensive justifications for positions and shows respect for other positions and arguments. Although these indicators may suggest deliberative action, we cannot exclude the possibility that the actor is engaging in sophisticated “rhetorical action,” intended to manipulate an audience. Put differently, until we can read minds, we will never be able to “prove” that actors were really motivated by a logic of common understanding.

Third, the real world of politics suggests that there is no unitary core of deliberation in representative politics. Consider a comparison of deliberative behavior under the public eye and behind closed doors: public debates in parliament increase justification rationality but decrease respect, while nonpublic debates increase respect but decrease justification rationality. From the perspective of old deliberation, which implies the compatibility of all the elements

of good deliberation, this juxtaposition might cast doubt on the validity of the empirical findings. One might be forced to assume that political behavior under the public eye was only deliberative rhetoric, in which the pressures of publicity force the actors to produce justifications that they do not sincerely believe. Because the norms of public debate in Western democracies generally value reasoned argument but not explicit respect for the political opponent, strategic actors will use strategies that mix justification and disrespect.

Fourth, empirical research shows that classic deliberation in politics is highly context-bound, with the conditions of good deliberation (a less-polarized issue debate in a second chamber of a consensus system behind closed doors) representing relatively rare conditions. If this is the case, political deliberation would be so unlikely as to lose its real world significance. A deliberative lens on politics might be misplaced when we consider “normal conditions” of politics: namely, strong partisan competition and high issue polarization.

Fifth, the conditions for good parliamentary deliberation create a challenge for the two other democratic goods of responsiveness and accountability. As political scientist Gerry Mackie has noted: “It is worrisome that each of the discourse-improving institutions is also one that reduces accountability of representatives to the citizenry (it’s harder to know who to blame in a consensus coalition, in a presidential regime, and in a system of closed meetings, and the political elite can collude against the population).”<sup>9</sup> Institutionalizing more deliberative politics in legislatures seems to imply a return to “old parliamentarism,”<sup>10</sup> with a premodern “trustee” model of representation in which politicians have loose links to their constituents and can freely change their minds on the basis of the better argument. Yet today, at least in the United States, a majority of citizens rejects

the trustee model of government and instead prefers strong government responsiveness.<sup>11</sup>

Taken together, these challenges seem to underscore the criticism of deliberation as even a useful ideal for politics. From a new deliberative perspective, however, these challenges appear in a different light.

First, we need to clarify the goals of deliberation in politics before we specify what qualities we want to see in it. Focusing on legislatures, political scientists Gary Mucciaroni and Paul Quirk have made a first step in this direction.<sup>12</sup> They claim that the key goal of parliamentary debate should be the substantive consideration of policy issues and the related informational quality of a debate, rather than the ethical goals of deliberation. In other words, in this setting, the justificatory component of deliberation trumps respectful interactions. From this vantage point, even adversarial debating – which many deliberative democrats have placed in contradiction with deliberation – might yield an epistemic function in that the audience is provided with robust reasons for competing policy goals.<sup>13</sup>

Yet Mucciaroni and Quirk tend to overstretch their argument. Because both the goals of legislative deliberation and their institutional and issue contexts vary, a focus on informational quality as the sole goal of parliamentary debate at the expense of ethical goals may be misplaced. In the context of a nonparliamentary consensus system – or any other negotiation setting in politics – the ethical dimensions of respect may play an important instrumental role in facilitating the negotiation process. Respectful interactions are likely to bolster cooperative attitudes among negotiation partners. Moreover, in the context of moral and ethical issues (such as abortion) or highly divisive issues (such as conflict regulation in divided societies), an exclusive focus on informational quality may be deeply

misplaced. On such issues, it is hard to say that one of the principles under dispute is more correct than the other. To regulate deep conflict in divided societies, it is sometimes necessary to concentrate on what the other side can accept rather than searching for the “truth.”

Second, from the perspective of new deliberation, it is not a deficiency if we cannot fully distinguish between true deliberative and strategic action. It is neither realistic nor even desirable that politicians be oriented only toward a common understanding of the common good or comply with the full list of deliberative virtues in all venues of politics.<sup>14</sup> Under the public eye, for instance, politicians contribute to democratic goods – responsiveness and accountability – if they debate properly rather than deliberate in a way that reflects all the deliberative virtues. The standard of quality from a deliberative vantage here requires neither the deliberative virtue of reflection nor that of respect, but rather a high level of justification rationality (or what political scientist Simone Chambers has called “robust reasoning”).<sup>15</sup> A low level of deliberative quality under conditions of publicity involves what Chambers calls “plebiscitory reasoning” in which “arguments ... become shallow, poorly reasoned, pandering, or appeal to the worst we have in common.”<sup>16</sup> By contrast, behind closed doors, where pressures of public opinion are reduced and other governing logics, deriving from the possibility of agreement, set in, we can expect other deliberative virtues – such as some open-mindedness as well as listening and respect – to flourish more fully.

Good democratic representatives should pursue not only the common good, but also the interests of their constituents when they conflict with those of constituents in other districts or parties. If we build such conflict into our ideal of politics, we should not expect the representatives to ignore or supersede their constituents’ interests in de-

liberation. Even in the ideal, therefore, and even when politicians are motivated to find good solutions and are open to good arguments, we should expect a mix of strategic and deliberative behavior. The deliberative quality standard here should not be rational discourse but “deliberative negotiation” in which actors justify their positions extensively with respect, but are allowed to “bargain,” constrained by fairness, by making promises while abstaining from threats and strategic misrepresentation.<sup>17</sup> Negotiations that score low on justification and respect but high on force, threats, and strategic misrepresentation would count as less deliberative or, if there were no deliberative elements, not deliberative at all. Overall, rather than searching for fully fledged deliberative actors in politics, we should desire creative political actors who can engage in deliberation when needed and where contextually possible and appropriate. In this situation, it becomes analytically less necessary to draw strict dividing lines between strategic and deliberatively authentic political actors.

The idea of a “deliberative citizen” has been met with as much skepticism as has “deliberative politics.” Drawing from his own cases of citizen participation in deliberations, political scientist Shawn Rosenberg points out that most “participants who attend a deliberation do not, in fact, engage in the give and take of the discussion.” Rather, they “offer simple, short, unelaborated statements of their views of an event.”<sup>18</sup> Critics have also argued that classic deliberation may be undemocratic because classic forms of deliberation discriminate against already disadvantaged persons (especially people with low socioeconomic status); different speaking styles with less classically deliberative qualities often translate into a lack of influence; and group discussion – the hallmark of any deliberative event – often triggers nondeliberative group dy-



namics, such as group polarization, reducing the normative value of any transforms, such as opinion change, that the deliberation may produce.

As with politics, empirical research displays a different picture when it focuses on deliberative events that are well-structured to include supportive conditions such as information provision, expert questioning, and facilitator intervention. In their analysis of a transnational Deliberative Poll (the “Europolis”) – which represents a demanding setting for citizen deliberation – political scientist Marlène Gerber and colleagues found that “the standards of classic deliberation are far from being utopian standards that only very few citizen deliberators can achieve.”<sup>19</sup> In this context, the number of participants who both provided a sophisticated justification and engaged in respectful listening is almost 30 percent. Comparing the Europolis proceedings with parliamentary debates, the former fare quite well: although the Europolis discussion groups did not match the deliberative standards under the most ideal conditions in representative politics and also had slightly lower scores on justification rationality than in the average parliamentary debate, respect levels were significantly higher than in politics under the usual political conditions of strong partisan competition and issue polarization.<sup>20</sup> Not everything was perfect in Europolis. Gerber’s team found that working-class participants from Eastern as well as Southern Europe were less apt to reach most standards of high-quality deliberation (such as justification rationality, common good orientation, and respectful listening) than other participants, raising some concerns about the democratic dimensions of deliberation among citizens with culturally heterogeneous backgrounds. However, the research team did not find any indication that the different speaking styles and cultures had an impact on influence. That is, the predeliberation opinions of the

highly skilled deliberators were no more likely to affect the opinion changes in the group than were the predeliberation opinions of the less highly-skilled deliberators. Nor did the more highly-skilled deliberators impose their views on other participants. Nor, again, did these highly skilled deliberators stay stuck in their positions: they showed an almost identical amount of opinion change as the lower-skilled deliberators. Finally, the evidence suggests that opinion change in Europolis can be partly attributed to a systematic, justificatory, and argument-based component, and not to undesirable group dynamics such as group polarization: well-justified arguments seemed to affect opinion change.<sup>21</sup> These findings are by no means unique. In analyzing well-structured deliberative events, several independent research teams have reached strikingly similar conclusions regarding the deliberative potential of citizens, the non-violation of democratic standards, and the systematic and justificatory basis of opinion change.<sup>22</sup>

Overall, these findings contradict popular assumptions regarding citizen capacity and the inevitability of undemocratic deliberative structures. Just as in legislative politics, much seems to depend on the institutional setup: if an institution is explicitly geared toward dialogue and deliberation, many well-known psychological biases tend to be reduced or wither away. Political scientist Kimmo Grönlund and colleagues, for example, varied discussion rules in an experiment on citizen deliberation on the future of the Swedish language in Finland. Their main finding was that discussion with a facilitator and deliberative norms reversed tendencies to group polarization, whereas “free” discussion without a facilitator and explicit deliberative norms – as is implemented in most psychological experiments – produced the undesired polarization patterns described by Cass Sunstein and others.

*André  
Bächtiger  
& Simon  
Beste*

One outstanding question involves the policy impact of citizen deliberation, for example, in randomly selected “mini-publics.” Much depends on the sincerity of the intention to implement and the capacity to implement of the authorizing entity. In Canada, political scientist Genevieve Fuji Johnson has found that the interests of the authorizing bodies play a dispositive role in the implementation of the results of citizen deliberations.<sup>23</sup> Using Deliberative Polls, Fishkin has documented real effects on policy when the authorizers intended such effects or were extremely open to them. Yet as John Dryzek has noted: “Direct influence on and in policy making is a hard test for mini-publics to pass. While examples exist of influence and impact, they are outnumbered by cases where a mini-public is established but turns out to have little or no effect on public decision-making.”<sup>24</sup>

A new study has also suggested that the more deliberative mini-publics are, the less likely they are to influence policy.<sup>25</sup> This study documents that mini-publics with low representativeness and low deliberative quality are most likely to produce important policy effects.<sup>26</sup> Yet if deliberation is not tied to decision-making, it loses its democratic character. As Mark Warren has put it: “Political processes that fail to enable this moment of constitution [that is, a system’s capacity of making binding decisions] also disempower the people as a collective agent and thus undermine the normative point of inclusion and collective will formation.”<sup>27</sup>

Deliberative mini-publics also raise important questions of democratic legitimacy. Cristina Lafont has argued that mini-publics reach conclusions for reasons that most ordinary voters are not likely to fully appreciate, which, in turn, creates a fundamental challenge for their legitimacy as policy-making tools.<sup>28</sup>

From the perspective of new deliberation, these problems appear in a different

light. A key mistake in our view is to take a “totalizing view” of citizen deliberation and deliberative mini-publics and expect that a single institution can achieve all of deliberation’s goals at once.<sup>29</sup> In our view, this “unitary” vision should be replaced by a differentiated vision that takes the deliberative needs of different political contexts into account. Such a differentiated vision would specify different functions for deliberative mini-publics in different parts of any political system.

First, we need to consider which political systems can be well-served by mini-public input, and why. Political scientist Archon Fung, for example, has pointed out how patronage systems in Latin America have hollowed out their procedures of representative democracy. When competitive elections do not advance the collective goods that citizens want and need, then it is sensible to hand over policy-making activities to citizens who can produce these goods more effectively.<sup>30</sup> In another intriguing (and perplexing) example, authoritarian regimes may find that deliberative mini-publics yield distinct benefits for elites. They generate information about society and policy, co-opt dissent and maintain social order, and enable leaders to deflect responsibility onto the mini-public processes and thus avoid blame.<sup>31</sup> In certain townships in China, administrators have commissioned well-structured deliberative mini-publics and then implemented their recommendations. One could imagine such processes either making later electoral democracy more possible or, to the contrary, undermining citizen demand for democracy. Similar demands among existing authorities for high-quality citizen feedback also exist in Western democracies. Baden-Württemberg in Germany is a good example. The massive protests surrounding the “Stuttgart 21” project to rebuild a train station in the central city challenged the functioning of traditional

representative politics and consequently triggered several democratic innovations in order to reduce the disconnect between representative politics and citizen views. The Green-Left (now Green-Black) government introduced and institutionalized forums for citizen participation and deliberation, subsequently taking up the policy recommendations of those forums.

But not all political systems require the input of deliberative mini-publics. In the Swiss polity, extended direct-democratic mechanisms create feedback from the public. Politicians learn from both negative and positive votes in referenda, even if the exact reasoning behind the voting decisions is not always clear. Over time, this system has led to relatively good anticipations of what the “median voter” may desire, rendering additional input from deliberative mini-publics less necessary. Surely, more deliberative median voters might decide differently in direct democratic voting – and perhaps in less populist ways – compared with nondeliberative median voters.<sup>32</sup> But if the goal of deliberative mini-publics is just more feedback to politics, then a fully fledged direct-democratic system like Switzerland might provide a sufficient route to achieve this goal.

Second, we need to consider the functions of mini-publics beyond direct policy uptake. One prominent example is a “trust-based” function, which can inform citizens’ own later deliberations. Such functions do not replace citizen input, as Lafont argues, but instead supplement and inform it. The idea behind the trust-based function is that the (large) majority of non-deliberating citizens can trust the judgments of the (small) minority of deliberating citizens because that small minority, selected randomly for a deliberative mini-public, does not have to follow partisan logics of electoral representation and can focus instead on common concerns.<sup>33</sup> Some empirical evidence indicates that this

trust-based function works in practice: the more voters knew about the randomly selected British Columbia Citizen Assembly and Irish Citizen Convention – such as their recruitment mechanisms or their freedom from partisan instructions – the more likely they were to vote for the mini-public’s policy recommendation in the later citizen referendum.

Deliberative mini-publics can also function as schools of deliberation and democracy. In today’s fragmented and mediatized societies, truly dialogical opportunities have become rare for ordinary citizens. Yet psychologists argue that, in the formation of considered opinions, dialogue is much more effective than simply listening to arguments.<sup>34</sup> Deliberative mini-publics enable ordinary citizens to enter into reasoned political dialogue on important questions. In the U.S. context, political scientist Lawrence Jacobs and colleagues have found that those who regularly participate in structured public discussions have a higher proclivity to connect with elites, engage in civic voluntary activities, and participate in electoral politics.<sup>35</sup> In short, even when deliberative events do not directly influence policy, they may nonetheless produce a democratic and deliberative “culture,” which – as we shall detail below – may be essential for the renewal of our contemporary political systems.

We think that deliberation brings something unique to democracy. It promotes both epistemic advancement, through argument and reasoning, and mutual understanding and accommodation among diverse actors, through respectful interaction. With these goals in mind, most past research on deliberation has taken a strong reformist perspective. By contrast, the recent systemic approach – which has had a significant effect on current thinking about deliberation and deliberative democracy – seems to have left behind these reformist

goals. The systemic approach asks us to evaluate the deliberative system as a whole, suggesting that systemic mechanisms may sometimes be at work, in which components in a deliberative system may correct for each other's deliberative (and democratic) deficiencies.<sup>36</sup> Although we agree that deliberative "wrongs" can sometimes produce deliberative and democratic "rights," we think that such correcting mechanisms are increasingly hollowed out in contemporary times. Mediatization, for instance, systematically undermines the deliberative capacities of political elites, forcing them to follow media logics and engage in "plebiscitary reasoning." Increasing party polarization, especially in the United States, has severely reduced the potential for making respectful compromises. These developments make it even more important to think of smart interventions and reforms to existing institutional settings so that the unique contribution of deliberation to democracy can be realized.

In the political sphere, one might imagine institutional reforms toward more negotiation, similar to what we find in consensus democracies. Introducing proportional representation (PR) electoral systems, for example, makes it easier for several parties to form, which thereby forces the parties to enter into coalitions and negotiations with other parties. This requirement for negotiation, in turn, can involve deliberative elements. In recent years, negotiated systems have sparked interest among political theorists.<sup>37</sup> Denmark provides an interesting case. Here, an inclusive "negotiated" but also "authoritative" political system produces high-quality governance outputs; intriguingly (but perhaps not surprisingly), Denmark is also one of the few countries where the recommendations of one form of deliberative mini-publics ("consensus conferences") have found their way into legislation. Overall, well-functioning negotiated systems involve much higher citizen satis-

faction than competitive Westminster systems, even in times of major political crisis (as in the aftermath of the 2008 financial crisis).

A second possible institutional reform in politics might involve strengthening the bodies that Dryzek has called the "Chambers of Reflection."<sup>38</sup> Empirical research suggests that second chambers, such as the House of Lords in England and the second chamber in Switzerland, inject a modicum of deliberation and reflection into the political process, even in times of increasing political polarization.<sup>39</sup> Elected second chambers have the advantage that they are accountable to their constituents. But a well-functioning political system will try to balance the different needs of representative politics, including both strong responsiveness and reflective deliberation. One way to achieve the combination of these two ends may be a clever division of labor between different political venues: the partisan and the reflective. If the two venues are institutionally nested (for instance, if one arena is constrained at least in part by the decisions of the other), this nesting may advance the realization of the deliberative goods of epistemic advancement and mutual understanding without bypassing the other democratic goods of responsiveness and accountability.

A third possible institutional reform is simply enriching existing political systems with a plethora of democratic innovations. This supplementary approach is happening worldwide, but had a particular grip in Latin America and in polities deeply affected by the financial crisis in 2008, such as Iceland, Ireland, and Spain. In all of these polities, various actors have started a number of deliberative initiatives, ranging from direct citizen involvement to new party architectures and new direct communication links between representatives and the represented.<sup>40</sup> We think that the positive effects of these innovations can be increased when

institutional designers develop a higher sensitivity to context, asking in each setting what goals they want to realize and what conditions they confront. They should realize that there is no one-size-fits-all in organizing deliberative events. Depending on the goals of deliberation (such as epistemic advancement and accommodation), different forms of recruitment and communication are necessary. For instance, if we want to promote the interests of disadvantaged and disaffected groups, we should over-recruit members of such groups in order to enhance their public standing and adopt a cooperative communication format in order to enhance their deliberative influence. But if we want to achieve epistemic goals, then random selection of participations and more contestatory forms of engagement might be more effective.<sup>41</sup>

Overall, we should note that institutional reforms do not always work in straightforward ways. PR electoral systems and their resulting coalition arrangements may tend to enhance constructive negotiations, but in some conditions (like in Israel) this institutional arrangement does not conduce to cooperation. With regard to coalition systems, rational choice theorists have long argued that coalition settings entail mixed-motive games. On the one hand, coalition parties have reason to cooperate with their partners to pursue successful common policies. On the other hand, each party faces strong incentives to move policy in ways that appeal to their party members and to the constituencies on which the party relies for support.<sup>42</sup> Coalition arrangements thus do not automatically produce high-quality deliberation. Rather, as empirical research has shown, the deliberative capacity of coalition arrangements is strongly affected by partisan strategies and motivations.<sup>43</sup> This powerful effect of partisan variables underlines that there is, at least at the moment, a clear limit to the effects of institutional design.

