Democracy without Shortcuts: Can Deliberative Minipublics enhance Citizens’ Democratic Control?

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Introduction

Deliberative democrats are increasingly interested in institutional innovations such as citizens’ juries, citizens’ assemblies or Deliberative Polls that offer ordinary citizens opportunities to participate in quality face-to-face deliberation on political matters. This enables citizens to transform their raw opinions into genuine considered judgments. For this reason, many deliberative democrats propose inserting deliberative minipublics in the political process, even giving them decisional authority, in order to improve both the substantive and the democratic quality of political decisions. The most ambitious proposals envision replacing legislative assemblies of elected representatives with assemblies of randomly selected citizens. I disagree. As I will argue in what follows, what is missing in these proposals is any connection between the deliberative improvements of minipublics and the quality of deliberation in the public sphere that shapes actual public opinion. To the extent that deliberative minipublics are conceived of as a shortcut that bypasses public deliberation by the citizenry, they cannot deliver on their promise of enhancing the democratic quality of political decisions. Indeed, as a form of deliberation and decision-making by the few, not by the many, empowered minipublics offer a mistaken model for thinking about forms of citizen participation that can help current societies overcome their democratic deficits. Whatever the benefits of conferring decisional status on minipublics may be, they are unrelated to democratization (1). Whether or not they would increase the deliberative quality of the political system as a whole, they would diminish their democratic legitimacy. However, the point of the argument is not to reject the use of minipublics altogether or to claim that they cannot genuinely contribute to democratization. To the contrary, showing that conferring decisional status on minipublics would not be a democratic improvement is a first step in addressing the question of when and how minipublics could be used to lead to such

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improvement. I address this question in a second step by exploring different uses of minipublics that could improve the democratic legitimacy of current societies.

1. The Case against Empowering Minipublics?

Among the many political innovations developed in recent decades, deliberative minipublics such as citizen juries, consensus conferences or Deliberative Polls are particularly attractive to deliberative democrats. The reasons have to do with two features of minipublics that are of special significance for the ideal of a deliberative democracy, namely, their high deliberative quality and their democratic representativeness. Deliberative minipublics provide a space for high quality face-to-face deliberation where participants receive balanced information on some important political issue, they are exposed to a variety of relevant social perspectives, and they 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 a given issue 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 at hand. In fact, their views are often significantly transformed. Thus, it is plausible to assume that inserting minipublics 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 minipublics that makes them democratically significant, as compared to other deliberative forums. Participants in minipublics are randomly selected among ordinary citizens precisely with the purpose of getting a representative sample of the population. This explains why minipublics 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—a choice that alternative conceptions of democracy must make. Elite conceptions of democracy choose the filter over the mirror. They promise better political outcomes at the price of taking decision-making away from the people.

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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, yet at the price of endorsing majoritarian procedures that are insensitive to the quality of citizens’ preferences and which can thereby yield unreasonable outcomes (whenever those preferences are uninformed, self-interested, biased, manipulated, etc.). The contrast with these unattractive alternatives explains the attraction of proposals that confer decision-making authority to minipublics. Since minipublics combine the deliberative filter with the democratic mirror, conferring decisional status on them seems to offer us a unique opportunity to simultaneously improve the epistemic and the democratic quality of political outcomes.

Many deliberative democrats see the prospects of letting ordinary citizens make political decisions after they have had a chance to think about them under good deliberative conditions as a promising strategy for genuine democratic renewal and improvement. This democratic motivation drives many proposals to empower minipublics such that they either make binding political decisions directly or offer binding recommendations to decision makers—either political officials or the citizenry in cases of referenda. Since the minipublic is a microcosm of the people and their recommendations reflect what the citizenry would think about a political issue if they could deliberate under the best available conditions, in following the minipublics’ recommendation, so the argument goes, the citizenry would be following themselves. As Fishkin puts it, “if the people’s deliberations create the cues and the rest of the public follows the cues that could realize a form of deliberative popular control.” Unfortunately, I think that this impression is an illusion. In order to show this, let’s analyze the claim that citizens should endorse the minipublics’ recommendations because the participants are like them.