Another challenge to institutional design derives from institutional interactions and details. First, institutions are frequently nested in other institutions. For instance, the deliberative potential of second chambers is affected by the overall system architecture: if the larger system is dominated by partisan advocacy – as in Australia and the United States – then the deliberative potential of second chambers is limited. Second, institutional details matter. In coalition government, for example, recent research has shown that constructive political action may be strongly influenced by the coalition composition. Political scientists Stephen Fisher and Sara Hobolt have provided empirical evidence that when a coalition government is composed of two parties, the head of government's party is subject to greater punishment and reward from voters in their retrospective voting in the next election than the other coalition party. Conversely, when a coalition government has more than two parties, the effects of retrospective voting on any of the parties is substantially reduced. Accountability seems to be reduced because it is harder to know whom to blame. On the other hand, the space for deliberative engagement may be enhanced, since it is more difficult for parties to use political successes for partisan electoral advantages. Details also matter for deliberative mini-publics. Political scientist Lucio Baccaro and colleagues have shown that an institutional detail, such as asking participants to justify their positions before making a choice, can have major effects on the dynamics of deliberative process and the subsequent outcomes.<sup>44</sup>

In short, we argue for a new contextual and functional approach to deliberation. Both electoral politics and citizen participation can become more deliberative, often without undermining other democratic values. What is needed, what will work, and what innovations make sense depend on the details and the context.

\* Contributor Biographies: ANDRÉ BÄCHTIGER is Chair of Political Theory at the Department of Social Sciences at the University of Stuttgart, Germany. His research has been published by Cambridge University Press and in such journals as the *British Journal of Political Science*, *European Journal of Political Research*, *Journal of Political Philosophy*, *Political Studies*, and *Acta Politica*. He is coeditor of the *Oxford Handbook of Deliberative Democracy* (with John Dryzek, Jane Mansbridge, and Mark Warren, forthcoming).

SIMON BESTE is a Ph.D. candidate at the University of Lucerne, Switzerland. He has published articles in such journals as *Acta Politica*, *Journal of Public Deliberation*, *Swiss Political Science Review*, and *Journal of Legislative Studies*.

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# Deliberation & the Challenge of Inequality

Alice Siu

*Abstract: Deliberative critics contend that because societal inequalities cannot be bracketed in deliberative settings, the deliberative process inevitably perpetuates these inequalities. As a result, they argue, deliberation does not serve its theorized purposes, but rather produces distorted dialogue determined by inequalities, not merits. Advocates of deliberation must confront these criticisms: do less-privileged, less-educated, or perhaps illiterate participants stand a chance in discussions with the more privileged, better educated, and well spoken? Could their arguments ever be perceived or weighed equally? This essay presents empirical evidence to demonstrate that, in deliberations that are structured to provide a more level playing field, inequalities in skill and status do not translate into inequalities of influence.*

When we think of the greatest orators, we often see men. In many developed democracies, those men are also likely to be white, educated, and privileged – men who had better opportunities from birth. It would be natural to expect these same privileged men to dominate in deliberation; indeed, we have all seen this kind of discursive domination in our own lives. Thus, many critics of deliberation have identified societal inequalities in deliberative settings, from town meetings to the jury room. Compared with the vote, which is explicitly structured to foster equality, deliberation seems destined to perpetuate existing societal inequalities, and perhaps foster greater inequality. These criticisms apply to many contexts; yet in deliberative settings structured to provide a more level playing field, we do not find empirical evidence to support these claims. Since the critics' claims are empirical, it is necessary to examine them empirically. This essay provides empirical evidence to demonstrate that inequality is not a necessary attribute of deliberation.

ALICE SIU is Deputy Director of the Center for Deliberative Democracy at Stanford University. Her work on Deliberative Polling has been published in *The Search for Deliberative Democracy in China* (2006), *Governance Reform under Real-World Conditions: Citizens, Stakeholders, and Voice* (2008), and prominent journals such as the *British Journal of Political Science*.

Deliberative theorists contend that forums for public deliberation provide opportunities for citi-

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zens to engage each other in thoughtful discussion; in such settings, they may share competing views and, over time, develop reasoned and considered opinions.<sup>1</sup> John Stuart Mill argued that taking part in public functions, such as small town offices or jury duty, serves as a *school of public spirit*.<sup>2</sup> In the case of juries, people, privileged or not, would engage in deliberations together to decide the fate of others.<sup>3</sup>

More recently, German sociologist and philosopher Jürgen Habermas has envisioned the larger *public sphere* as a space in which “private people com[e] together as a public.”<sup>4</sup> That public sphere can serve as a place for “critical public debate,”<sup>5</sup> where public opinion can form and to which all citizens could have access, with freedom to discuss and gather as desired. In his essay “Further Reflections on the Public Sphere,” Habermas discusses how the public debate could be carried through in a variety of today’s civil society organizations, including volunteer organizations, churches, and academic institutions.<sup>6</sup> Such organizations, he argues, are capable of helping the public engage in the kind of debate and discussion that could produce reflective opinion formation.

Claus Offe has also argued that deliberation could help rehabilitate liberal democracy. He has noted the abundance of literature on the crisis of democracy and even “the end” of democracy.<sup>7</sup> Defining the basic elements of liberal democracy as “stateness” (the state’s ability to maintain the allegiance of its population and to execute central functions), rule of law, political competition, and accountability, he has illuminated the inherent threats to these key elements. For example, although political competition allows for parties and contenders to have a clear and legitimate winner, the process of competition has created an electoral need to portray candidates through their “personalities.” It has also encouraged politicians to treat their

competition in terms of them versus us, in which *we* are good and honest and *they* are untrustworthy and evil. The rampant use of such strategies in political campaigns and politics in general has strengthened populist movements and created more divisiveness in society. Offe’s remedies include strengthening the people’s voice through various forms of participation and improving the public’s will formation through deliberation. He argues that deliberation, through reason-giving, listening, and respecting, could bring forth positive effects, such as more informed opinion, internal efficacy, and the ability to widen social inclusion. Offe also suggests using “randomness” in the composition of participants in deliberation to ensure diversity and inclusive representation. Deliberation, he argues, can offer a path to restoring liberal democracy, especially if that deliberation can be institutionalized.

Many deliberative critics find the aims and aspirations of deliberation too lofty. They have argued that, given societal inequalities, deliberation in practice does not come close to reaching those ideals. The critical theorist Nancy Fraser has argued, for instance, that Habermas’s public sphere is incapable of “bracketing” societal inequalities: that is, to neutralize inequality in a deliberative setting.<sup>8</sup> Even if people voluntarily agree to participate and deliberate “as if” they were equals, it is simply not possible to impose deliberative equality on a social base of inequality.<sup>9</sup> The common societal behaviors of men and women play out in deliberative settings. Men tend to interrupt women, speak longer and more often than women, and ignore women in deliberations.<sup>10</sup> Men are also more likely to be assertive, while women are more tentative and accommodating.<sup>11</sup> Further, Fraser is concerned that group deliberation often transforms what were individual opinions into one single group opinion.<sup>12</sup> Societal inequalities then not only unbalance the dis-

cussion; they may also, through a dynamic of interrupting and silencing, create inaccurate impressions of group opinion. Finally, certain speech styles, characteristic of the dominant, diminish the value of other's opinions.<sup>13</sup> The inherent inequalities in our society cause deliberation to benefit more dominant individuals and groups, while disadvantaging minority individuals and groups.

Political theorist Iris Marion Young has similarly argued that "speech that is assertive and confrontational is here more valued than speech that is tentative, exploratory, or conciliatory. In most actual situations of discussion, this privileges male speaking styles over female."<sup>14</sup> Moreover, if Habermas were right and the essence of good deliberation were "the force of the better argument" restricted to reason alone, then deliberation would disadvantage people who typically use other forms of argumentation, such as telling stories and sharing experiences.<sup>15</sup> Participants who are less privileged may be particularly likely to share their arguments in the form of stories. Thus, even if participants from varying socioeconomic classes did deliberate together, there would be no guarantee that they would actually listen to and understand one another.<sup>16</sup>

A further argument against deliberation stresses the undue influence of those who dominate deliberations verbally.<sup>17</sup> Because there is limited time in any given deliberation, the participants who use the most time and are most articulate in sharing their opinions are likely the most successful in persuading their group members. The evidence from jury studies shows both how the more socially advantaged members speak more and how the sheer quantity of remarks from participants is correlated with influence on fellow jurors.<sup>18</sup> Given these findings, the results of deliberations should favor the more privileged, contrary to the aims and aspirations of deliberative theorists.

The most common point of reference for deliberation is the jury. Accordingly, many scholars have used juries (usually mock juries) to examine group dynamics, behaviors, and decision-making mechanisms.<sup>19</sup> Correlational evidence from jury studies has supported deliberative critics. Most of the jury research on gender has found that men participate significantly more than women.<sup>20</sup> Men are also more likely to reference facts, dispute facts, and discuss organizational matters, whereas women are more likely to discuss the consequences of verdicts. Significant differences also appear between the more- and less-educated jurors. More-educated jurors not only participate more than less-educated jurors, but also discuss legal and factual issues more often. But discussing more factual issues does not necessarily mean that the more-educated jurors bring forth more facts. Researchers have found that the number of facts shared by the more- and less-educated jurors differed only marginally in favor of the more educated.<sup>21</sup>

Research on juries has also shown a relationship between juror occupation and income and the likelihood of being selected as foreperson.<sup>22</sup> Across the jury research, the foreperson was almost always male and usually was more educated, had a higher income, and had a higher-status occupation.<sup>23</sup> Typically, income and occupation are highly correlated with education, and the relationship is no different in juries. Jurors with higher-status occupations and higher income have been shown to participate in deliberations more than their counterparts.<sup>24</sup> Further, men with higher-status occupations and higher income participated more than women who possessed the same criteria.<sup>25</sup> The evidence from jury studies suggests why deliberative critics fear the negative consequences of introducing more citizen deliberation into democracy.

Until recently, there has been little empirical evidence on forms of citizen delib-

eration other than juries and mock juries. This essay presents one of the most comprehensive analyses of deliberation to date, using both quantitative and qualitative correlational evidence drawn from five nationally representative Deliberative Polling projects in the United States, consisting of four online Deliberative Polls and one face-to-face Deliberative Poll. Across these five projects, the study included 1,474 participants and ninety-nine small groups. Typically, empirical results, if available, derive from much smaller samples with fewer participants. This study made possible a more systematic and thorough analysis.

Each of these five projects covered a different discussion topic, including U.S. foreign policy (online in 2002 and face-to-face in 2003), primary elections (online in 2004), general elections (online in 2004), and health care and education (online in 2005).<sup>26</sup> The four online projects were conducted through voice-only, like a typical phone conference but with the addition of web-based software that enabled participants to see their own and other group members' icons on screen and queue up to speak. This software also allowed moderators to mimic in-person moderation by interrupting speakers with pause/mute buttons and moving people around in the queue. Instead of a full-day or weekend deliberation, the discussions in the online Deliberative Polls were spread out over a few weeks, on a weekly or biweekly basis, with each session taking approximately 1.25 to 1.5 hours. Like the in-person deliberations, the online sessions included plenary sessions in which experts and/or policy-makers would answer questions developed by participants in the small group discussions. Instead of a live plenary session, the plenary sessions were prerecorded and then listened to together as a group. In total, the small group and plenary session discussions took between five to six hours, similar to a one-day face-to-face

event. All small groups were recorded and transcribed for qualitative and quantitative analyses. All projects also had control groups that were surveyed at the same time as the deliberative groups but did not receive the deliberative "treatment."<sup>27</sup>

To directly address concerns regarding participation inequality in deliberation, the analyses examined the number of words spoken, minutes used, and statements made by each person in each small group discussion. The expectation from jury studies was that economically and educationally privileged white males would dominate the time in the deliberations, leaving less time for others in the group to participate. In these Deliberative Polls, however, there were no statistically significant differences between the participation levels of men and women: in total minutes used, total statements made, or total words spoken. Income, age, and race produced some statistically significant differences, but not in a consistent pattern of dominance. Those with higher incomes took more time in the discussion and used more words, but spoke less frequently.<sup>28</sup> Comparing participants over and under fifty years old yielded statistically significant differences only on the topics of health care and education. Even here, although those over fifty years old contributed significantly more statements and used more time, they did not use more words in the discussions. Like age, the results for race, coded as white and nonwhite, were mixed. In the discussion of the candidates in the presidential primaries, white participants contributed statistically significantly more statements than nonwhite participants, but did not use more words or time. In the discussion of issues relating to health care and education, however, nonwhite participants used more time, words, and statements than the white participants.

In short, in these five Deliberative Polls, the more-privileged participants did not

consistently dominate the deliberations. Only one Deliberative Poll produced an instance in which one group used more time, words, and statements. In this instance, the demographic variable was race. But in this case, nonwhite participants contributed more than white participants in the discussions of both health care, with a specific focus on the rising costs of health care and universal health care, and education, with a specific focus on educational standards, testing, No Child Left Behind, vouchers, and charter schools. In this deliberation, on average across the small groups, nonwhite participants used twenty minutes each of the allotted deliberation time, while white participants used thirteen minutes each. (This difference is statistically significant at the highest level:  $p=0.000$ . Each small group session allowed for between fifty-five to seventy minutes of discussion time.) Nonwhite participants collectively used an average of 2,587 words, whereas white participants used 1,742 words ( $p=0.002$ ). Nonwhite participants also contributed more statements than white participants: an average of sixteen versus twelve statements, respectively. In short, the nonwhite participants made more individual statements, using more words and time per statement.

Although the participation measures show no consistent domination by the more-privileged participants, that may be because more-privileged participants have more experience in deliberative settings, and thus their contributions influenced their group members' opinions more effectively, bringing opinions closer to their own. The analysis used to test for this possibility did so by quantifying the pre- and post-deliberation opinions of participants to see whether their opinions moved after deliberation and, if so, in what direction. The analyses examined the proportion of participants in each small group that moved either closer or further away (in a binary indicator) from the opinions of more-priv-

ileged participants. If, after deliberation, participants in a small group moved closer to the opinions of the more privileged, the movement was coded as a 1; if further away, a 0. Across all five Deliberative Polls, on average, the proportion of small groups that moved closer to the opinions of the more privileged was about 0.500 – a coin flip.

For this analysis, “more privileged” means being either male, more highly educated (having an undergraduate four-year college degree or beyond), with a higher income (\$60,000 or higher annual income), or white. On average, across the five Deliberative Polls, the proportion moving toward the average male opinion was 0.515; toward the average higher-educated opinion 0.542, toward the average higher-income opinion 0.526, and toward the average white opinion 0.484. The range of opinion change toward the more privileged in these five Deliberative Polls was fairly narrow, with the exception of the movement toward the higher educated. The range for the proportion of small groups moving toward the opinions of the more highly educated was 0.448 to 0.714, toward the opinions of males 0.438 to 0.558, toward the opinions of those with more income 0.479 to 0.617, and toward the opinions of whites 0.438 to 0.563. In short, we see no consistent movement toward the more privileged in these Deliberative Polls.

We may now ask whether increased levels of participation themselves might influence participation. That is, regardless of socioeconomic status, does simply participating more in the deliberation cause group members to move toward your views? To answer this question, the analyses applied “participation weights” to each participant, based on the amount of time, number of words, and number of statements used. Using these participant weights, the regression model used three explanatory variables: the weighted opinion of each small group (without the individual's own opinion), each in-

Alice  
Siu

individual's opinion, and each individual's knowledge. The dependent variable was individual level change in opinion. (The explanatory variables of the weighted opinion of the group and each individual's opinion were measured before deliberation; the variable of each individual's knowledge was measured after deliberation.)

If the standard social patterns revealed in the jury studies held up, the regression analyses should have yielded a statistically significant and positive association between the weighted group mean opinion (group mean with participation weights applied) and individual change in opinion. In these five Deliberative Polls, however, none of the coefficients were statistically significant. Only two of the five coefficients were in the hypothesized positive direction.<sup>29</sup> In short, participants with higher participation scores did not influence outcomes any more than participants with lower participation scores.<sup>30</sup>

The final piece of empirical evidence from these data speaks to the possibility, suggested by some critics of deliberation, that those who are less privileged will be less likely to deliberate by giving explicit justifications and reasons ("argument quality"). Some earlier experiments interviewed experts and nonexperts to determine the ability of persons in these two groups to offer and counter arguments. These experiments found that most interviewees, both expert and nonexpert, were capable of defending their arguments.<sup>31</sup> Other experiments, however, have found that citizens who had previously engaged in political conversation were more likely to offer reasoned arguments in deliberation.<sup>32</sup>

Using the transcripts of these five Deliberative Polls, the analysis examined how well participants defended their views according to whether or not they offered reasons or justifications for their statements. The amount of justification was categorized as 1) statements without reasons; 2) state-

ments with one reason; and 3) statements with two or more reasons. For example, the simple statement "I support free trade" would be coded as a statement without reasons. The statement "free trade is harmful because it takes away jobs from the United States" would be coded as a statement with one reason. The statement "the government should consider universal health care because millions of Americans are uninsured and governments in other countries provide universal health care for their citizens" would be coded as giving two or more reasons.

It turns out that gender, income, and political affiliation did not predict reasoned arguments in these five small group deliberations. The significant explanatory variables were predeliberation knowledge, education, race, and age. But in the case of the social variables – education, race, and age – the association did not fall in the predicted direction. Predeliberation knowledge did perform as predicted. As one might expect, the small groups with more participants with higher predeliberation knowledge scores produced the greatest number of reasoned arguments. These groups contributed more statements with two or more reasons, more statements with one reason, and fewer statements with no reasons. Education, however, revealed a pattern contrary to prediction. The more-educated small groups offered fewer reasons in their arguments. That is, they contributed fewer statements with two or more reasons, fewer statements with one reason, and more statements with no reasons. Thus, although the more highly educated groups were more likely to contribute opinions to the deliberations, they were not as likely to give the reasons for these opinions. Race, too, showed a pattern contrary to expectations: the less privileged offered more reasons in the deliberations. The small groups with more white participants contributed significantly few-

er statements with one reason and more statements without any reasons. Groups with more whites also contributed fewer statements with two or more reasons, but this difference was not statistically significant. Finally, age also performed against traditional privilege-based predictions, although only one of these associations was statistically significant. The younger small groups (that is, having the greatest number of participants under fifty years old) were more likely to contribute statements with two or more reasons. They were not significantly more likely to offer one reason or no reasons. Summing up, although pre-deliberation knowledge did perform as expected, in these five Deliberative Polls, the groups with more white, highly educated, and older participants did not provide as many reasons for their arguments as the groups with more nonwhite, less-educated, and younger participants. If offering reasons is the quintessential Habermasian characteristic of good deliberation, it seems that the less traditionally privileged groups in these Deliberative Polls acted in the most Habermasian manner.

It is possible that those who believe their statements carry more weight because of their social position feel less need to offer reasons. Those with less power, conversely, might believe that they are required to furnish more justifications for their views. For the same reason, the number of words uttered might not necessarily be a sign of power. Often the most powerful in a meeting speaks least. These possibilities are open to future investigation. At the moment, we can say only that on the obvious and surface dimensions – those that earlier studies of juries have measured and that have informed the conclusions of earlier critics of deliberation – the predicted patterns do not emerge.

The empirical evidence presented in this essay has demonstrated that, when citizen deliberations are well structured, the many

social patterns that we might expect from inequalities in the world around us are, to some degree, negated. The more privileged do not consistently dominate deliberations, nor are their opinions more influential than their fellow group members. The participants who speak most frequently and for the longest duration in the conversations also have no greater influence over the rest of the group. The idea that the more privileged will be more capable of engaging in the reasoned exchange of justification is also, in this setting, not true.

What characteristics of these deliberations made them differ from the predictions of deliberation's critics? The relevant characteristics are clear and replicable. These deliberations began with a selection from the citizenry that was closer to random than most such endeavors, such as jury studies, and far more reflective of the citizenry than the typical citizen forum, which attracts self-selected persons, often activists or the extremely interested. This deliberative design included sending the participants, before they arrived, informational materials that were balanced and agreed upon by both sides of the issue at stake. Because the deliberations were special occasions and the citizens involved were aware of being personally selected for participation, they typically read some of the materials they were sent, thus becoming aware, more or less, of information on the side of the issue that they might usually oppose. During the deliberative process, participants also engaged with experts on both sides, an experience that again exposed them not only to much more information than they usually would have access to, but particularly to information on the side opposing their predisposition. The small group deliberation took place in two stages, one of which had time dedicated to preparing questions for the experts in the plenary sessions. Since not all questions could be asked, small groups had to carefully consider which questions would be most

useful in helping them form their own opinions. They indirectly learned about one another's views through this common task, but the process was designed so that they were focused on developing their group's questions and were not likely to confront one another on opposing views at this stage. Finally, and perhaps most important, small group discussion moderators were trained explicitly to solicit opinions from everyone in the group, encourage all participants to speak, and maintain a tone of courtesy and nonconfrontation in pursuit of mutual understanding. With these conditions in place, the predicted dynamics of domination by the more privileged did not appear.

This examination of the empirical evidence from five projects – with 1,474 participants and ninety-nine small groups – is, to my knowledge, the largest study of the internal dynamics of deliberation ever undertaken. It measured class, race, gender, and previous knowledge, and traced the effects of these variables on several forms of participation and influence. The conclusion – that in fairly easily replicable circumstances, the expected forms of privilege have little effect on participation and no effect on influence – ought to undermine the automatic association of deliberation and inequality.

#### ENDNOTES

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- <sup>2</sup> John Stuart Mill, *Considerations on Representative Government* (New York: Prometheus Books, 1991 [1861]), 79.
- <sup>3</sup> *Ibid.*
- <sup>4</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, Mass.: The MIT Press, 1989), 27.
- <sup>5</sup> *Ibid.*, 52.
- <sup>6</sup> Jürgen Habermas, "Further Reflections on the Public Sphere," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Mass.: The MIT Press, 1996), 421 – 461.
- <sup>7</sup> Claus Offe, "Crisis and Innovation of Liberal Democracy: Can Deliberation Be Institutionalised?" *Czech Sociological Review* 47 (3) (2011): 447 – 473.
- <sup>8</sup> Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text* 25/26 (1990): 55 – 80; and Nancy Fraser, "Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Postwestphalian World," in *Identities, Affiliations, and Allegiances*, ed. Seyla Benhabib, Ian Shapiro, and Danilo Petranovic (Cambridge: Cambridge University Press, 2007), 45 – 66.
- <sup>9</sup> Fraser, "Rethinking the Public Sphere."
- <sup>10</sup> *Ibid.* For more recent work on these behaviors, see Christopher Karpowitz and Tali Mendlerberg, *The Silent Sex: Gender, Deliberation, and Institutions* (Princeton, N.J.: Princeton University Press, 2014).
- <sup>11</sup> *Ibid.*
- <sup>12</sup> *Ibid.*



- <sup>13</sup> Iris M. Young, "Communication and the Other: Beyond Deliberative Democracy," in *Democracy and Difference*, ed. Seyla Benhabib (Princeton, N.J.: Princeton University Press, 1996), 60–74.
- <sup>14</sup> *Ibid.*
- <sup>15</sup> *Ibid.*
- <sup>16</sup> *Ibid.*; and Iris M. Young, *Inclusion and Democracy* (New York: Oxford University Press, 2000).
- <sup>17</sup> Lynn M. Sanders, "Against Deliberation," *Political Theory* 25 (3) (1997): 347–373.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> Phoebe C. Ellsworth, "Are Twelve Heads Better Than One?" *Law and Contemporary Problems* 52 (1989): 205–224; Reid Hastie, Steven Penrod, and Nancy Pennington, *Inside the Jury* (Cambridge, Mass.: Harvard University Press, 1983); Valerie P. Hans and Neil Vidmar, *Judging the Jury* (New York: Plenum Publishing Corporation, 1986); Rita M. James, "Status and Competence of Jurors," *The American Journal of Sociology* 64 (6) (1959): 563–570; Charlan Nemeth, Jeffery Endicott, and Joel Wachtler, "From the '50s to the '70s: Women in Jury Deliberations," *Sociometry* 39 (4) (1976): 293–304; and Fred L. Strodbeck and Richard D. Mann, "Sex Role Differentiation in Jury Deliberations," *Sociometry* 19 (1956): 3–11.
- <sup>20</sup> Hans and Vidmar, *Judging the Jury*.
- <sup>21</sup> Hastie, Penrod, and Pennington, *Inside the Jury*.
- <sup>22</sup> Fred L. Strodbeck, Rita M. James, and Charles Hawkins, "Social Status in Jury Deliberations," *American Sociological Review* 22 (6) (1957): 713–719.
- <sup>23</sup> Hastie, Penrod, and Pennington, *Inside the Jury*; and Hans and Vidmar, *Judging the Jury*.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Ibid.*
- <sup>26</sup> In respective order: James Fishkin, "Realizing Deliberative Democracy: Virtual and Face to Face Possibilities," Electronic Working Papers Series, Paper No. DEG 007 (Vancouver: W. Maurice Young Centre for Applied Ethics at the University of British Columbia, 2005); *ibid.*; Center for Deliberative Democracy, "PBS Deliberation Day Shows Americans' Views on Iraq, Trade," January 24, 2004, <http://cdd.stanford.edu/2004/pbs-deliberation-day-shows-americans-views-on-iraq-trade/>; Center for Deliberative Democracy, "PBS Deliberation Day on National Security and the Global Economy," October 16, 2004, <http://cdd.stanford.edu/2004/pbs-deliberation-day-on-national-security-and-the-global-economy/>; and Center for Deliberative Democracy, "By the People: A National Deliberation on Healthcare and Education," September 6, 2005, <http://cdd.stanford.edu/2005/by-the-people-a-national-deliberation-on-healthcare-and-education/>.
- <sup>27</sup> The data sets for these analyses are available to researchers at the Center for Deliberative Democracy, <https://cdd.stanford.edu/>. This research is part of a larger project that will compare online and face-to-face deliberations. In the analyses that follow, the groups reported on averaged a composition of 52 percent men, 37 percent high income, and 18 percent nonwhite, with an average age of forty-eight years old. As a point of comparison, the 2004 National Election Study's group was 47 percent male, 40 percent high income, and 28 percent nonwhite, with an average age of forty-seven years old.
- <sup>28</sup> Of the two Deliberative Polls that were analyzed, income was unavailable for one. Therefore, this result is based on only one Deliberative Poll.
- <sup>29</sup> A further note on the regression analyses: The analyses were conducted on two of the five Deliberative Polls, because the transcripts for three of the Deliberative Polls did not have individual identifiers, which made it too difficult to identify participants. Without identifiers, the regression analyses were not possible. And as mentioned, of the two Deliberative Polls analyzed, income was unavailable for one. Therefore, one Deliberative Poll had three explanatory variables for the regression analyses and another had two explanatory variables for the

analyses, making a total of five explanatory variables or five coefficients from the regression analyses.

<sup>30</sup> The analyses were also conducted using unweighted variables. The results were similar, indicating that participation levels are not a predictor of opinion changes.

<sup>31</sup> Deanna Kuhn, *The Skills of Argument* (New York: Cambridge University Press, 1991).

<sup>32</sup> Joseph N. Cappella, Vincent Price, and Lilach Nir, "Argument Repertoire as a Reliable and Valid Measure of Opinion Quality: Electronic Dialogue during Campaign 2000," *Political Communication* 19 (1) (2002): 73–93.

# Deliberative Democracy in the Trenches

Cass R. Sunstein

*Abstract: In the last decades, many political theorists have explored the idea of deliberative democracy. The basic claim is that well-functioning democracies combine accountability with a commitment to reflection, information acquisition, multiple perspectives, and reason-giving. Does that claim illuminate actual practices? Much of the time, the executive branch of the United States has combined both democracy and deliberation, not least because it has placed a high premium on reason-giving and the acquisition of necessary information. It has also contained a high degree of internal diversity, encouraging debate and disagreement, not least through the public comment process. These claims are illustrated with concrete, if somewhat stylized, discussions of how the executive branch often operates.*

CASS R. SUNSTEIN, a Fellow of the American Academy since 1992, is the Robert Walmsley University Professor at Harvard University. From 2009 to 2012, he was Administrator of the White House Office of Information and Regulatory Affairs. He is the author of, most recently, *#Republic: Divided Democracy in the Age of Social Media* (2017), *Conspiracy Theories and Other Dangerous Ideas* (2014), and *Why Nudge? The Politics of Libertarian Paternalism* (2014).

In the last decades, a large number of political theorists have explored the idea of deliberative democracy.<sup>1</sup> The basic claim is that well-functioning democracies combine accountability with a commitment to reflection and reason-giving. They do not merely respond to popular pressures and majority sentiment. They also try to “refine and enlarge the public view” through acquisition of relevant information, attention to multiple perspectives, and careful deliberation in the public sphere.<sup>2</sup> Versions of this claim have been impressively elaborated by many people, including Joseph Bessette (who originally coined the term), Jürgen Habermas, Amartya Sen, Jane Mansbridge, James Fishkin, and the team of Amy Gutmann and Dennis Thompson.<sup>3</sup>

The idea of deliberative democracy might focus on the internal operation of government, with an emphasis on how the legislative, executive, and judiciary branches speak with one another. It could take more or less populist forms, focusing on deliberation among citizens themselves, or between citizens and public officials. And while citizen-centered conceptions focus on widespread participation, drawing on the idea of town meetings, we can also find concep-

tions of deliberative democracy that emphasize reason-giving by elected leaders.

My goal in this essay is to explore the operation of deliberative democracy in the trenches – not as a set of abstract ideals, but as concrete practices. My central question is relatively narrow: can deliberative democracy be found within the executive branch of the U.S. government? In important ways, I will suggest, it can be, or at least there have been periods in which it has flourished.<sup>4</sup> When it is working well – and it often is – the executive branch places a large premium not only on accountability, but also on the exchange of information and reason-giving within the federal government, between that government and states and localities, and between that government and diverse citizens. This discussion draws a great deal on my own experience from 2009 to 2012, when I served as administrator of the White House Office of Information and Regulatory Affairs (OIRA), and also from 2013 to 2014, when I served as a member of the President’s Review Group on Intelligence and Communications Technologies. It is important to acknowledge that the executive branch can take different forms, with a stronger or weaker focus on deliberation, and I shall have something to say about variability over time as well.

The notion of deliberative democracy has two components, and we could easily imagine different emphases, or one without the other. A system of purely majoritarian democracy could require a high level of accountability while placing little or no premium on deliberation. Call this non-deliberative democracy. Perhaps accountability would be a sufficient safeguard for what matters, whether it is welfare, liberty, or some other value. At least if we think that the views of majorities have strong epistemic credentials, a nondeliberative democracy might work well (or at least it

would be lovely to think so). Moreover, a system of deliberative government need not be democratic at all. It might be undemocratically deliberative. Such a government could be run by a set of experts, with different perspectives, who would exchange information and ideas, without paying much attention to the public. We could also stress one or another component of the term. A *deliberative* democracy would emphasize the importance of reflection and reason-giving. A *deliberative democracy* would stress the importance of popular control. Or the two values could be given equal weight (though it is not entirely clear what that would mean).<sup>5</sup>

No one doubts that, in the United States, the executive branch is accountable for its decisions and subject to democratic constraints. The president is elected, and his basic convictions and proposals are a large part of what accounts for his position in the White House. When a president wants something to be done, it is often because most or at least many people want it to be done, though this is not always the case. Elections to one side, many of the president’s decisions, and those of people who work for him, are subject to intense public scrutiny. Accountability looms especially large in the period right after an election, when the new administration is inclined to ask, “What were our campaign promises?” The same kind of accountability also looms large right before elections, including both presidential reelections and the midterms. White House staffers and members of a president’s cabinet do not want to endanger the electoral prospects of their boss. Executive branch officials are also reluctant to undermine the campaign efforts of legislators within the president’s own party, and certainly do not want to risk losing one of the houses of Congress.<sup>6</sup> In either case, the executive branch will be subject to a continuing process of careful public scrutiny, at least for its most important decisions.

I want to emphasize here a different point: within the executive branch, deliberation about policies has often been a fact of daily life. When the system is working well (and I will leave that important qualification implicit for most of the remaining discussion), it is the best place in government to see deliberative democracy in practice. And critically, its discussions are largely substantive and technical rather than political, at least if we understand the term *political* to refer to attention to electoral considerations, to the views of various interest groups, or to issues of fundraising and campaign finance. For the most part (though not always), such political considerations are entirely irrelevant, and the exchange of reasons about different policies has often been the coin of the realm. There is intense focus on consequences: What would this policy do? What are the alternatives? Would they be worse, or better, in terms of their effects?<sup>7</sup>

Of course, in some cases, political constraints matter. They then become part of a deliberative process, in the sense that political deliberation is the art of the possible. If a proposal must be enacted by Congress, the executive branch will think hard about what is most likely to receive congressional support. But there is a great deal that the executive branch can or must do on its own, and when this is so, the role of politics weakens and often evaporates. In my own experience, and much of the time, substance often turns out to be all that matters.<sup>8</sup>

The process of deliberation involves diverse people with a great deal of knowledge. Within any cabinet-level department, there are numerous experts who have been working on the relevant issues for many years and through multiple administrations. Most of them do not care at all about elections, politics, or interest groups; they are policy specialists, not political animals. To be sure, they might well have their institu-

tional biases. They might be mired in existing practices. They might be (and sometimes are) resistant to significant change. They tend to be Burkeans, wedded to traditions, sometimes displaying an acute form of status quo bias. But they also have an immense stock of knowledge.

With respect to deliberation, the central point is that these officials will also work and exchange facts and views with numerous people within the executive branch, at least on the most significant questions. For multiple issues, this process of interagency collaboration is formalized and routinized.<sup>9</sup> With respect to both domestic and international affairs, deliberation typically takes something like the following (highly stylized) form: participants in an interagency process, including representatives of various parts of government, work together on some issue, whether short-term (in need of resolution within, say, three weeks) or long-term (not requiring resolution for many months).

Sometimes these discussions take months or more, and can have a high degree of intensity and animation. Diverse people, with different knowledge and perspectives, are frequently involved. In one discussion, there might be participants from the National Economic Council, the Council of Economic Advisers, the Office of Management and Budget, the Department of the Treasury, the Office of the United States Trade Representative, the Department of State, and the Department of Energy. The participants might be “policy” officials; some might have been chosen by the president and confirmed by the Senate. But those officials will be staffed and, to some extent, guided by people without any evident political affiliation; they are specialists and technocrats. Of course, it is also true that policy officials, and not their staffs, are entitled to make the ultimate call.

At the same time, the participants will have distinctive “equities,” understood as

perspectives and inclinations that grow out of special concerns and roles. The Office of Management and Budget, for example, will be particularly concerned about budgetary implications and might well be focused on the possibility of excessive costs to taxpayers. Meanwhile the Office of the United States Trade Representative will focus on the implications for international trade, and the Environmental Protection Agency (EPA) will typically be concerned with the effects on clean air and water. Because of their own equities, participants are unlikely to be silent if the issue raises serious concerns from the standpoint of their office. As a result, a great deal of information is likely to be exchanged. A failure to include someone with a relevant perspective, or an utter disregard of what they have argued, counts as a “process foul”: a violation of the internal morality of executive branch operations.

It is true that the public might not know what perspectives have been represented in a process. Even more important, it would also be extravagant to say that “all” relevant perspectives have been included. (To avoid absurdity, a judgment about the meaning of “all” would require normative criteria, which might well be contested.) Some perspectives will undoubtedly lack representation in any such process, and that might be a serious problem. The only point is that the range of views is very wide, and the construction of the executive branch is such that many competing perspectives, with diverse priorities and concerns, will be heard.

After the participants are done with their own process of deliberation, they might be able to resolve the issue in a way that is essentially final. But if that issue is very important, or if agreement proves impossible, it might be “elevated” to some kind of “deputies’ committee,” consisting, for example, of the deputy secretary of state, the deputy secretary of defense, the deputy secretary of

energy, and the deputy director of the Office of Management and Budget (who might, as the highest-ranking White House official, run the meeting and have special authority over resolution of the issue). After that, the issue might be resolved, or it might be elevated to a “principals’ committee,” consisting of cabinet-level officials.