_Beware of Usurpers!_

One of the main attractions behind the proposal to confer decisional status on minipublics is precisely that their considered opinions are often different from (and presumably

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3 Among current proposals there is a split between those who endorse conferring decisional status on minipublics directly, so that their recommendations would be taken up by the relevant political authorities without any need to ask for ratification by the citizenry (e.g. in elections or in a referendum) and those who hesitate to go as far as to hand over actual political power (e.g. of legislation or constitutional interpretation) to minipublics. For examples of the first kind see e.g. Buchstein 2010; Fishkin and Luskin 2006; Fung 2007, 161, 165; Ghosh 2010; Goodin and Dryzek 2006, 225; Guerrero 2014; Landemore 2013; Leib 2004; Levinson 2010, 66; Mansbridge 2010, 60; McCormick 2011; O'Leary 2006; Pettit 2006; 2013; Talbott 2010. For examples of the second kind see e.g. Fishkin 2013, Zurn 2007. For an intermediate option that would leave it up to citizens whether to blindly trust the minipublics' recommendations see MacKenzie and Warren 2012.

4 J. Fishkin, _Democracy when the People are Thinking_, Cambridge, MA: MIT Press, 2018, p. 46.
better than) the raw opinions of the actual people. After all, if they weren’t, there would be not much point in conducting Deliberative Polls instead of regular polls. The opinions of the majority of the minipublic often differ from the opinions of the majority of the people. That’s the whole point of the deliberative experience, namely, that their “raw” views, opinions, and so on can be transformed into genuinely considered judgments. But this is precisely the problem! The disconnect between the views of the minipublic and those of the actual people induced by the effective intervention of the deliberative filter is precisely what undermines the mirror claim at the post-deliberative stage. Before the deliberative experience the mirror claim could plausibly be granted. Assuming the selection process was successfully conducted, it seems trivially true to claim that participants in the minipublic 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 to (more or less reliably) 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 whole purpose of getting deliberative minipublics organized in the first place!) 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 minipublics’ participants at the postdeliberative stage is the voice of “the people,” especially in those cases when they are on record as dissenting from the actual people. The populist temptation to speak for the people is common among political actors of all kinds, but the dissimilarity between them and the actual people helps to undermine such claims. By contrast, the similarity between minipublics’ participants and the people at the initial, pre-deliberative stage makes their dissimilarity at the postdeliberative empowered stage harder to spot. As such, they could become the ultimate usurpers! Let’s see why.

The Problem of Blind Deference

The democratic ideal of self-government requires some form of democratic control of political decision-making by the citizenry. A helpful way to evaluate the impact of different conceptions of democracy and their proposals for reform upon democratic control is to assess the extent to which they require or expect citizens to blindly defer to the decisions of others.\(^5\) Note

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\(^5\) Avoiding blind deference is only a necessary but not a sufficient condition for democratic control. Additional conditions such as inclusion, equality in voting, effective participation, enlightened understanding, final control over the agenda, etc. may also be necessary. For the classic analysis of these criteria see Dahl, *Democracy and Its Critics*, NH: Yale University Press, 1989, p. 221. I mention Dahl’s criteria just as examples. For my argumentative purposes, it is enough to show that a generalized expectation of blind deference by the citizenry is incompatible with democratic control.
that the question here is *not* whether citizens are required to *defer* to the political decisions of others. All representative democracies require citizens to do that. The question is whether they are expected to do so *blindly*. In representative democracies citizens are expected to delegate political decisions to their representatives, officials, and so on. However, to the extent that citizens maintain some capacity for control over these actors, they are not doing so *blindly*. By contrast, deference is blind if there is no such capacity for control. The difference between the two can be explained as follows. In the first case, one has *some* (defeasible) *reason* to assume that the political decisions endorsed by the agent to whom one is deferring have a higher than random chance of being those that one would have endorsed if one had thought through the issue with access to the relevant information under the best available conditions. By contrast, in the second case, one has no reason whatsoever to make this assumption. This criterion is helpful for evaluating the democratic promise of different conceptions of democracy and their proposals for institutional reform: the more such conceptions expect citizens to blindly defer to the decisions of others and thus accept the possibility of a permanent misalignment between the processes of opinion and will formation in which citizens participate and the actual policies to which they are subject, the less attuned these conceptions and proposals are to the democratic ideal of self-government.