If the issue is a very important one, the principals’ committee might be chaired by one of the highest-ranking officials in the White House, such as the national security adviser or the chief of staff, who is often, next to the president, the most important person within the executive branch of the government, effectively in charge of the cabinet. The principals’ committee might well be able to resolve the question; many issues are settled at this level. But if there is an internal division, or if the issue is very important, it is likely to go to the president. The president sometimes resolves issues on the basis of some kind of paper briefing, which ends by asking him for a decision. Or he might resolve an issue as a result of, or in, a meeting, in which competing perspectives are explored in considerable detail. In some cases, a principal, having been badly outnumbered in a principals’ committee, requests an individual meeting with the president, so as to ensure that he hears all relevant arguments and ultimately makes the decision personally.

Stylized and brief though it is, this account should be sufficient to suggest that, within the executive branch, there has typically been a great deal of deliberation, and it often involves people with diverse perspectives and high levels of technical expertise. Everyone within the executive branch works for the president, of course, but there is often a surprising level of heterogeneity and disagreement that has to be worked through, typically as a result of substantive exchanges that place a high premium on acquisition of relevant information.<sup>10</sup> On important environmental

questions, for example, there might well be differences in the views of the Environmental Protection Agency, the Council on Environmental Quality, the National Economic Council, the Council of Economic Advisers, and the Office of Management and Budget; some process has to be used to work out different perspectives and underlying disagreements.

To take an example with which I am familiar: In 2009–2010, an interagency working group produced a “social cost of carbon,” meaning the economic cost of a ton of carbon emissions, suitable for use in regulatory impact analyses.<sup>11</sup> The group included representatives of the Council of Economic Advisers, the Council on Environmental Quality, the Department of Agriculture, the Department of Commerce, the Department of Energy, the Department of Transportation, the Environmental Protection Agency, the National Economic Council, the Office of Energy and Climate Change, the Office of Management and Budget, the Office of Science and Technology Policy, and the Department of the Treasury. Members of this group, like members of countless others, had different information and different equities.

The EPA, for example, is a crucially important participant in discussions of the social cost of carbon, and it sees environmental protection as its major equity, while the Office of Science and Technology Policy also knows a great deal about the underlying science (but might have a somewhat different perspective from the EPA). The Department of Commerce seeks to promote commercial activity; the Department of Energy has a great deal of expertise on the effects of carbon emissions; and the Council of Economic Advisers and the National Economic Council have expertise on the appropriate discount rate. The efforts of the working group involved the aggregation of a great deal of scientific, economic, and legal expertise, with agree-

ments being forged through substantive arguments. And notably, for this decision, politics – understood as electoral considerations, the views of interest groups as such, or possible press reactions – did not play the slightest role in determining the working group’s substantive choices.<sup>12</sup>

Here, then, was a practice of *deliberative* democracy. It was democratic because the ultimate decision was under and by appointees of an elected official, the president. It was deliberative for the reasons I have given. And while the ultimate product has certainly been subject to reasonable dispute, it seems fair to say that the effort was both reasonable and highly professional. In this respect, the process was hardly unique.<sup>13</sup>

With respect to the regulatory process, the system of internal review takes a somewhat different but also standard form, one that has been worked out over several decades.<sup>14</sup> For example, suppose that the EPA wishes to issue a new regulation involving particulate matter. If the regulation is submitted to the Office of Information and Regulatory Affairs (and it almost certainly would have to be),<sup>15</sup> it will be scrutinized by numerous offices within the Executive Office of the President, including the Office of Management and Budget, the Domestic Policy Council, the National Economic Council, the Council of Economic Advisers, the Office of the Vice President, and the Office of the Chief of Staff. If it has international implications, it will be scrutinized as well by the Department of State, the National Security Council, and the Office of the United States Trade Representative.

Within the Executive Office of the President, the initial comments will likely come from staff, not from high-level officials. The principal focus will be intensely substantive rather than political, and at most stages, and often all of them, political considerations – including reactions of interest groups, congressional committees, or the

media – will not be raised at all except insofar as they suggest legitimate substantive questions and concerns. (When they bear directly on the merits, those questions and concerns can turn out to be quite important.) If political considerations are raised, for example, it might be to make relevant communications and legislative affairs offices aware of what is coming. The White House Office of Legislative Affairs might have to manage congressional questions, certainly on high-visibility matters, and it is important to ensure that it is prepared.

Draft rules, both proposed and final, are certainly subject to scrutiny by other departments within the executive branch, at least when they raise issues within the legal authorities or policy-making expertise of those departments. For example, if a regulation has implications for the energy supply, it will be assessed by the Department of Energy, which will have information relating the risk of energy price increases or power outages. The Departments of Commerce and Treasury might be involved, especially if the regulation raises economic issues. To the extent that there are labor implications, the Department of Labor will comment. If agriculture is affected, the Department of Agriculture will comment as well. And for regulations with environmental implications, the Department of the Interior might also be involved. Within the agencies, it is important to see that the initial analysis is typically done by people with no political affiliation: they will be civil servants, specialists in the issues at hand. (Hence again we are speaking here of *deliberative* democracy.)

With respect to regulations, this process of internal scrutiny can be intense. Issues of policy and law might receive detailed attention. Perhaps people will disagree. There might be legal objections from lawyers within the Department of the Treasury or the Department of Justice. Someone in the Department of Energy could

suggest that some of the policy choices are wrong. Perhaps the economic analysis will be seen, by someone in the Council of Economic Advisers, to contain a serious mistake. Perhaps the benefits or the costs will appear to have been inflated. (As administrator of the Office of Information and Regulatory Affairs, my own position was that, in the face of reasonable disagreement, the views of the Council of Economic Advisers are presumed to be authoritative on technical economic issues, just as the views of the Department of Justice are presumed to be authoritative on technical legal issues. Of course, there can be a back-and-forth on such issues.) Any analysis of benefits and costs will likely be seen and scrutinized by numerous people.

With respect to the law, here is a relevant fact, based on my own experience, and casting light on the operation of deliberative democracy in the trenches: General counsels within agencies are usually excellent, but in at least some cases, their legal judgments are influenced by the substantive goals and hopes of their own cabinet secretaries. Lawyers in other parts of government – the Department of Justice, the White House Counsel's Office, the Office of Management and Budget General Counsel – often have greater objectivity even if they have less specialized expertise. What is true of legal issues can be true of policy questions as well, including predictions of likely consequences (such as costs and benefits).

Frequently, issues and concerns can be worked out at the staff level, as a result of brief or extended substantive conversation. OIRA staff will convene staff-level discussions, and most of the issues are indeed resolved in that way, whether they involve economics, policy, or law. But here as well, issues might be “elevated.” For example, an assistant secretary of one department might engage with the assistant secretary at the rule-making agency and with the OIRA's deputy administrator to explore interagen-



cy concerns. Sometimes the issue will be raised with the OIRA administrator himself. If (and this is quite rare) agreement is not possible at that level, further discussions will be required, with ultimate resolution by a group of principals or (this is very rare indeed) by the president personally. If the attorney general has a clear view on the law, for example, that will ordinarily dispose of legal questions, just as the president's science adviser will have a great deal of authority on issues of pure science.

The regulatory process is not only an internal one: it involves citizens, not merely public officials. In this respect, the process of deliberative democracy, in the trenches, has more than an indirect democratic pedigree. (Now we are speaking of deliberative *democracy*, at least in the sense that the public is both engaged and influential.) For regulations, public comment is usually involved, and it can make a large difference. The Administrative Procedure Act calls for a process of "notice and comment" on proposed rules, which means that agencies must ordinarily submit those rules to the public and take comments on their contents. This is central to the process of deliberative democracy; it enables a dialogue between citizens and public officials.

Among law professors and political scientists, public comments are often thought to be irrelevant, a kind of outlet, display, or show, not much affecting what government actually does. Nothing could be further from the truth. Public comments sometimes make a large difference in the content of what emerges from the national government, whether the issue involves climate change, health reform, occupational safety, or homeland security. Time and again, proposed rules are changed as a result of what government learns from citizens.

The strong institutional inclination of the Office of Information and Regulatory Affairs is to make it entirely clear to the public

that comments are invited on a wide range of choices that have been made in a proposed rule, and also on alternatives to those choices. Agencies often think, and the OIRA often urges them to think, that their own judgments are provisional and that the role of the comment process is to learn whether or not they are right. For that learning to occur, the public must be asked to comment on the provisional choices and on alternatives to them. It is not much of a stretch to see the inspiration for this form of deliberative democracy in the work of economist Friedrich Hayek and, in particular, his emphasis on the dispersed nature of knowledge in society.<sup>16</sup> Of course, Hayek was not a great fan of the modern regulatory state – he liked markets, not regulators – but his work on widely dispersed information has helped spur the effort, in both Democratic and Republican administrations, to go outside of government to learn from others.

To be sure, the public as a whole does not comment on proposed rules; only certain members do. In this light, it is reasonable to ask whether the comment process reflects a harmful kind of skew. Here is one concern: Comments often come from well-organized interest groups with resources that can support a team of experts who are willing and able to attack what the government seeks to do. If the issue involves the environment, those who own and manage power plants may be in the best position to engage in advocacy, running numbers and making claims of policy and law that are self-serving and wrong, but likely to make officials nervous. If the issue involves regulation of the transportation sector, the airline and railroad industries will predictably make a series of objections, and because of the incentives and immense skill of those who work on behalf of those industries, the objections might end up convincing those who work for the public. If so, we have a form of "capture," not in the simplest form, and not through anything

that is easily described as corruption, but in epistemic terms: public officials learn from those who speak, and those who speak are likely to have both money and self-interest at stake.

This concern can hardly be ruled out in the abstract. If it accurately depicts reality, we have a cruel parody of the ideal of deliberative democracy. Moreover, no one should doubt that comments are most likely to come from those with resources and organization. The extent of epistemic capture, if any, will vary with context and time. But the concern should not be overstated.<sup>17</sup> Often resources and organization come from more than one side. Environmental groups, for example, often have a great deal to say, and their experts are also well-trained; the same is true for civil rights organizations and labor unions. In addition, and even more important, the government has strong “filters” by which to test the plausibility and reasonableness of public comments. Self-serving claims about economics, policy, and law are often easy to dismiss. It is true that the public comment process can suffer from a kind of epistemic skew, but it is also true that as a result of what is learned, outcomes are both more democratic and more deliberative than they would be otherwise.

One reason for the great length of final rules is that their preambles engage with comments, frequently in considerable detail. And in many cases, public comments help produce substantial changes. Sometimes agencies learn that their proposals need to be withdrawn.<sup>18</sup> Sometimes they learn that a fundamentally different approach, saving costs, is best.<sup>19</sup> Sometimes they learn that a more expansive approach, increasing benefits, is justified.<sup>20</sup> A great deal of deliberation thus occurs between public officials and citizens, not only as a result of meetings, but perhaps most fundamentally through the process of public comment. It might not live up to the very highest

ideals, but much of the time it is worthy of the idea of deliberative democracy.

These points suggest strong reasons to reject the view, offered energetically by some law professors, that courts should be less willing to defer to executive action when that action is not a product of the autonomous decision-making of the particular agency involved, but of numerous officials within the executive branch.<sup>21</sup> Put to one side the fact that courts will not ordinarily know about the internal process of deliberation and will not be able to sort out the precise role of various officials. The much deeper problem is that this view has things exactly backwards. If an agency is acting on its own, there might well be reason to worry about myopia, mission orientation, and tunnel vision, potentially compromising the ultimate judgment. If multiple officials are involved, there are of course no guarantees, but the risks are reduced by the safeguards provided by multiple perspectives. The case for judicial deference to executive action is far stronger if the action is supported and produced by numerous officials, and not only by the rule-making agency. That process of support, and that kind of production, ensure more in the way of both deliberation and democracy.

The picture I have presented might well be an idealized one. Not every executive branch, and not every issue in the executive branch, is the same. Some people will be deeply skeptical about any picture of the Obama administration as embodying an appealing form of deliberative democracy. Others will point to their own preferred examples, real or imagined, in which it seems misleading, incomplete, or worse to depict the executive as an embodiment of deliberative democracy. And whatever we think of the Obama administration, it is easy to find or to envision other administrations, past, present, or future, that draw that characterization into serious doubt.

To put the point most vividly: imagine your least favorite presidential candidate of the past few elections; now imagine he is president. Perhaps he has terrible but fixed convictions and is unwilling to listen to reason; perhaps he does not much care about the facts; perhaps he is indifferent to public comments; or perhaps he is unduly influenced by well-organized interest groups. During a Republican administration many years ago, I emailed some tentative suggestions about how to deal with climate change to a high-level public official, who was (and is) a committed conservative and was (and is) also a good friend. My suggested approach did not involve the imposition of high costs. I was puzzled to receive no answer (though after my own experience in government, learning about the potentially acute risks of using email, my puzzlement dissipated). When I next saw him at the White House, he came right up to me and said: “Cass, you have absolutely no idea how conservative my colleagues are!”

Note, however, that even if the president were your least favorite candidate, many decisions of the executive branch would not be likely to be affected. They would involve relatively routine (even if important) decisions, and they would be settled by something like the process I have described here. But it must be acknowledged that with such a president, or anyone with the characteristics described above, deliberative democracy would work far less well in the trenches, at least on high-profile questions, on which relevant interest groups are able to exert their influence, or on which the antecedent convictions of the president, and of his high-level advisers, are fixed and firm.

If such officials believe that climate change is a myth, a technical process on the social cost of carbon is unlikely to go well. If such officials favor stringent regulation of ozone, mercury, and particulate matter – whatever the facts show – decisions will not reflect a well-functioning

process of deliberation. If such officials are enthusiastic about renewable fuels and want to maximize their use, it is useless to emphasize that executive officials are listening to one another and to the public.

This essay was originally written long before the 2016 presidential election, and at least in the early months of the administration of President Donald J. Trump, many people believed that the executive branch was not working in a highly deliberative fashion. Critical observers think that the Trump administration is sometimes or often bypassing the time-honored processes sketched here, in which diverse people explore, in great detail, policy options and the substantive arguments for and against them. Whether or not that is so, it must be acknowledged that the arguments I am making here depend on a picture of the executive branch that may not always be accurate. I believe that it is indeed accurate under most Democratic and Republican presidents, certainly outside of the context of the most politicized questions (and frequently enough, in that context as well). But under any president, the influence of interest groups cannot be discounted, and the risk of politicized decision-making or excessive domination by antecedent convictions is well above zero.

**T**he theoretical literature on deliberative democracy has made significant contributions not only to theory but to practice as well. My main goal here has been to make some progress in understanding deliberative democracy in the trenches, in part by offering an account of practices that I wish, in retrospect, I had known before starting to work in the federal government.

The major lesson is that, much of the time, the executive branch itself combines both democracy and deliberation, and places a high premium on reason-giving and the acquisition of information. Perhaps surprisingly, it often contains a

high degree of internal diversity, encouraging debate and disagreement, not least through the public comment process.

I have not argued that this basic picture holds in all times and places. Some executive branches are different from others, and even within a year or a month, internal processes can be different from one another.

But no one should doubt that it is possible to operate national institutions in a way that insists not only on accountability, but also on careful considerations of the human consequences of potential courses of action. When the executive branch is working well, that possibility is not fanciful; it is a lived reality.

#### ENDNOTES

<sup>1</sup> See, for example, Jon Elster, ed., *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998); Jürgen Habermas, *Between Facts and Norms* (Cambridge, Mass.: The MIT Press, 1998); and Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy* (Princeton, N.J.: Princeton University Press, 2004).

<sup>2</sup> See James Madison, “The Same Subject Continued: The Union as a Safeguard against Domestic Faction and Insurrection,” *The Federalist Papers* No. 10, November 23, 1787, accessed at <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>.

<sup>3</sup> See Joseph Bessette, *The Mild Voice of Reason* (Chicago: The University of Chicago Press, 1994); Habermas, *Between Facts and Norms*; Amartya Sen, *Development As Freedom* (Oxford: Oxford University Press, 1999); Jane Mansbridge, *Beyond Adversary Democracy* (Chicago: University of Chicago Press, 1980); James Fishkin, *Democracy and Deliberation* (New Haven, Conn.: Yale University Press, 1993); and Gutmann and Thompson, *Why Deliberative Democracy*.

<sup>4</sup> A great deal of valuable information to this effect can be found in Michael Morrell, *The Great War of Our Time: The CIA’s Fight Against Terrorism from Al Qa’ida to ISIS* (New York: Twelve, 2015).

<sup>5</sup> This is the tendency in Fishkin, *Democracy and Deliberation*.

<sup>6</sup> A small story: When I was in the government, I helped write a “checklist” for regulatory impact analyses to promote accountability and make it easier to produce such analyses. (See Office of Information and Regulatory Affairs, “Agency Checklist: Regulatory Impact Analysis,” October 28, 2010, [https://obamawhitehouse.archives.gov/sites/default/files/omb/inforg/regpol/RIA\\_Checklist.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/inforg/regpol/RIA_Checklist.pdf).) Within the Executive Office of the President, some people, especially those with “Hill experience,” were actually concerned: Perhaps the checklist could have adverse political effects? Perhaps it should not be released before the midterms? These questions seemed to me absolutely absurd, and eventually the checklist was released, midterms or no midterms. Within an hour after the Democrats lost the House in 2010, in a crushing defeat, a cabinet official emailed me: “It was the checklist.” (I wrote back immediately: “That saved the Senate.”)

<sup>7</sup> See *ibid.*

<sup>8</sup> A little story from my own experience: On a difficult regulatory issue, a very sharp and highly influential member of the White House communications staff weighed in heavily on the substance. In my view, that person’s conclusions were, in this particular case, entirely without merit; they had a political motivation and lacked evidentiary support. I communicated my concerns (less than politely, I fear) to the relevant person. The response was as unexpected as it was priceless, roughly: “I am just a political hack. Ignore me! Do the right thing.”

<sup>9</sup> See Morrell, *The Great War of Our Time*; and Cass R. Sunstein, *Valuing Life: Humanizing the Regulatory State* (Chicago: The University of Chicago Press, 2014).

<sup>10</sup> I am bracketing questions raised by the independent regulatory commissions, such as the Federal Reserve Board and the Federal Communications Commission.

- <sup>11</sup> See Interagency Working Group on Social Cost of Carbon, U.S. Government, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,” February 2010, [https://www.epa.gov/sites/production/files/2016-12/documents/scc\\_tsd\\_2010.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/scc_tsd_2010.pdf). See also the discussion in Cass R. Sunstein, “On Not Revisiting Official Discount Rates: Institutional Inertia and the Social Cost of Carbon,” *American Economic Review* 104 (5) (2014).
- <sup>12</sup> This is the conclusion of the U.S. Government General Accountability Office, *Regulatory Impact Analysis: Development of Social Cost of Carbon Estimates* (Washington, D.C.: U.S. Government Accountability Office, July 2014), <http://www.gao.gov/assets/670/665016.pdf>. I can attest to the correctness of that conclusion. At various stages, of course, public comments were also considered on the merits. See, for example, Interagency Working Group on Social Cost of Carbon, U.S. Government, “Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,” July 2015, <https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc-response-to-comments-final-july-2015.pdf>.
- <sup>13</sup> For similar examples, see The Office of Management and Budget, “Circular A-4,” September 17, 2003, <https://www.transportation.gov/sites/dot.gov/files/docs/OMB%20Circular%20No.%20A-4.pdf>. The analysis of the value of a statistical life is available at U.S. Department of Transportation, Office of the Secretary of Transportation, “Revised Departmental Guidance 2014: Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analysis,” memorandum, June 17, 2015, [https://www.transportation.gov/sites/dot.gov/files/docs/VSL2015\\_0.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/VSL2015_0.pdf).
- <sup>14</sup> For a detailed account, see Cass R. Sunstein, “The Office of Information and Regulatory Affairs: Myths and Realities,” *Harvard Law Review* (126) (2013).
- <sup>15</sup> See Executive Order 12866, incorporated in The White House, Office of the Press Secretary, “Executive Order 13563 – Improving Regulation and Regulatory Review,” January 18, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>.
- <sup>16</sup> See Friedrich Hayek, “The Use of Knowledge in Society,” *American Economic Review* 4 (1945).
- <sup>17</sup> See also Daniel Naurin, *Deliberation behind Closed Doors: Transparency and Lobbying in the European Union* (Colchester, United Kingdom: ECPR Press, 2007). Naurin found that, in the European Union, business lobbyists who acted under closed-door conditions in their relationships with the European Commission had realized “that in order to promote their interests they have to argue carefully with reference to public interests and ideals rather than bargain from self-interest” and that “the industry lobbyists studied here sounded better, with respect to self-interest, behind closed doors than in public” due to constituency pressure toward a self-interested stance in public settings.
- <sup>18</sup> See, for example, U.S. Department of Labor, “U.S. Department of Labor’s OSHA Withdraws Proposed Interpretation on Occupational Noise,” OSHA National News Release, January 19, 2011, [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=19119](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=19119).
- <sup>19</sup> See, for example, Environmental Protection Agency, *Effluent Limitations Guidelines and New Source Performance Standards for the Airport Deicing Category*, Federal Register vol. 77, no. 95, May 16, 2012, <http://www.gpo.gov/fdsys/pkg/FR-2012-05-16/pdf/2012-10633.pdf>.
- <sup>20</sup> See, for example, U.S. Food & Drug Administration, “FDA Finalizes Menu and Vending Machine Calorie Labeling Rules,” FDA news release, November 25, 2014, <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm423952.htm> (last archived February 28, 2017).
- <sup>21</sup> See Daniel A. Farber and Anne Joseph O’Connell, “The Lost World of Administrative Law,” *Texas Law Review* 92 (2014).

# Applying Deliberative Democracy in Africa: Uganda's First Deliberative Polls

*James S. Fishkin, Roy William Mayega, Lynn Atuyambe, Nathan Tumuhamy, Julius Ssentongo, Alice Siu & William Bazeyo*

*Abstract: Practical experiments with deliberative democracy, instituted with random samples of the public, have had success in many countries. But this approach has never before been tried in Sub-Saharan Africa. Reflecting on the first two applications in Uganda, we apply the same criteria for success commonly used for such projects in the most advanced countries. Can this approach work successfully with samples of a public low in literacy and education? Can it work on some of the critical policy choices faced by the public in rural Uganda? This essay reflects on quantitative and qualitative results from Uganda's first Deliberative Polls. We find that the projects were representative in both attitudes and demographics. They produced substantial opinion change supported by identifiable reasons. They avoided distortions from inequality and polarization. They produced actionable results that can be expected to influence policy on difficult choices.*

At the Center for Deliberative Democracy at Stanford University, JAMES S. FISHKIN is Director and ALICE SIU is Deputy Director.

At Makerere University, Uganda, ROY WILLIAM MAYEGA is a Lecturer, LYNN ATUYAMBE is Associate Professor, NATHAN TUMUHAMYE is Director of the Eastern Africa Resilience Innovation Lab, JULIUS SSENTONGO is a Research Fellow, and WILLIAM BAZEYO is Dean of the School of Public Health.

(\*See endnotes for complete contributor biographies.)

The last two decades have seen a great rise in interest in deliberative democracy, in both theory and practice.<sup>1</sup> In political theory, this “deliberative turn” has largely supplanted the previous enthusiasm for “participatory democracy,” a change sometimes decried by advocates of the latter. Participatory democracy generally relies on self-selected mass participation. In development contexts, an iconic form is the “participatory budgeting” practiced in Porto Alegre, Brazil.<sup>2</sup> By contrast, the form of deliberative democracy that we will discuss here emphasizes designs that promote both the representativeness and the thoughtfulness of public participation. Instead of mobilizing as many people as possible, the idea is to foster thoughtful weighing of the arguments for and against policy alternatives by representa-

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Lynn Atuyambe, Nathan Tumuhamy,  
Julius Ssentongo, Alice Siu & William Bazeyo  
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tive microcosms of the public.<sup>3</sup> The numbers who participate may be smaller than in mass participatory institutions, but the conclusions offered can represent the public's considered judgments.

In practice, this kind of deliberative democracy has found applications in various parts of the world with designs that foster public input for actual policy-making. The designs vary, but they generally attempt to facilitate the discussion of competing reasons for policy alternatives in a context in which members of the public can become more informed about the issues in question. The more rigorous versions carefully select the participants by recruiting a microcosm or "mini-public" of the relevant population through random sampling.<sup>4</sup> The basic idea is that if the sample is representative and the participants deliberate under good conditions for considering the issues, then the results should represent what the public *would* think were it to engage with the issues under similarly good conditions. This strategy makes deliberative democracy a practical and implementable theory, at least for the policy issues selected.

How widely can this approach be applied? There have been successful cases in postconflict situations and instances of ethnic division.<sup>5</sup> There have also been successful cases across multiple linguistic barriers, as when a Europe-wide sample deliberated in Brussels in twenty-two languages with simultaneous interpretation.<sup>6</sup> There have even been successful cases in authoritarian systems lacking electoral competition.<sup>7</sup> But never before have there been applications of deliberative democracy with random samples of the public in Africa, where populations with low literacy and low levels of education often face extraordinary policy challenges. Is it applicable in such contexts? Or is deliberative democracy just an approach for advanced countries with highly educated populations? We reflect here on a pilot effort to apply deliberative democra-

cy, through randomly selected microcosms, to produce public input for policy-making in Africa.

**B**illions of people around the world live in poverty and deprivation. Development efforts to assist them increasingly invoke the idea that the people should be consulted. Those who might be affected by policies should in some way have a voice about them. Some argue that policies the public can accept will be more effective. Others argue that long-term development will be more sustainable in open and inclusive societies in which people participate.<sup>8</sup>

But how is this to be accomplished? There are various approaches. Some efforts engage stakeholders or policy experts who speak on behalf of the people. Some take decisions to the people themselves in self-selected forums or meetings. Sometimes researchers employ focus groups and key informant interviews to get voices from the people and from those who might have relevant local knowledge.

However, stakeholders or policy experts may turn out to have different views from those of the people themselves. Self-selected forums are inevitably unrepresentative and usually dominated by those especially motivated to turn out. Further, self-selected forums to discuss the distribution of benefits are likely to foster mobilization for the benefits, rather than deliberation about the general good of the community. For example, in the famous "participatory budgeting" in Porto Alegre, a practice now spread around the world, self-selected groups mobilize for specific benefits but the broader population is not well represented.<sup>9</sup> The question we explore here is whether the move from participatory to deliberative democracy, a move made prominent in democratic theory,<sup>10</sup> can be retraced in the practice of public consultation in developing countries. More specifically, is it practical to consult populations in developing countries through delib-

*Fishkin,  
Mayega,  
Atuyambe,  
Tumuhamyé,  
Ssentongo,  
Siu &  
Bazeyo*

erating microcosms selected through random sampling?

There have been a few efforts to incorporate elements of deliberative democracy in public consultations in Africa. In Benin, for example, politics scholar Leonard Wantchekon has reported on a field experiment looking at how the discussion of different kinds of platforms (clientelist or public-policy related) just before an election affected voting.<sup>11</sup> In Príncipe and São Tomé, political scientist Macartan Humphreys and colleagues have found in a deliberative democracy experiment “robust evidence that the influence of leaders on the outcome of deliberation is extremely strong, with leadership effects accounting for a large share of the variation in views elicited across the country.”<sup>12</sup> Their finding that discussion leaders effectively determine the outcome would obviously undermine the aspiration for using genuine deliberation by the public to influence public policy.

However, neither of these studies involved random samples of the public. Rather, they involved random assignment of self-selected participants to different treatments. And the project that seems to have been a self-conscious application of deliberative democratic theory (the São Tomé and Príncipe experiments) apparently gave moderators a great deal of flexibility and discretion to present their own opinions and advocate for them. Moderators appear to have used that discretion freely, resulting in the apparent distortion of the outcomes to conform to their views. As in other applications of deliberative democracy, the precise institutional design can be consequential. It remains to be seen what would happen with a deliberative design closer to the microcosms that have been applied thus far in developed countries.<sup>13</sup> If deliberators were recruited through random sampling rather than self-selection and if the moderators were strictly constrained to avoid advoca-

cy, rather than having free rein to promote their own views, might the efforts be more successful? Until now, the basic idea of deliberating microcosms chosen by random sampling had not been tested in Africa. We report on such an effort here.

While the idea of deliberative democracy has acquired many enthusiasts over the last two decades, it has also attracted criticisms. Some of those criticisms might plausibly define barriers to applying the approach in developing countries. Consider three. First, deliberative democracy is often criticized as an elite form of democratic practice. Even the term was coined in a discussion of James Madison’s theory of representatives who would “refine and enlarge the public views by passing them through the medium of a chosen body of citizens.”<sup>14</sup> The refinement derived both from the process of weighing arguments on the merits in the legislative assembly and from the selection process for selecting the “best” representatives. The term in its first coinage thus applied to deliberations among the highly educated and supposedly especially virtuous, who would choose in the interests of the public good for the rest of us. In the last two decades, the term has been adapted, at least for practical applications, to deliberations by the people themselves and especially, for our purposes, by random and representative samples. But the question remains whether ordinary citizens who vary widely in education and expertise can usefully weigh the competing arguments at issue in actual policy choices. Some critics even question whether ordinary citizens in developed countries such as the United States have the capacity to weigh competing policy arguments.<sup>15</sup> From such a perspective, it would seem even less plausible that participants who lack education or even basic literacy could do so.

Second, arguments “against deliberation” have found a footing in normative



theory, building on the jury literature.<sup>16</sup> In particular, there is the worry that advantaged groups will dominate the deliberations and impose their views on everyone else. In some juries, the men dominate, or the more educated, or those who have higher social status. Juries are the most studied deliberative institution, and while one can make a case that juries do fairly well at not reflecting the power relationships found in society,<sup>17</sup> any pattern of domination by the more advantaged raises questions about whether people are *really* deliberating on the merits, rather than deferring to those who may be seen to have more competence or authority.<sup>18</sup> To the extent that the deliberations are not genuine decisions on the merits, the institution loses its claim to determine legitimate outcomes. Of course, juries are generally deciders of fact, not policy, but the worries about juries have inspired concerns about the broader use of citizen deliberation for policy questions. If deliberating microcosms or mini-publics are distorted by deference to the advantaged, or by the ability of the advantaged to impose their will on the other participants, then the ideal of deliberation, nicely captured in German philosopher Jürgen Habermas's famous phrase as the "unforced force of the better argument," would be undermined.<sup>19</sup> In the context of developing countries, this worry might well be exacerbated. Those few participants who are well educated, or who have high status for other reasons, might have a great advantage over the rest of the participants who lack basic education and preparation for the discussions. The less well educated might defer to the advantaged, thus distorting the process. Hence this critique, often applied generally to applications of deliberative democracy, would seem to pose a special challenge in developing countries.

A third critique has centered on what has come to be known as *polarization*, or the tendency of groups engaging in discus-

sion to move toward extremes. Building on earlier work on the "risky shift," Cass Sunstein and various colleagues hypothesized a "law of group polarization."<sup>20</sup> On an issue for which there is a midpoint, if most participants in the discussion are to the right of the midpoint, then there will be movement away from the midpoint to the right. But if most participants are to the left of the midpoint, then there will be movement to the left. This polarization occurs, the argument goes, because of two factors: an "imbalance in the argument pool" and "a social comparison effect." If the group is mostly on one side, then more of the arguments voiced are likely to be on that side. Hence the tendency to move to a "more extreme" position away from the midpoint. Second, as people pick up on the conclusions of others, they will feel social pressure to conform to the dominant position.<sup>21</sup> More recently, Sunstein has added a third argument. Those who feel "tentative" in their views may choose initial moderation out of uncertainty, but these "tentatives" are more easily swayed by the other two factors to conform to the apparently dominant arguments.<sup>22</sup>

The vulnerability of deliberative discussion to polarization is likely a matter of institutional design. While found in jury-like experiments conducted by Sunstein and his collaborators, this pattern has not applied universally to deliberating microcosms chosen by random sampling. For example, we have not found it in Deliberative Polls.<sup>23</sup> If designs have elements of balance and confidentiality, those elements may well defeat the imbalance in the argument pool and the social comparison effect. The design of Deliberative Polls includes elements of balance, such as balanced briefing materials, balanced plenary session panels, and moderators who are trained to draw attention to the competing sides of the argument in the briefing materials. It also ensures confidentiality for the final considered judgments

*Fishkin,  
Mayega,  
Atuyambe,  
Tumuhamyé,  
Ssentongo,  
Siu &  
Bazeyo*

by collecting them in confidential questionnaires. The facilitators are trained to bring out minority opinion and to set a tone for respecting the opinion-givers equally. These elements appear to protect at least this kind of deliberative microcosm from the polarization pattern.<sup>24</sup>

But what would happen with far less educated and literate respondents? None of the cases thus far have involved samples mostly composed of less-literate respondents with low levels of education. It is an open question whether the avoidance of the “law of group polarization” might apply in such contexts. It is easy to see why this might be a problem. The balance achieved through written briefing documents and the ability to weigh arguments from competing experts on either side of the issues in the plenary sessions might be undermined for nonliterate and low education respondents. Further, the less literate might more easily defer to group pressures, allowing the social comparison effect to determine the outcome and moving the mean of the group to more extreme positions. Perhaps less literate respondents will tend to be more “tentative” and defer to those with considered judgments or with higher social status. Such speculations imply that in the development context, the “law of group polarization” may well prove to be more of a challenge.

What is at stake here? Why is polarization a challenge for applications of deliberative democracy? If there were a predictable pattern of group psychology moving arguments to more extreme positions, then it would be hard to argue that the results were really the product of participants weighing the issues carefully on the merits. But if roughly half the time the groups move further from the midpoint and roughly half the time they move toward the midpoint, then the potential dynamic toward group polarization would have been stopped. As noted, Deliberative Polls have produced

this nonpolarizing result with samples of more-educated and -literate populations, indicating that the postulated “law of group polarization” is not an inexorable law, even though it appears in jury-like designs.<sup>25</sup> The dynamic among largely nonliterate and uneducated samples has only just been tested in research.

The Deliberative Polling projects in Uganda took place in the Mount Elgon region in two districts, Bududa and Butaleja, both troubled by frequent environmental disasters (floods and rock slides). Each district has about two hundred thousand inhabitants, mostly working in subsistence farming. The areas are characterized by low levels of education and high population density. The average population density in Uganda is 195 persons per square kilometer, but in the Mount Elgon region, the average population density is 950 persons per square kilometer. This population density puts pressure on the subsistence farming and prevents investment in education. The low education levels are especially pronounced for women and girls, many of whom get no formal education at all. The common environmental disasters lead to periodic evacuations and issues of resettlement.

The Deliberative Polling efforts were led by a team from Makerere University, more specifically, the East Africa Lab in the Resilient Africa Network sponsored by USAID and housed in the Makerere School of Public Health. The Stanford Center for Deliberative Democracy, also with USAID support, provided assistance at each stage of the two projects.

The Lab ran focus groups and key informant interviews in the two communities to identify challenges faced by the two districts. The project also convened an advisory group, including academics, key government officials (both local and national), and NGOs to provide further input. The ad-

visory group is listed in the report, available online.<sup>26</sup>

The advisory group developed an agenda with specific policy options in three broad areas. Because of the region's recurrent environmental disasters, the agenda focused on three related topics: resettlement management, land management, and population pressure. The committee identified policy options under each of these headings that might feasibly be implemented in Bududa and Butaleja. These options were the principal topics in the pre- and post-deliberation questionnaires.

Deliberative Polling assesses the representative opinions of a population, both before and after it has had a chance to think about an issue and discuss it in depth. The idea is to gather a representative sample and engage it in transparently favorable conditions for considering the pros and cons of competing policy options. Most citizens, most of the time, in most countries around the world, do not spend much effort considering public policy questions in depth. The premise is that when policy options are important for a community, then public consultations about them should be representative of the population and thoughtfully based on the best information available. Hence the need for recruiting a random sample and engaging it in good conditions for considering the issues and the arguments for and against various policy options.

The method offers certain advantages over other methods of public consultation. Self-selected town meetings are unlikely to be representative because they involve only those who feel strongly enough to attend. Focus groups cannot be used to represent opinion because they are too small to be statistically meaningful. Rather, they are useful for uncovering the way the public frames an issue as a step in facilitating more systematic research. Conventional polls, while potentially representative

when done well, offer the public's impression of sound bites and headlines. They do not reflect what the public would think if it actually thought in depth about the issues. Deliberative Polling is a method that offers representative and informed opinion. It offers a road map to the policies the public would accept upon reflection, and for what reasons. It can also indicate those policies the public would have reservations about, and for what reasons.

**H**ow should we evaluate these first Deliberative Polls in Africa? First, is the sample representative? We can compare the participants (those who take the initial survey and attend the deliberations) with the nonparticipants (those who take the survey and do not attend the deliberations). The comparisons should include both demographics and attitudes. The idea is to recruit a microcosm of the viewpoints and interests of the community. Voter lists, census data, and random digit dialing have all been used in other countries to provide the sampling frame. What approach might work in rural Uganda, where the data for such approaches are flawed and where the cell phone coverage is unreliable?