In pluralist societies participants in minipublics on contested issues are likely to disagree. This is particularly apparent in the case of Deliberative Polls where participants are under no pressure to reach consensus. 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. Thus, it cannot be true of *all the people taken individually* that the majority of the sample is *like them*. In the absence of information about the specific reasons, values, interests, etc. behind the majority’s recommendation, no citizen has any particular reason to assume that either the majority or the minority recommendation coincides with what they themselves would have thought if they had deliberated. Indeed, precisely because the minipublics are a microcosm of the people as a whole, it cannot be the case that all of them are like me. Some will share my political views and others won’t. Thus, since there is no particular reason to assume that minipublics’ recommendations will invariably be those endorsed by the selected participants who happen to share my views (either before or after deliberation), I would have no more reason to defer to the views and political decisions of the minipublics’ majority than I have to defer to the majority of my fellow citizens in general. The reason is simple: the fact of majority support
for a political decision *adds nothing to the reasons in its favor*. Clearly, asking those who disagree to blindly defer to the majority of the minipublic simply because they have considered other reasons and reached a different conclusion would be plainly unjustified. But this also indicates what’s wrong with asking the same of undecided or uninformed voters.

The main problem with the proposal to blindly follow the minipublics’ recommendations is that such uses have a built-in *status quo bias*. Indeed, for all contentious issues about which the majority’s recommendations happen to be wrong, the extra boost blindly provided by uninformed citizens would give an unfair advantage to their recommendations while making the possibility of contesting them in public debate harder than it would otherwise be. Having yet another ‘blind force’ operating against the ‘force of the better argument’ in the overall deliberative system would, according to the standards of deliberative democrats, decrease rather than increase the deliberative system’s legitimacy. In light of these difficulties, a more legitimate alternative for passive (but conscientious) citizens would be to *abstain* from voting instead of blindly reinforcing the majority’s judgments. Or they may be able to use standard heuristics such as relying on the recommendations of groups whose political views they share or upon experts whose judgments they have reasons to trust in order to cast their votes. However imperfect, this type of deference at least is not *blind*, as it is in the case of deferring to the majority of a randomly selected group of citizens. In contrast to the former, the latter relies on blind deference precisely because non-participants do not have any reason to assume that either the majority’s or the minority’s recommendation is more likely to coincide with what they would have endorsed if they had been informed and thought about the issue. To the extent that such uses rely on blind deference they are inimical to the democratic ideal of self-government. By expecting citizens to *blindly defer* to the political decisions of a randomly selected group of citizens, the generalized use of minipublics for decision-making would decrease rather than increase the ability of the citizenry to take ownership over and identify with the policies to which they are subject, as the democratic ideal of self-government requires.

*The Promise of Better Outcomes*

Moreover, with respect to the substantive quality of outcomes, proposals which involve blind deference to minipublics’ recommendations make the same naïve assumption of elite democrats: namely, that it is possible for democratic societies to *keep the citizenry ignorant* (i.e. with their bias, prejudices and irrational attitudes intact) *while still achieving better political outcomes* or even approximating the goal of a deliberative society. As any political activist knows, political struggles
on significant issues ultimately depend on changing the underlying attitudes, beliefs, and value orientations of the majority of the population. Until their views and attitudes regarding the questions at hand are settled, no shortcut aimed at passing legislation without securing the relevant transformation of actual public opinion would be able to reach its goal. It is hard to see how we could get any closer to a deliberative democracy by adding institutional means that keep the citizenry ignorant while blindly following others. Deliberative minipublics offer a fascinating view of what can become considered public opinion in a political community at a given time. At their best, their recommendations reflect how far the majority of citizens can be brought from where they are now in light of their interests, values, attitudes, and so on. But political struggle and contestation must first do the heavy lifting in order to help the community to get there. There is no shortcut for transforming actual public opinion into considered public opinion. Transforming the opinions of a random sample of citizens won’t do.

What is missing in proposals to empower minipublics for political decision-making is any connection between the deliberative improvements of minipublics and the quality of deliberation in the public sphere that shapes actual public opinion. Could deliberative minipublics be used to improve deliberation in the public sphere? If so, what types of political uses would be needed and how could they be implemented?