Second, do the opinions change? Ultimately we are interested in the final considered judgments of the sample, regardless of whether they stay the same or move away from where they began. But if Deliberative Polls rarely yielded significant net change, then few consultations would go to the trouble of creating these balanced and informed discussions. It would be easier just to do conventional polling. Hence, statistically significant net change indicates that something is happening when citizens deliberate.

Third, are there identifiable reasons for the final judgments? Does the process produce considered judgments that people reach on the basis of having considered competing arguments?

*Fishkin,  
Mayega,  
Atuyambe,  
Tumuhamyé,  
Ssentongo,  
Siu &  
Bazeyo*

Fourth, does the process avoid the distortions we have already identified as potentially undermining the deliberative process? Two distortions have been especially prominent in the literature: group polarization and domination by the more advantaged. These potential distortions pose a challenge to deliberation in that they would appear to offer explanations for the results independent from the merits of the arguments. Rather, they would render the results an artifact of group psychology or of the domination of the more advantaged or educated. As mentioned above, if these distortions pose a challenge in the most developed countries with highly educated populations, they are even more likely to occur in developing countries whose populations have low education levels.

The participants were recruited through a random selection of households and a random selection within the households. In Bududa, there were 210 initial interviews, with only eleven refusals. Of those 210 initial interviews, 201 completed the full two days of deliberation. Counting the eleven refusals in the total, the response rate for the actual event was about 91 percent, an extraordinarily high level for surveys by international standards and especially among processes requiring two days of discussion. In Butaleja, there were 232 initial interviews, again with only eleven refusals. Of those 232 who took the initial interview, 217 completed the full two days of deliberation. Counting the eleven refusals in the denominator, the response rate in Butaleja is 89 percent, also an extraordinary level of participation. Why this high level? The projects had strong buy-in from community leaders and local authorities. The topic was one of great interest to the communities. And an honorarium and transport costs helped make participation attractive.<sup>27</sup>

Ten percent of the Bududa participants had no education, and 58 percent had only primary education. For Butaleja, 8 percent

had no education and 57 percent had only primary education. Eighty-seven percent of the Bududa participants and 86 percent of the Butaleja participants were farmers. As best we can judge, it was an excellent sample with one serious distortion: an overrepresentation of men.<sup>28</sup> Yet, as we will see below, issues of gender and the interests of women were reasonably well represented in the discussions, despite the underrepresentation of women among the participants.

The pre- and post-deliberation questionnaires were administered in individual interviews taking approximately thirty-five to forty minutes each. The use of oral interviews combined with video briefings allowed the nonliterate to respond and participate in the process. We will return to the questions of whether the participation was relatively equal and whether the groups were able to avoid the predictable distortions in group discussion.

In both communities there were thirty-six policy options posed for deliberation covering three topics: resettlement, land management, and population pressure. Upon first contact at home and at the end of the weekend, the participants were asked to rate the thirty-six options in importance on a scale from zero (extremely unimportant) to ten (extremely important), with five in the middle. Here we will report the percentage saying simply that an option was “important” (a rating above five); the means of the respondents’ ratings appear in Tables 1 and 2.

In Bududa, the rating of eleven of the thirty-six policy options changed significantly after deliberation; four other options had changes that were marginally significant (see Table 1). The changes were mostly in the direction of increased support for what became the most favored options.<sup>29</sup> Some options started high and went significantly higher. Before deliberation, 76 percent of respondents viewed the rezoning of high-

Table 1  
Bududa: Significant Policy Changes for Participants

Question/Issue	T1	T2	T2-T1	P-value
1. Rezone high-risk areas for no settlement.	0.766	0.840	0.075	0.001***
4. Give support to the host families for helping those who move.	0.685	0.759	0.073	0.003***
5. Strengthen the local disaster management committees.	0.760	0.827	0.068	0.002***
6. Raise funds to support the work of the local disaster management committees.	0.646	0.766	0.119	0.000***
8. Build peri-urban centers where people can resettle.	0.752	0.810	0.058	0.013***
9. Make sure new peri-urban centers are nearby so people can farm.	0.812	0.843	0.031	0.108*
13. Ensure that the early warning system works with the local disaster committees.	0.715	0.756	0.041	0.076*
16. Communities should manage the wetlands during the dry season.	0.602	0.671	0.069	0.015**
17. Communities should create more rice schemes, but not in the wetlands.	0.529	0.631	0.102	0.003***
20. Communities should be responsible for desilting riverbeds.	0.585	0.674	0.089	0.002***
21. Government should assist communities in desilting riverbeds.	0.528	0.580	0.052	0.076*
22. Communities should build sanitation drains for the reduction of malaria.	0.836	0.872	0.036	0.074*
27. The government should raise narrow bridges.	0.811	0.858	0.047	0.015**
29. Communities should build ladders in the highlands where there are not roads.	0.420	0.483	0.063	0.053**
34. Families should consider their resources in planning the size of their families.	0.740	0.797	0.058	0.011***

Note: T1 denotes before deliberation; T2 denotes after deliberation; T2-T1 denotes after deliberation minus before deliberation; P-value denotes statistical significance. Proposals were rated on a scale of 0 to 10, with 0 being extremely unimportant, 10 being extremely important, and 5 being the midpoint. Data are the means of respondents' ratings.

In the significance column, \* indicates a P-value of 0.10 or below, \*\* 0.05 or below, and \*\*\* 0.01 or below.

risk areas for no settlement as important; post-deliberation, 85 percent viewed it as important. Before deliberation, 67 percent of respondents viewed supporting host families to help those who move as important; post-deliberation, 78 percent viewed it as important. Some of the changes were large: the perceived importance of raising funds to support the work of the local di-

aster management committees jumped from 58 percent to 79 percent. There was also significantly increased importance given to proposals involving community action: to create more rice schemes (but not in the wetlands), to manage irrigation for cultivation (from 48 percent to 57 percent), for taking responsibility to desilt the riverbeds (from 52 percent to 64 percent),

and for building sanitation drains to reduce malaria (from 87 percent to 94 percent). On the subject of family planning, there was a significant increase in support for the notion that families should consider their resources in planning the size of their families. The endorsement of this proposal increased from 76 percent to 87 percent.

The online appendix lists the top priorities after deliberation for Bududa and for Butaleja. In Bududa, after deliberation, the top priority of all thirty-six proposals was that the community should encourage girls as well as boys to go to school. This proposal, which began with very high support (96 percent) ended with virtually unanimous support (99 percent). The online appendix includes transcript excerpts exhibiting the reasoning in support of the top priorities.<sup>30</sup>

The Butaleja deliberation also produced significant changes on eleven policy attitudes. These changes are depicted in Table 2. Some of these changes show interesting reversals with deliberation. All are significant at the 0.05 level or better.

Rezoning high-risk areas for no settlement began with only 46 percent of respondents endorsing it as important before deliberation; but after deliberation, the level rose twenty points to 67 percent. Support for an early warning system using text messaging went down from 60 percent to 42 percent, while support for an early warning system using sirens went up from 79 percent to 92 percent. We think that the unreliability of electric power for charging and the unreliability of the cell connections moved people to support sirens as a more dependable system than text messaging. While there was an increase in support for communities to manage the wetlands during the dry season (from 70 percent to 82 percent), there was a drop in support for the idea that communities should maintain the water channels during the wet season (from 78 percent to 67 percent) and that

communities should be responsible for desilting riverbeds (from 55 percent to 42 percent). Discussions revealed a growing awareness of the machinery and scale of work required to get these tasks done.

In the family planning area, there was an increase in support for the government enforcing the minimum age for marriage of eighteen years from the already-high level of 87 percent to 94 percent.

The online appendix shows the priorities after deliberation for Butaleja. Government assistance in drilling for clean water tops the list with 98.6 percent of participants endorsing its importance. The second highest priority post-deliberation was that the community should encourage girls to go to school as well as boys. As in Bududa, this moved from 97.4 percent before deliberation to about the same level as the top priority (98.6 percent) after.

Our third question, whether the final considered judgments seem to reflect reasoned deliberation, gets ample support from the transcript excerpts detailed in the online appendix. Consider the top priorities.

In Bududa, the top priority after deliberation was that the community should encourage girls to go to school as well as boys. Education can reduce the outcome of girls getting pregnant and married at too young an age. With schooling, they may be able to go to technical schools and find jobs. The second top priority was creating more Health Center 2s (local clinics) in small villages. Currently, the distance to health centers is too great for many community members to receive treatment for emergency illnesses. The local clinics could provide a first response even if they do not offer all the equipment and services found in the larger hospitals. Moreover, in other discussions, community health centers were cited as offering support for family planning, meaning that some women were reluctant to pursue family planning assistance because medical

Table 2  
Butaleja: Significant Policy Changes for Participants

Question/Issue	T1	T2	T2-T1	P-value
1. Rezone high-risk areas for no settlement.	0.553	0.670	0.116	0.000***
3. Resettle with host families in a low-risk area when there is a disaster.	0.563	0.626	0.063	0.017**
11. Early warning system should use sirens.	0.761	0.821	0.061	0.008***
12. Early warning system should use text messages.	0.628	0.525	-0.103	0.000***
14. Plant trees to protect the river banks.	0.833	0.869	0.036	0.049**
16. Communities should manage the wetlands during the dry season.	0.687	0.736	0.048	0.041**
18. Communities should maintain water channels during the wet season.	0.749	0.657	-0.092	0.000***
20. Communities should be responsible for desilting riverbeds.	0.593	0.513	-0.080	0.006***
21. Government should assist communities in desilting the riverbeds.	0.846	0.874	0.028	0.091*
33. The government should enforce the minimum age requirement for marriage of eighteen years.	0.840	0.881	0.041	0.032**
37. Which option do you prefer? Spend money on more roads and fewer bridges, or spend money on more bridges and fewer roads (on a scale of 1 to 7, with 1 showing preference for more roads and fewer bridges and 7 more bridges and fewer roads).	0.612	0.462	-0.150	0.000***

Note: T1 denotes before deliberation; T2 denotes after deliberation; T2-T1 denotes after deliberation minus before deliberation; P-value denotes statistical significance. Proposals were rated on a scale of 0 to 10, with 0 being extremely unimportant, 10 being extremely important, and 5 being the midpoint. Data are the means of respondents' ratings. Question 37 posed a trade-off on a 1 to 7 scale.

In the significance column, \* indicates a P-value of 0.10 or below, \*\* 0.05 or below, and \*\*\* 0.01 or below.

help was too far away. The third top priority in Bududa was creating one-classroom schools for elementary education in remote areas. The distances to school now are too far for children to walk, so many receive no elementary education at all. Concern that girls may be sexually assaulted if they have to walk long distances to school also motivates parents to keep their children at home.

In Butaleja, the top priority was government assistance in drilling for clean water. Participants were very concerned about the disease risks of dirty water, but they needed help with drilling. The second top priority

was encouraging girls as well as boys to go to school, for reasons very much like those in Bududa. The third priority was the government building roads in remote areas so residents could bring their produce to market. The local communities did not have the resources to build the roads themselves.

Another way to explore the reasons supporting the final ratings of the policy options is to run regressions to isolate the levers of opinion change. The questionnaire, covering thirty-six policy options plus demographics and other questions, did not have much room for explanatory variables.

However, it did probe some basic values, allowing us to make connections in the regressions between those values and the policy options. The online appendix illustrates some of these connections. The floods and rock slides, for example, periodically threaten the basic well-being of the communities. The disasters threaten the order and security required for people to prosper economically and maintain their access to basic necessities. Hence, support for the early warning system in Butaleja is associated in the regression analysis with basic values such as making sure everyone has clean air and water and promoting economic growth. These two values plus the importance of education are associated in Bududa with support for new infrastructure, such as building roads in remote areas, building bridges, and raising narrow bridges. The link between valuing education and supporting travel infrastructure may reflect that the difficulties of travel pose a major impediment to education. The values of economic growth and clean air and water are also associated in the regression analysis with the policy of offering more education for family planning, probably because large family size in these communities impedes economic growth and better access to the necessities of life.

Both the transcripts and the regressions provide evidence that the final considered judgments were supported by the reasoning of participants grappling with trade-offs and priorities.

Turning to our fourth major issue, did the process avoid the distortions that have plagued some other group discussions? The two we focused on are polarization and domination by the more advantaged.

Polarization, as we discussed earlier, is the idea that on a given issue, if a group starts out to the left of the midpoint, it will move further to the left. If it starts out to the right of the midpoint, it will move fur-

ther to the right. If this were a consistent pattern for the issues, then it would undermine the claim that participants were deliberating on the merits. For example, in a study of polarization in group discussions in two locations in Colorado, researchers found 80 percent of the group issue combinations (the movements of small groups on a given issue) polarizing in this way in Boulder (moving left politically) and 93 percent in Colorado Springs (moving right).<sup>31</sup>

In the Uganda projects, there were fourteen groups in Bududa and fifteen groups in Butaleja. Both projects used the same questionnaire with thirty-six policy options. Hence, there were 504 group issue combinations (potential group movements on the specified issues) in Bududa and 540 group issue combinations in Butaleja. In contrast to the results predicted by polarization theory, only 54 percent of the group issue combinations polarized in Bududa and 51 percent in Butaleja.<sup>32</sup> That is, about half the time the groups moved away from the midpoint in the hypothesized direction and about half the time they moved toward it in the opposite direction. We see no evidence of a “law of group polarization” distorting these deliberations.

The second distortion is domination by the more advantaged: do they impose their views on the others? In rural Uganda, where many of the respondents lack education, this risk was of special concern. Using the group issue combinations, we began by looking at the starting points of the more privileged. If they were dominating the discussions and imposing their views on everyone else, then the group issue combinations should move in the direction of the views held by the privileged or advantaged. We looked at three possible patterns of domination: males imposing their views on females, older participants imposing their views on younger ones, and the more educated imposing their views on the less educated. No such patterns arose. In Bududa,



the group issue combinations moved in the direction of the males only 21 percent of the time, in the direction of the older respondents only 47 percent of the time, and in the direction of the more educated only 24 percent of the time. In Butaleja, the group issue combinations moved in the direction of the males only 25 percent of the time, in the direction of the older respondents only 53 percent of the time, and in the direction of the more educated only 42 percent of the time.<sup>33</sup> In these contexts, then, we see no evidence that the advantaged are imposing their views on others. Instead, all sectors seem to be learning from each other, sharing arguments, and coming to conclusions about what should be done.

The results of our studies in Bududa and Butaleja, Uganda, reveal two cases of representative and thoughtful deliberation expressing the considered views of the communities. Rather than self-selected group meetings or stakeholder consultations, these two projects show a way for the public to provide input directly on what they consider to be the most urgent issues. The results have already been remarked upon by local and national officials in Uganda and in the donor communities that hope to see many of the policies implemented. Consider two examples of useful input: the policies on schools and health care centers. District officials had previously been closing secondary health centers (or failing to rebuild them after natural disasters) in order to consolidate health care provision in bigger and better centers. But these larger facilities are fewer in number, requiring many people to travel much farther. Officials had also been consolidating the schools to make them bigger and better, again increasing travel time for those who attend. The idea of small one-room schools in more remote villages to provide elementary education, particularly to girls, was not on the agenda. Yet these deliberations highlight the merits of placing

both the local health clinics and the schools as close to the communities as possible. Although the trade-off between distance and quality for schools and for health care generates arguments on both sides, the district officials found that, deliberating together, the people from these communities had reached a different decision from the one they had made. The officials were, however, receptive to the idea that unless the health centers were located close to the villages, many people would not get critical health care, including family planning, and unless there were school facilities close to the villages, many people would not get elementary education. These burdens would fall especially on the women, for family planning, and on the girls, for education.

Government officials and other policymakers can weigh these trade-offs by themselves if they so decide. But if they want policies that are sustainable because the people can buy into them, then they need to hear from the people. To date, the only practical method for getting that public input in both a representative and informed way is through the kind of deliberative process outlined here.

The challenges to applying deliberative democracy in Africa have previously been thought overwhelming. Yet the Uganda projects have already helped inspire subsequent Deliberative Polls in Ghana (in Tamale), in Senegal (in an area near Dakar), and in Tanzania (on a national level). All of these deliberative projects have featured high participation rates and intense deliberation. The complex story of the policy impacts of these projects will require separate analysis. In the meantime, these first projects stand as demonstrations that it is entirely feasible to consult populations in Africa in a representative and thoughtful way about the policies affecting their communities. We need not leave it only to stakeholders and elites to speak for the people. With the right design, the people can speak for themselves.

*Fishkin,  
Mayega,  
Atuyambe,  
Tumuhamyé,  
Ssentongo,  
Siu &  
Bazeyo*

\* Contributor Biographies: JAMES S. FISHKIN, a Fellow of the American Academy since 2014, is Director of the Center for Deliberative Democracy, the Janet M. Peck Chair in International Communication, Professor of Communication, and Professor of Political Science (by courtesy) at Stanford University. He is the author of *When the People Speak: Deliberative Democracy and Public Consultation* (2009), *Deliberation Day* (with Bruce Ackerman, 2004), and *The Voice of the People: Public Opinion and Democracy* (1995).

ROY WILLIAM MAYEGA is a Lecturer in the Department of Epidemiology and Biostatistics at the Makerere University School of Public Health, Uganda. He is a Ph.D. student in Medical Science on a joint program between Karolinska Institutet, Sweden, and Makerere University. He has published articles in *PLOS ONE* and *Diabetes Research and Clinical Practice*.

LYNN ATUYAMBE is Associate Professor in the Department of Community Health and Behavioral Sciences at the Makerere University School of Public Health, Uganda. He has written for such journals as *PLOS ONE*, *BMC Medical Education*, and *Pan African Medical Journal*.

NATHAN TUMUHAMYE is a Research Fellow and Director of the Eastern Africa Resilience Innovation Lab at the Makerere University School of Public Health, Uganda. He has written for such journals as *BMC Public Health*, *PLOS Currents*, and *Health*.

JULIUS SSENTONGO is a Research Fellow at the Makerere University School of Public Health, Uganda, and a practicing physician. His research has been published in *PLOS Currents: Disasters* and by the Eastern Africa Resilience Innovation Lab.

ALICE SIU is Deputy Director of the Center for Deliberative Democracy at Stanford University. Her work on Deliberative Polling has been published in *The Search for Deliberative Democracy in China* (2006), *Governance Reform under Real-World Conditions: Citizens, Stakeholders, and Voice* (2008), and prominent journals including *British Journal of Political Science*.

WILLIAM BAZEYO is Dean of the Makerere University School of Public Health, Uganda, where he is also Associate Professor of Occupational Medicine. He is Director of the Centre for Tobacco Control in Africa. He has published articles in such journals as *BMC Psychiatry*, *PLOS Currents*, and *Annals of Global Health*.

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<sup>1</sup> For some collections that gather the most influential of these discussions, from various perspectives, regarding deliberative democracy, see James Bohman and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass.: The MIT Press, 2007); Jon Elster, ed., *Deliberative Democracy* (Cambridge: Cambridge University Press, 2008); and James S. Fishkin and Peter Laslett, eds., *Debating Deliberative Democracy* (Oxford: Blackwell Publishing, 2003). The phrase "deliberative turn" was coined by John Dryzek in his *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2003).

<sup>2</sup> Carole Pateman, "Participatory Democracy Revisited" *Perspectives on Politics* 10 (1) (March 2012): 7–19.

<sup>3</sup> If and when it is possible to engage the entire public on an issue, that also exemplifies deliberative democracy by the people. For a proposed method of doing so, see Bruce Ackerman and James Fishkin, *Deliberation Day* (New Haven, Conn.: Yale University Press, 2004). Most of the focus of recent empirical work on public deliberation has, however, been on the microcosmic

- or mini-public strategy. Other work has addressed the quality of deliberation in democratic legislatures; see Jürg Steiner, André Bächtiger, Markus Spörndli, and Marco R. Steenbergen, *Deliberative Politics in Action: Analyzing Parliamentary Discourse* (Cambridge: Cambridge University Press, 2004).
- <sup>4</sup> For an overview, see Kimmo Grönlund, André Bächtiger, and Maija Setälä, eds., *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (Wivenhoe Park, United Kingdom: ECPR Press, 2014).
- <sup>5</sup> Robert C. Luskin, Ian O’Flynn, James S. Fishkin, and David Russell, “Deliberating across Deep Divides,” *Political Studies* 62 (1) (2014): 116 – 135. For the case of public deliberation about the condition of the Roma, see Center for Deliberative Democracy, “Deliberative Polling on Policies toward the Roma in Bulgaria,” <http://cdd.stanford.edu/dp-locations/europe/bulgaria/>.
- <sup>6</sup> James S. Fishkin, Robert C. Luskin, and Alice Siu, “Europolis and the European Wide Public Sphere: Empirical Applications of a Counter-Factual Ideal,” *European Union Politics* 15 (3) (2014): 328 – 351.
- <sup>7</sup> See James S. Fishkin, Baogang He, Robert C. Luskin, and Alice Siu, “Deliberative Democracy in an Unlikely Place: Deliberative Polling in China,” *British Journal of Political Science* 40 (2) (2010): 435 – 448. For the more general issue, see Baogang He and Mark Warren, “Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development,” *Perspectives on Politics* 9 (2) (2011): 269 – 289.
- <sup>8</sup> Joseph E. Stiglitz, “Participation and Development: Perspectives from the Comprehensive Development Paradigm,” *Review of Development Economics* 6 (6) (2002): 163 – 182. See also Amartya Sen, *Development as Freedom* (New York: Alfred Knopf, 1999).
- <sup>9</sup> See *Toward a More Inclusive and Effective Participatory Budget in Porto Alegre*, World Bank Report No. 40144-BR (Washington, D.C.: World Bank, 2008). For the critique of representativeness, see volume 1 of the report, 27 – 30.
- <sup>10</sup> For a critique of the move from participatory to deliberative democracy, see Pateman, “Participatory Democracy Revisited.”
- <sup>11</sup> Leonard Wantchekon, “Clientelism and Voting Behavior: Evidence from a Field Experiment in Benin,” *World Politics* 55 (3) (2003): 399 – 422.
- <sup>12</sup> Macartan Humphreys, William A. Masters, and Martin E. Sandbu, “The Role of Leaders in Democratic Deliberations: Results from a Field Experiment in São Tomé and Príncipe,” *World Politics* 58 (4) (2006): 583 – 622, esp. 604.
- <sup>13</sup> The Ugandan projects reported on here did not collect separate survey data from the moderators. But in a more recent Deliberative Poll in Tanzania with the Center for Global Development, we did collect such data and intend to report on it separately. The Deliberative Poll process trains moderators not to offer their own substantive views during deliberations.
- <sup>14</sup> The quotation is from James Madison in Federalist No. 10. The term “deliberative democracy” was coined by Joseph Bessette in discussing Madison’s theory of deliberation by representatives (not deliberation by the people themselves). See Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994).
- <sup>15</sup> Russell Hardin asks whether “deliberative democracy is the ‘democracy’ of elite intellectuals.” Russell Hardin, “Deliberation: Method, Not Theory,” in *Deliberative Politics: Essays on Democracy and Disagreement*, ed. Stephen Macedo (New York: Oxford, 1999), 103 – 119. Shawn W. Rosenberg argues that deliberation even among the educated in the United States is “problematic,” concluding from his case study in California that “even in what might be considered the favorable case of highly educated, empowered adults raised in a liberal democratic polity, the deliberation very rarely was rational, reasonable, or critically reflective in the ways assumed by deliberative democrats.” See Shawn W. Rosenberg, ed., *Can the People Govern* (New York: Palgrave, 2007), 157.
- <sup>16</sup> Lynn Sanders, “Against Deliberation,” *Political Theory* 25 (3) (1997): 347 – 364; and Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

- <sup>17</sup> In the landmark study comparing views of judges with actual jury verdicts, Harry Kalven and Hans Zeisel found considerable agreement between the judges and juries. See Harry Kalven and Hans Zeisel, *The American Jury* (Boston: Little Brown, 1966).
- <sup>18</sup> For classic accounts of gender and class domination, see Fred L. Strodbeck, Rita M. James, and Charles Hawkins, "Social Status and Jury Deliberations," *American Sociological Review* 22 (1957): 713–719; and Reid Hastie and Steven D. Penrod, *Inside the Jury* (Cambridge, Mass.: Harvard University Press, 1983).
- <sup>19</sup> Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, Mass.: The MIT Press, 1998), 306.
- <sup>20</sup> Cass R. Sunstein, "The Law of Group Polarization," in *Debating Deliberative Democracy*, ed. James S. Fishkin and Peter Laslett (Oxford: Blackwell Publishing, 2003), 80–101.
- <sup>21</sup> For an overview of these arguments and an extensive bibliography documenting their occurrence, see Cass R. Sunstein, *Going to Extremes* (Oxford: Oxford University Press, 2009).
- <sup>22</sup> Cass R. Sunstein and Reid Hastie, *Wiser: Getting Beyond Groupthink to Make Groups Smarter* (Boston: Harvard Business Review Press, 2015), 84.
- <sup>23</sup> See, for example, Robert C. Luskin, James Fishkin, and Roger Jowell, "Considered Opinions: Deliberative Polling in Britain," *British Journal of Political Science* 32 (3) (2002): 455–487; Fishkin et al., "Deliberative Democracy in an Unlikely Place"; and Alice Siu, "Look Who's Talking: Examining Social Influence, Opinion Change, and Argument Quality in Deliberation" (Ph.D. diss., Stanford University, 2008).
- <sup>24</sup> For more on this, see Alice Siu, "Deliberation & the Challenge of Inequality," *Daedalus* 146 (3) (Summer 2017).
- <sup>25</sup> See David Schkade, Cass R. Sunstein, and Reid Hastie, "When Deliberation Produces Extremism," *Critical Review: A Journal of Politics and Society* 22 (2–3) (2010): 227–252.
- <sup>26</sup> See *Deliberative Polling in Uganda: A Report on the Projects in Bududa and Butaleja Districts, Uganda* (Stanford, Calif., and Kampala, Uganda: Center for Deliberative Democracy at Stanford University and Resilient Africa Network Eastern Africa Resilience Innovation Lab at Makerere University, 2014), Appendix Table 1, "Members of the Advisory Group," 30, <https://cdd.stanford.edu/2014/a-report-on-the-projects-in-bududa-and-butaleja-districts-uganda/>.
- <sup>27</sup> Participants were paid the equivalent of about seven dollars a day as an honorarium.
- <sup>28</sup> Both the Bududa and Butaleja samples were overrepresented by men. Participants in Bududa were 58.7 percent male and in Butaleja were 66 percent male. The interviewers randomly selected the participant within each household, but they could only do so based on the list of inhabitants provided by the person first contacted. Despite this limitation, the interests of women seem to have been well represented in the discussions, as should be clear from the priorities after deliberation on the education of women and on population pressure.
- <sup>29</sup> We will discuss these results in percentages; the means can be seen in Table 1 and Table 2.
- <sup>30</sup> The online appendix for this article is available at Center for Deliberative Democracy, "Deliberative Polling in the Bududa and Butaleja Districts of Uganda," <https://cdd.stanford.edu/2014/deliberative-polling-in-the-bududa-and-butaleja-districts-of-uganda/>. For the top-ten priorities after deliberation in Bududa and Butaleja, see Tables H and I. The transcript excerpts are included in Tables J and K.
- <sup>31</sup> Shkade, Sunstein, and Hastie, "When Deliberation Produces Extremism," 232.
- <sup>32</sup> See Tables D and E in the online appendix, <https://cdd.stanford.edu/2014/deliberative-polling-in-the-bududa-and-butaleja-districts-of-uganda/>.
- <sup>33</sup> See Tables F and G in *ibid.*

# Authoritarian Deliberation in China

*Baogang He & Mark E. Warren*

*Abstract: Authoritarian rule in China increasingly involves a wide variety of deliberative practices. These practices combine authoritarian command with deliberative influence, producing the apparent anomaly of authoritarian deliberation. Although deliberation and democracy are usually found together, they are distinct phenomena. Democracy involves the inclusion of individuals in matters that affect them through distributions of empowerments like votes and rights. Deliberation is the kind of communication that involves persuasion-based influence. Combinations of command-based power and deliberative influence – like authoritarian deliberation – are now pervading Chinese politics, likely a consequence of the failures of command authoritarianism under the conditions of complexity and pluralism produced by market-oriented development. The concept of authoritarian deliberation frames two possible trajectories of political development in China. One possibility is that the increasing use of deliberative practices stabilizes and strengthens authoritarian rule. An alternative possibility is that deliberative practices serve as a leading edge of democratization.*

BAOGANG HE is the Alfred Deakin Professor and Chair in International Relations at Deakin University, Australia.

MARK E. WARREN is the Harold and Dorrie Merilees Chair in the Study of Democracy at The University of British Columbia, Canada.

(\*See endnotes for complete contributor biographies.)

Over the last several decades, authoritarian regimes in Asia have increasingly experimented with public consultation, political participation, and even deliberation within controlled venues.<sup>1</sup> China is a particularly important example: though it remains an authoritarian regime, governments, mostly at the local level, have employed a wide variety of participatory practices that include consultation and deliberation.<sup>2</sup> In the 1980s, leaders began to introduce direct elections at the village level. Other innovations have followed, including approval and recall voting at the local level, participatory budgeting, deliberative forums, Deliberative Polls, public hearings, citizen rights to sue the state, initiatives to make government information public, and acceptance of some kinds of autonomous civil society organizations. Although very uneven, many of these innovations appear to have genuinely deliberative elements: that is, they involve the kinds of talk-based politics that generate persuasive influence, from which political leaders take guidance,

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and upon which they rely for the legitimacy of their decisions.<sup>3</sup> Curiously, these practices are appearing within an authoritarian state led by a party with no apparent interest in regime-level democratization. We call this paradoxical phenomenon *authoritarian deliberation*.

We make three broad claims. The first is oriented toward democratic theory. We argue that authoritarian deliberation is theoretically possible: it combines authoritarian distributions of the power of decision with deliberative influence.

Our second claim characterizes China's regime type as *deliberative authoritarianism*: a regime style that makes common use of authoritarian deliberation. But why would an authoritarian regime resort to deliberative practices? Our broad hypothesis is functional: problems of governance in complex, multi-actor, high-information, and high-resistance environments give elites incentives to rely on popular input and even popular deliberation, especially when they believe they can use these instruments to provide the kinds of proximate and specific responsiveness that co-opt popular organizing and substitute for democratic empowerment. These arrangements can produce a unique relationship between authoritarianism and deliberation. Such functionally driven deliberative developments can be found in several nations other than China: governments in developed democracies have been innovating with new forms of participatory and deliberative governance over the last few decades in response to many of the same kinds of pressures.<sup>4</sup> What distinguishes China is that governance-driven deliberative politics is developing in the absence of regime-level democratization.<sup>5</sup>

Our third broad claim is that the contradictory features of authoritarian deliberation identify the dynamic qualities of Chinese political development that most interest democratic theorists. We illustrate

these dynamics by stylizing two possible trajectories of political development. One possibility is that deliberative mechanisms could provide stability for authoritarianism in ways that would make it compatible with complex, decentered, multi-actor market societies. Another possibility, less likely at the moment but possible in the future, is that if the regime were increasingly to rely on deliberative influence for its legitimacy, it might find itself locked into incremental advances in democratic empowerment. Under this scenario, democratization would be driven by problems of governance and led by the current experiments in deliberation, as opposed to regime change following the more familiar "liberal" model in which independent social forces propel regime-level democratization – the pattern most frequent in the democratic transitions of the last several decades.

In 2012, Xi Jinping assumed office as president of the People's Republic of China and general secretary of the Central Committee of the Communist Party of China (CCP). Xi's leadership has reversed much of the liberalization of the past several decades. Under Xi, the CCP has increased authoritarian controls and Party discipline and has heightened pressure on dissidents, universities, and public spaces. Chinese foreign policy is increasingly aggressive. Xi has also sought to reassert civilian control over the People's Liberation Army. He has embarked on a strong anticorruption campaign, probably motivated by concerns that corruption is a kind of "slow political suicide" of the regime itself, and certainly aimed at more control over quasiautonomous political power centers. Xi is using increasingly authoritarian controls to modernize the financial sector, to continue to reform state-owned enterprises, and, more generally, to modernize the economy so that it continues to perform well. These developments are not entirely surprising: the legitimacy

of the CCP depends heavily on economic performance, which in turn depends on removing roadblocks to growth – including entrenched and often corrupt interests – as well as developing the institutions of a modern market economy. The general pattern remains that of regime-level authoritarianism with no apparent signs of regime-level democratization.

Yet although the CCP under Xi has increasingly cracked down on “foreign ideas” in politics – liberal democracy and multiparty democracy in particular – one such idea has gained influence. The CCP continues to develop and deepen what they call *xie shang min zhu*, varying translated as “consultative democracy” or “deliberative democracy.” Except when referring directly to CCP documents, here we will use the term *deliberative democracy*, in keeping with the meaning of *xie shang*, which combines *xie* (doing things together, cooperation, and harmonization) with *shang* (talk, dialogue, consultation, and discussion). So democracy (*min zhu*) is modified by *xie shang*: discussing issues in the spirit of doing things together.

In November 2013, the Party Central Committee held its Third Plenum of the Eighteenth National Congress, in which deliberative democracy was given official encouragement in the form of a directive to lower levels of government – as is often the CCP’s style of rule. The mention of deliberative democracy (officially, “socialist consultative democracy”) in the Third Plenum document was no accident, as it was followed by documents from the Central Committee on February 9, 2015, with directions for “Strengthening Socialist Consultative Democracy,” and on June 25, 2015, outlining the role of the Chinese People’s Political Consultative Meeting in furthering deliberative democracy. Six ideas were especially prominent in these directives: 1) consultative democracy is an ordered way of absorbing wisdom and strength from the Chinese people to improve governance and

public policy, as has always been emphasized by the CCP’s Mass Line; 2) democracy is a way of ensuring that expertise is included in public policies; 3) consultative democracy is a key resource for developing legitimacy for Party leadership; 4) consultative democracy is a way of ensuring social harmony by providing places for the people’s problems and demands to be heard and channeled into the political system; 5) the long-term goal is to develop not just consultative democracy in a few places, but rather a “multi-institutional” and “complete system of consultative democracy”; and 6) the ultimate goal of developing consultative democracy is to ensure *min zhu*: “the people are the masters.”

These central directives are both a response to governance challenges and an incorporation of considerable political inventiveness, particularly at the local level. Local governments in China face an increasing number of petitions and social conflicts, as well as challenges from complex issues. The Beijing government, for example, now receives more than one thousand petitions each day! To manage the social conflicts these petitions represent, local governments have been introducing the ideas and practices of deliberative democracy, such as citizens’ juries. From 2014 to 2016, Baogang He took several trips to Beijing, Xiamen, Hangzhou, Shanghai, Guangdong, Zhejiang, Hebei, and Henan to investigate the recent trends in deliberative politics over the last few years. Interestingly, He found that the CCP’s program of “socialist consultative democracy” appears to be proceeding, even as authoritarian controls are increasing.

First, several organizations specifically designed for public deliberation have been set up. An empowered Deliberative Poll on local budgeting was held in Wenling in 2005. The process was so popular that it is now institutionalized; and studies suggest that it not only represents a high-quality de-

liberative process, but is also quite democratic, owing to representation through its near-random selection process.<sup>6</sup> A similar Deliberative Poll was held in the Puxi District of Shanghai in 2015.<sup>7</sup> The Haicang District of Xiamen established a center for public deliberation that organizes and executes all local deliberative forums. Aitu County in Jinling Province set up the “People’s Arbitration Center” through which citizens can call for a public hearing. This center oversaw a much-discussed live telecast of the public debate between villagers and local leaders on the issue of compensation.

Second, some procedures that empower citizens to participate in deliberative processes remain in place or have been further improved. In theory and often in practice, citizens have entitlements such as access to information and rights to agenda-setting. For example, petitioners can call for public hearings in Changshan, Hunan Province, or Haining, Zhejiang Province. In the Ronggui neighborhood government of the Shuide District in Guangdong Province, all social policies must be proposed and discussed through a citizen committee before being submitted to the Party Committee for further consideration. In 2013, Yanjin County in Yunnan Province introduced a new budgeting process in which both randomly selected citizens and elected representatives are able to make new proposals about the budget, with majority rule used to decide the result. One procedure introduced in Haining in Zhejiang Province in 2014, required the immediate release of the results of votes cast by citizen jurists on the spot. Moreover, citizen jurists can vote on whether a governmental organization has done an adequate job or whether the petitioners in a dispute have legitimate reasons for their petitions. Haining has established a pool of one hundred jurists comprising forty ordinary citizens, twenty locally elected people’s deputies, nine lawyers, nine mediators, and six social workers, includ-

ing citizens from other professional bodies like social psychology. The city guarantees that petitioners have the right to choose juries from this pool to consider petitions. It has also developed a new practice of moving public deliberation from official offices to the site of the dispute to help jurists better understand the issues.