2. The Democratic Case for Political Uses of Minipublics

As we have seen, the mirror claim is an essential element in democratic defenses of proposals to institutionalize minipublics. However, in order to avoid the problematic ambiguities that we analyzed in the previous section, it is important to avoid identifying minipublics’ participants with “the people.” 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. Minipublics are no exception. Their members tend to disagree in their considered opinions. Thus, even at their best, what the recommendations of minipublics 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

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6 This tendency is particularly visible in Leib’s proposal for a popular branch of government modeled on minipublics, where the voice and will of “a group of stratified random samples of laymen” (Leib 2004, 72) is routinely identified with the voice and will of “the people” (see e.g. Leib 2004, 66).
recommendation, deliberative polling always reflects the percentage of the majority and of the minority opinion on the political issue in question. But even if one recognizes that minipublics’ outcomes only reflect the considered opinion of the majority of the people is still easy to see what is so 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 us, citizens? 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 minipublics, let me mention that in order to be of any use to the citizenry, citizens would need to be familiarized with the minipublics’ workings, so that they would understand the political significance of the type of information they reveal. Different types of deliberative minipublics have different characteristics, but for simplicity of exposition I will take Deliberative Polls as paradigm example. My analysis of possible functions that minipublics 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 minipublics, but it does assume that citizens would have become sufficiently familiar with them as to be aware of the higher quality of deliberation they enable in terms of representativeness (inclusion and diversity), access to information, independence, impartiality, orientation towards the public interest, and so on.

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 democratic society. It is in the context of this struggle that the information provided by minipublics acquires its political significance.

The alignment or misalignment between majority opinion, public policies and minipublics’ recommendations offers an interesting way of organizing the potential political uses of the latter so that their benefits or drawbacks can be better assessed. Following this idea (and for the purpose of simplicity) I distinguish the following four general categories under which the many potential uses of minipublics can be subsumed: empowered, contestatory, vigilant and anticipatory uses of minipublics. My brief analysis, however, does not aim to cover the
innumerable applications of minipublics currently under discussion in the vast empirical literature on applied deliberative democracy or to answer empirical questions of institutional design for each of these types of uses of minipublics. My aims are more modest. I analyze some possible political uses of minipublics 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 in each case.

According to deliberative democrats, the democratic legitimacy of political decisions requires an ongoing alignment between considered public opinion and the laws and policies to which citizens are subject. We can represent this idea schematically as follows:

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Actual Policies
   /
  /  
Actual Public Opinion  ➔  Considered Public Opinion
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Assuming that minipublics may enable us to find out what considered public opinion on some political issue would be if the public had the opportunity to deliberative under the best (available) conditions, we can treat their recommendations as a proxy for considered public opinion in order to analyze their potential uses:

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Actual Policies
   /
  /  
Actual Public Opinion  ➔  Minipublics’ recommendations
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Obviously, if this condition were always met minipublics would be redundant, i.e. useless. But minipublics are particularly interesting to deliberative democrats precisely because often the views of their participants undergo significant, at times drastic transformations, which leads to a mismatch between actual public opinion and minipublics’ recommendations. In that type of

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For good overviews of empirical applications of minipublics see e.g. Grönlund, Bächtiger and Setälä 2014; Smith 2009, 72-110. For a comparative empirical analysis of the potential impacts of minipublics in different kinds of states see Dryzek and Niemayer 2010, 155-76.
situation, the question arises as to what would be the right way to proceed, according to the criteria of deliberative democracy:

In that type of scenario, one option would be to simply ignore the minipublics’ recommendations and follow actual public opinion, in spite of having good reasons to assume that the citizenry would actually have a different opinion if they were better informed and had deliberated about the policies in question:

Obviously, if one follows this option political decisions would fail to meet the criterion of democratic legitimacy that deliberative democrats endorse. For, according to this criterion, political decisions should be sensitive to the quality of the reasons in their support and thus should track considered public opinion and not simply actual public opinion—however misinformed, manipulated or otherwise defective it may be. The obvious drawback of this option explains why so many deliberative democrats speak in favor of empowering minipublics to make political decisions.