Third, the topics discussed are increasingly substantive. Ten years ago, the issues put up for public deliberation were comparatively insubstantial, such as tourist development or developing cultural signage for a city. When Baogang He proposed a public forum, like citizens’ juries, to deal with the petition issue in 2005 in one Beijing workshop, it was immediately dismissed as “too idealistic”: the petition issue was viewed by officials as sensitive and complicated, so much so that it fell into the zone of national security concerns. Over the last few years, however, important issues like land appropriation, building demolition, and compensation have been hotly debated in public forums. There are other indications that local governments are beginning to use deliberative forums to manage increasing numbers of petitions from citizens. Local governments in Huizhou, Changsha, Huzhou, and Aitu have started to organize citizens’ juries to examine petition claims. Huizhou successfully organized a modified version of Deliberative Polling to solve the “married-out” women’s petitions for equal distribution of village wealth.<sup>8</sup> Haining has developed and improved a set of concrete procedures of citizens’ juries to deal with a series of the petition claims in 2014. Citizens’ juries introduced in Aitu County in Jilin Province between 2011 and 2015 have substantively reduced the number of petitioners. This causal effect is also indicated by public deliberation in Wenling and Huizhou. But there is not yet consensus on this issue, with some arguing that public deliberation may increase the number of petitioners.



The Chinese Legal Database (Peking University Law Database, *Beida Fabao*) provides another source of evidence. Documents between 2001 and 2016 show a rapid increase in the numbers of provisions on public hearings in municipalities, provincial capitals, and major cities up through 2010, after which the numbers plateau, though at a relatively high level (Table 1). These documents vary from informing the citizens' right to hold public hearings, to organizing, improving, and establishing procedures for public hearings, issuing public announcements on public hearings, and reporting the results.

Experiments with public deliberation in China appear to be increasingly genuine, substantive, inclusive, and often impressive. But their contributions to regime democratization remain an open question. The CCP continues to control these processes. Political elites typically define permissible spaces by issue, scope, and level of jurisdiction. Questions of representative inclusion, especially through elections, but even within deliberative forums that seek descriptive representation, are often submerged. That is, the pattern does not appear to be one of increasingly democratic deliberation, but rather one in which an increasingly authoritarian regime is also making greater use of deliberative mechanisms. Our challenge here is to make sense of this seemingly paradoxical development.

The combination of authoritarian control and deliberative mechanisms is not as paradoxical as it might seem once we sort out our terms of analysis. Among other things, democracy involves the inclusion of individuals in matters that potentially affect them, realized through equal distributions of empowerments in votes, the opportunity for voice, and related rights. Deliberation is a mode of communication involving argument and reasoning that generate persuasion-based influence. In many ways, "deliberation" requires "democracy." Good

deliberation requires protection from coercion, economic dependency, and traditional authority if deliberative influence is to function as a means of resolving conflict and legitimizing collective decisions. Democratic institutions usually provide these protections by limiting and distributing power in ways that provide both the spaces and the incentives for persuasion, argument, expressions of opinion, and demonstration. These protected spaces enable the formation of preferences, enable legitimate bargains, and, sometimes, produce consensus. Because democracy implies inclusion, collective decisions without it – no matter how deliberative – are likely to be experienced by the excluded as illegitimate impositions. Although highly imperfect, established democracies have, in addition to their elected representative bodies, a high density of institutions that generate relatively deliberative approaches to politics, such as politically oriented media, law courts, advocacy groups, ad hoc committees and panels, and universities with long-standing traditions of academic freedom. Whatever their other differences, all theories of deliberative democracy presuppose a close and symbiotic relationship between democratic institutions and deliberation.<sup>9</sup>

The clear and robust connection between democracy and deliberation has led democratic theorists to ignore the difficult problem of identifying deliberative influence under authoritarian circumstances. To be sure, authoritarian regimes are, on average, unfriendly to deliberative approaches to conflict. Decision-making is closed and strict limits are placed on spaces of public discourse, such as the press, publishing houses, the Internet, advocacy groups, and universities. Authoritarian rulers typically command; they do not invite the people to deliberate.

Yet democracy is contingently, rather than necessarily, linked to deliberative

Table 1  
The Number of Official Documents on Public Hearings in Selected Years, 2001 – 2016

Year	2001	2005	2006	2008	2010	2011	2012	2013	2014	2015	2016
Number of Documents	193	945	1,282	1,389	1,833	1,645	1,533	1,426	1,457	1,523	1,476

Source: Data compiled using Peking University Law Database, *Beida Fabao*.

devices and mechanisms. In theory, deliberation can occur under authoritarian conditions when rulers decide to use it as a means to acquire information by which to form policies and to gain approval from those affected without giving up powers of decision. To identify the theoretical possibility of deliberative politics under authoritarian conditions, we define deliberation as a persuasive influence generated by the give and take of reasons. Here we follow the sociologist Talcott Parsons’s conception of influence as “the capacity to bring about desired decisions on the part of the other social units without directly offering them a valued quid pro quo as an inducement or threatening them with deleterious consequences.”<sup>10</sup> Thus, we understand deliberation broadly as any act of communication that motivates others through persuasion “without a quid pro quo”: that is, in ways that are not reducible to threats or coercion, economic incentives, or sanctions based on tradition or religion, nor, we would add, the result of deceit or manipulation. Persuasion, in this sense, can include bargains and negotiations, assuming that the procedures can be justified by reference to claims to fairness or other normative validity claims.<sup>11</sup> In contrast, commands are backed by implied threats, quid pro quos, or the authority of position or tradition. Commands convey information, but the motivation for obeying the command is *extrinsic* to the communication. Deliberation, in contrast, generates motivations that are *intrinsic*

to the communication: the addressees are persuaded by the claims put to them.

Democracy, in many ways, favors persuasive influence over other ways of getting things done, but its root meaning is rule by the people. Democracy empowers those potentially affected by collective decisions so they can influence those decisions. The standard means of empowerment include the rights and opportunities to vote for political representatives in competitive elections and, on occasion, to vote directly for policies, as in the case of referenda or town meetings. In addition, democratic means of empowerment include representative oversight and accountability bodies; the rights to speak, write, and be heard; rights to information about public matters; rights to associate for the purposes of representation, petition, and protest; and due process rights against the state and other powerful bodies.<sup>12</sup>

Such empowerments can, of course, be highly institutionalized as part of competitive electoral systems. But democratic empowerments can also appear more generically in nonelectoral contexts. For example, freedom of information legislation in virtually all the developed democracies enables citizens to monitor public bureaucracies within the appointed parts of the political system.

Although both democratic and authoritarian regimes make use of persuasive influence, in a democracy, citizens usually have

the powers necessary to introduce deliberative claims into almost any issue at any level of government. In authoritarian regimes, political elites decide the subject and place of deliberative processes. In China, elites constrain public deliberation to the problems of governance they choose; they seek to avoid spillover into nonapproved arenas and topics. Despite regime control over the domains and agendas of public deliberation, Chinese citizens have limited kinds of democratic empowerments within specific domains of governance, ranging from the negative powers of protest and obstruction to the positive powers of some kinds of voice (in organized deliberative forums), citizen rights (like property rights), accountability (like the right to vote on the performance of village officials), and voting (like village elections, intraparty elections, and some direct voting for policies). In China, public deliberations 1) are usually more local than national; 2) favor issues related to municipal governance and economic performance; and 3) channel demand into Party-controlled forms of representation. These limited governance-focused empowerments do not add up to regime democratization. Rather, they contribute to an overall pattern of authoritarian deliberation by empowering some domain-limited and scope-limited forms of voice. They also produce functioning pockets of democracy constrained by geographical scope, policy, and modes of representation.<sup>13</sup> The conjunction of these resources with domain constraints maps the spaces of authoritarian deliberation that have been emerging in China.

China lacks, of course, the major institutions of electoral democracy, such as independent political organizations, autonomous public spheres, independent oversight and separations of powers, open-agenda meetings, and, most notably, multiparty elections. Although divisions of power among layers of government and between

agencies exist, there is no effective separation of power within governments and no independent oversight bodies (except where the judicial system operates with increasing autonomy).<sup>14</sup> Under President Xi, discussion of “constitutional” or “liberal” democracy is forbidden. The Chinese state still maintains a Leninist political structure. Democracy, Premier Wen Jiabao remarked about ten years ago, is “one hundred years away” – possible only when China becomes a “mature socialist system.”<sup>15</sup>

Thus, although we agree with political scientist Minxin Pei’s observation that democratic change has stalled in China and is now likely reversed at the regime level, when we look below the regime level, where we would normally expect democratization, we find significant changes in governance, producing a regime that combines authoritarian control of agendas with just enough democratization to enable controlled deliberation.<sup>16</sup> While many established democracies are seeing the emergence of governance-level deliberative bodies – China is not unique in this respect<sup>17</sup> – what distinguishes China is that these modes of participation are evolving in the absence of regime-level democratization.

Why would elites in an authoritarian regime decide to devise and encourage new deliberative practices and institute any low-level democracy, even a highly constrained version? We should not rule out normative motivations embedded in political culture. The post-Maoist, neo-Confucian culture of China imposes moral responsibilities on elites that are not trivial.<sup>18</sup> But even where such motivations exist, they would need to correspond with the strategic interests of powerful elites and with established institutions in order for such practices to evolve. From a strategic perspective, the CCP is gambling that opening some constrained participatory spaces will channel political demand into venues the Party can

control, containing popular protest and demands for regime-level democratization.

Behind this gamble is a functionalist story, which, in its broad outlines, is common to developing contexts. The strategic conditions for deliberative experimentation were probably the result of decisions in the late 1970s to justify the continuing rule of the CCP as necessary for economic development, in the face of disintegrating ideological justifications. Opening China to market-oriented development introduced three conditions under which deliberation could become necessary to maintain CCP rule: 1) increasing complexity of governance; 2) increasing numbers of veto players as a consequence of pluralized control over economic resources; and 3) changing popular expectations, especially within the growing middle class, driven by increasing levels of education and contact with the West. So although popular deliberative influence may be most reliably generated under democratic conditions, elites may have incentives to generate deliberative influence even without the incentives provided by democratic empowerments. As economist Albert Hirschman famously noted, the limited options for *exit* under one party rule are more likely to increase internal pressures for *voice*.<sup>19</sup>

These functional demands do not entirely explain authoritarian deliberative responses. But they do suggest a series of hypotheses as to why authoritarian regimes might adopt deliberative mechanisms.

First, and arguably most important, deliberative mechanisms can co-opt dissent and maintain social order. In the context of Hirschman's typology of *exit*, *voice*, and *loyalty*, the CCP faces functional limits with two of the three possible means of controlling dissent. Currently, the CCP controls much high-profile political dissent with an exit strategy, allowing dissidents to emigrate to the United States and other countries to minimize their domestic impact. Internally, the CCP purchases the loyalty of

Party members with senior positions and privileges. But simply owing to their numbers, neither the exit nor the loyalty strategy can be applied to the hundreds of millions of ordinary Chinese citizens who are quite capable of collective forms of dissent. Suppression is always possible and is used selectively against those dissidents who have politically mobilized potential or capacity but, as with all overtly coercive tactics, overuse produces diminishing returns. In the case of China, suppression risks undermining the growing openness that supports its development agenda, as well as drawing international attention that may also have economic consequences. Thus, voice is the remaining option for controlling dissent and maintaining order.

Second, deliberative mechanisms can produce information about society and policy, thus helping to avoid mistakes in governance. Authoritarian regimes face a dilemma with regard to information: Under conditions of rapid development, authoritarian methods are often at odds with the information resources necessary to govern. Elites need information not only about operational and administrative matters, but also about the preferences of citizens and other actors. Command-based methods, however, limit communication and expression, while increasing the incentives for subordinates to acquire and leverage information. Controlled deliberation is one response to this dilemma.

Third, deliberation can provide forums for business in a marketizing economy. In China, market-style economic development is greatly increasing the number and independence of business stakeholders with independent economic control over not only new investment, but also tax payments, which can make up the bulk of revenues for many local governments.<sup>20</sup> Pressures for deliberation thus often come from an increasingly strong business sector. Consultations among public and private inter-

ests have become increasingly institutionalized – a process reminiscent of the origins of many legislative assemblies in England and Europe, in which the middle classes bargained with their monarchs for liberty and political voice in exchange for their tax revenues.<sup>21</sup>

Fourth, public deliberative processes can protect officials from charges of corruption by increasing credible transparency. When local government revenues depend on business, officials are usually regarded as corrupt, and not only by the public, but often by their superiors as well. Officials can learn to use transparent and inclusive deliberative decision-making to avoid or at least reduce accusations that their decisions have been bought by developers and other business elites.<sup>22</sup>

Fifth, in situations in which decisions are difficult and inflict losses, deliberative processes enable leaders to shift responsibility onto the process and thus avoid blame. In China, the elites are recognizing that “I decide” implies “I take responsibility.” But “we decide” implies that the citizens are also responsible, thus providing (legitimate) political cover for officials who have to make tough decisions.

In summary, deliberative processes can generate legitimacy when ideological sources of legitimacy are declining for the CCP, and development-oriented policies are creating winners and losers. Legitimacy is a political resource that even authoritarian regimes must accumulate to reduce the costs of conflict and enforcement.

Our argument so far has been that the apparently puzzling combination of authoritarian rule and deliberative devices and mechanisms is conceptually possible and empirically extant in the Chinese case. Yet the Chinese case also highlights two very different possible developmental trajectories of deliberative authoritarianism: 1) deliberative politics effectively strengthen the

rule of the CCP, producing a new form of authoritarianism and 2) deliberative influence tends to undermine the power of authoritarian command, thus serving as a vector of democratization. These two tendencies are currently bridged by limiting the scope and domain of both deliberation and democracy so they can coexist with regime-level authoritarianism. In the short term, we expect deliberative authoritarianism to prevail. But deliberation-led democratization could be a longer-term possibility.

With the first possibility – deliberative authoritarianism – deliberative influence will increasingly function to stabilize authoritarian rule.<sup>23</sup> Under this scenario, authoritarian political resources are used to mobilize deliberative mechanisms. Deliberative influence is constricted in scope and agenda, and removed from political movements and independent political organizations. Deliberative experiments are localized and skillfully managed so as to prevent them from expanding beyond particular policy areas, levels of government, or regions. By this logic, if deliberation is successful at demobilizing opposition and generating administrative capacity, it could enable the CCP to avoid regime-level democratization. Authoritarian rule would undergo some important transformations, but these would fall far short of regime-level democratization. The current nascent form of deliberative authoritarianism in China would develop into a more consistent and sophisticated type of rule, under which cruder exercises of power would be gradually replaced with more limited, subtle, and effective forms. Political legitimacy would be produced by means of deliberative consultations, locale by locale and policy by policy, as a complement to the kind of performance legitimacy that depends on continuing economic development.

With the second possibility, contemplated by an increasing number of Chinese intellectuals and local officials, deliberative

institutions developing within authoritarian ones will gradually democratize the regime. New institutions would overlay old ones for the intended purpose of enhancing their effectiveness but, at the same time, would also transform their character in democratic directions.<sup>24</sup> If this trajectory were to materialize, it would be unique: we know of no examples of regime democratization as a consequence of progressively institutionalized deliberation. It is, nevertheless, a possibility. Although democracy and deliberation are distinct phenomena, they are, as we have pointed out, structurally related. Democratic empowerments – such as the rights of voting, association, and free speech – provide the space within which persuasion, argument, opinion, and demonstration can form preferences, enable negotiated bargains, and produce consensus. Democracy enables deliberation. But can deliberation enable democracy? Possibly. Deliberation provides legitimacy only if it has the space and inclusiveness to generate actual influence.<sup>25</sup> Under this scenario, four mechanisms could result in transformations in the form of rule.

First, deliberative legitimacy tends toward the inclusion of all the people affected by it. When other sources of legitimacy fail – ideology, traditional deference, or economic benefits – deliberation provides an alternative means of generating legitimacy. However, this legitimacy is “usable” by the state only when 1) those whose cooperation the state requires are included in the deliberations, either directly or through representation mechanisms, and 2) the participants believe they have had influence. As the methods of obstruction (both rights-based and protest-based) and exit are widely available in China, elites have incentives to expand empowerments to those affected by policies so as to enable more engaged, less disruptive interactions with citizens.

Second, experiences of consultative and deliberative engagement tend to change

citizen expectations. So too, democratic institutions are easier for regimes to initiate than to retract. Once the state grants the people voice and rights, they become part of the culture of expectations and transform supplicants into citizens.

Third, deliberation tends toward institutionalized decision-making procedures. The more deliberation is regularized, the greater the pressures for it not to be discontinued. Trends toward institutionalization can be driven by elite desires to retain control of political demand by channeling it into scope-specific and domain-specific venues. But they can also be driven by citizen expectations that, once established, elites will find difficult to reverse.

Fourth and finally, the logic of deliberative inclusion eventually leads to voting. Political elites in China often refer to the relationship between deliberation and consensual decision-making. This relationship is consistent with authoritarian deliberation. Yet when interests conflict, even after deliberation, elites may find it difficult to claim that their preferred decisions are the result of “consensus,” thus eroding the legitimacy of command authoritarianism. It is increasingly common for leaders in China to respond to deliberation that results in the clarification of conflict by holding votes in a public meeting, by submitting decisions to the community via referenda, or by deferring to voting by the deputies of local people’s congresses.

Our argument should not be viewed as a prediction that if China democratizes, it will be governance-driven and deliberation-led. Our argument is both more modest and speculative: by conceptualizing authoritarian deliberation and exemplifying its existence in China, we identify a potential trajectory of democratization that is conceptually possible and normatively significant. By distinguishing between democratic empowerments and deliberative in-

fluence, we can focus on the legitimacy-producing capacities of deliberation. In so doing, we hope to push the democratic imagination beyond familiar institutions

and toward the transformative practices out of which democratic innovations arise, wherever they might develop.

Baogang He  
& Mark E.  
Warren

#### ENDNOTES

\* Contributor Biographies: BAOGANG HE is the Alfred Deakin Professor and Chair in International Relations at Deakin University, Australia. He is the author of *In Search of a People-Centric Order in Asia* (2016), *Contested Ideas of Regionalism in Asia* (2016), and *Governing Taiwan and Tibet: Democratic Approaches* (2015).

MARK E. WARREN is the Harold and Dorrie Merilees Chair in the Study of Democracy at The University of British Columbia, Canada. He is the author of *Democracy and Association* (2001) and coeditor of *The Oxford Handbook of Deliberative Democracy* (forthcoming) and *Designing Deliberative Democracy* (with Hilary Pearse, 2008).

Authors' Note: This essay updates and builds on the arguments in Baogang He and Mark E. Warren, "Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development," *Perspectives on Politics* 9 (2) (2011): 269–289.

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