1. Empowered Uses of Minipublics:

Minipublics can be empowered in different ways. They may have the authority to make political decisions directly or to issue (more or less binding) recommendations to those with decision-making authority (e.g. political officials or the citizenry in cases of referenda). This
option may seem more attractive than the previous one, but it does not offer a solution to the mismatch problem:

\[\text{Actual Policies} \quad \neq \quad \text{Actual Public Opinion} \quad \neq \quad \text{Minipublics' recommendations}\]

By following this path political decisions would still fail to meet the criterion of democratic legitimacy that deliberative democrats endorse. Over time the misalignment between citizens’ political opinion and will, on the one hand, and the laws and policies to which they are subject, on the other, would predictably increase instead of decreasing. As discussed before, by being required to blindly defer to the political decisions of others citizens would hardly be able to see themselves as participants in a project of self-government as the democratic ideal requires. But are we stuck with these two equally unattractive options? Or are other, alternative uses of minipublics that could help improve the quality of public deliberation so that the citizenry can reach a considered opinion on the political decisions to which they are subject? With this participatory perspective in mind, let’s look again at the different scenarios in which actual public opinion and the minipublics’ recommendations on some political decision differ so that we can explore the possible uses of minipublics from that perspective.

2. Contestatory Uses of Minipublics:

As mentioned, one case that motivates proposals for inserting minipublics into the political process is when the majority opinion reached after deliberation by the minipublic differs 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 is even more important for an account of the democratic significance of this type of information. 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 could give minorities a powerful tool to challenge consolidated majorities in their own terrain, so to speak. It is one thing for a minority to simply claim that they are right and the majority is wrong. It is quite another to be able to provide some independent evidence that indicates that the majority of a representative sample of the population actually endorsed 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 minipublics could help minorities challenge consolidated majorities and hold them to account. The use of minipublics for political and legal contestation can thereby serve the important function of protecting the democratic value of “non-tyranny”—to use Fishkin’s expression.8

As mentioned above, a distinctive and very valuable feature of minipublics is the better ability to secure effective inclusion of marginalized voices and social perspectives. By virtue of achieving higher statistical representativeness, minipublics offer a mirror of the people that is unmatched by any other available mirror that allows the citizenry see itself. The mirrors offered by other institutions in the political system (from the judiciary to the legislature, the media, the public sphere, etc.) tend to be highly exclusionary and therefore reflect back a quite distorted image of the people. Even in democratic societies it is very hard to ensure effective inclusion in public political debate or even in voting, given the factual disenfranchisement of marginalized groups and the difficulties for providing a proper hearing to their interests and views.9 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.10 This means that even democratic political systems lack venues for finding out what would happen if the general public 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 minipublics provide, minipublics could be used by organized social groups in their political struggles to

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8 See Fishkin 2009, 60-64. Although I use Fishkin’s expression, in my view non-tyranny is a constitutive element of political equality whereas Fishkin treats them as independent values. See also Fishkin 2018, 23-27.
9 See Young 2000.
10 See Mansbridge 1980.
contest the views of consolidated majorities on specific political issues. The more the minipublics’ opinions differ from actual majority opinion the more this should signal the need to examine the available information and the relevant perspectives to the public 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 minipublics’ opinions as decisive or authoritative. To the contrary, the function of minipublics should not be to shut down political debate, but rather to reignite and facilitate the ongoing public debate on contested political issues.11 Minipublics can enrich those wider debates by enhancing the voices of silenced or marginalized groups and perspectives in the public sphere. But precisely because the recommendations of the minipublic differ from actual public opinion, this signals that what is needed is to transform public opinion accordingly. This means that political actors must address the minipublics’ recommendations to both officials and the public with the aim of shaping ongoing political debate in the public sphere.

Minipublics could be inserted in the political process not only for the purposes of political but also legal contestation. There are many possibilities here but let me just mention two. Civil society groups could include minipublics’ recommendations when filing amicus briefs to the Supreme Court as independent evidence for challenging the assumption that raw public opinion actually reflects those views “deeply rooted in the country’s history and traditions.”12 Again, I am not suggesting that the evidence in question would or should be taken as authoritatively settling the issue at hand. Still, the special features of minipublics (their independence, impartiality, representativeness, etc.) confer on their recommendations a status of independent evidence that no other evidence that parties may provide from like-minded sources (groups, organizations, etc.) can match. After all, if minipublics are working as intended, there is nothing any party can do 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 minipublic is routinely convened to provide the Supreme Court with additional information on what the considered majority opinion of the country on some contested issue may be. Again, there is no need to claim that this information should be authoritative about the right way to interpret constitutional rights.

11 For a defense of this claim in the context of an interesting analysis of different uses of minipublics see Curato and Böker 2016.
12 I am using here the formulation of the “deep roots test” that the US Supreme Court uses as its substantive due process standard. For a critical analysis of that standard see Toro 2009.
After all, the considered opinion of the majority may still be unduly hostile towards 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. Precisely because minipublics 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.

3. Vigilant uses of minipublics

The analysis of contestatory uses of minipublics was based on cases when the minipublics’ recommendations differ from actual majority opinion on some political issue. The driving idea was that the more minipublics’ recommendations differ from actual public opinion the more this should signal to the public the need to scrutinize public opinion, i.e. to reexamine the available information and reconsider the soundness of the views and arguments supported by the majority culture on the issue in question. The contestatory uses assume a scenario in which actual public opinion is divided between some consolidated majority and a disagreeing minority on the issue in question. In those cases, a genuine transformation of political opinion and will among the citizenry would be necessary to reach a settled view on the political issue at hand. However, this does not have to be the case. The misalignment between actual public opinion and the minipublics’s recommendation may be simply due to the defective deliberative quality of the political system and the media (e.g. the presence of misinformation, manipulation, fake news, etc.). In such cases, the misalignment between the minipublics’ recommendation and actual public opinion should signal to the citizenry that the political system is not responsive to their needs to have access to quality information, variety of perspectives, arguments pro and con, and so on so that they can reach a considered judgment on the issue. This is particularly important in cases when the citizenry is called upon to make the decision in question (e.g. in a referendum). The Brexit case comes to mind here. According to a recent survey, 58% of EU

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13 The level of empowerment of minipublics 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 necessarily endorse, but simply to indicate that political empowerment comes in degrees, so for any possible use of minipublics the level of empowerment can range from the weakest option of conferring upon them a merely non-binding 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.
citizens and 77% of UK citizens have become more politically and socially active after Brexit. Among the top changes in social/political behavior they report as a consequence of the Brexit referendum (besides joining a political party and participate in demonstrations) are the need to stay informed, higher interest in the news, media/politicians mistrust, concerns about misinformation and manipulation and proactive critical self-information. Assuming minipublics had been institutionalized long before the referendum so that the public was already familiar with their functioning it is easy to imagine that if a minipublic’s recommendation on Brexit had significantly differed from majority opinion before the referendum this could have helpfully signaled to the public the needed to be vigilant and to review the quality of their information on the issue before making the decision rather than after.

Similarly, but perhaps even more significant are cases when minipublics’ recommendations coincide with the majority opinion but differ from actual policy:

![Diagram]

This type of mismatch should also signal to the public the need to scrutinize the political system. The more minipublics’ recommendations are aligned with public opinion but differ from the actually enacted policies the more this should signal to the public that the political system is not properly responsive to their views, interests and policy objectives. The evidence provided by minipublics could draw additional support from the general public to social and political groups mobilized against whichever forces are impeding the proper working of the feedback loop between process of opinion and will formation in which citizens participate and actually enacted policies. By enhancing the responsiveness of the political system to the interests, views and policy objectives of the citizenry, such critical or vigilant uses of minipublics would serve the important political function of enhancing democratic control. Whereas the contestatory uses would strengthen political equality in the horizontal dimension (i.e. between socially powerful citizens and less powerful or marginalized citizens), the vigilant uses of minipublics would strengthen political equality in the vertical dimension (i.e. between ordinary citizens and political officials).

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One interesting possibility would be to use minipublics with the aim of enhancing the agenda-setting power of ordinary citizens so that they have more effective influence in the selection of policy objectives that the political system must act upon or respond to. Citizens could be regularly polled to rank important political issues that need to be tackled but have not been tackled and minipublics could then be convened to make recommendations concerning the top ranked issues. The main contribution here would be to provide public visibility to the issues in question. This would be particularly helpful concerning political issues that elected officials may see as intractable or not worth confronting. In those situations, officials do not have any incentive to tackle them and such issues 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 example of policy proposals for enforcing background checks on gun sales in the US, which are supported by 85% of the population, but cannot make it through the legislature.

Situations of political gridlock or when political institutions are captured by powerful interest groups are one of the key motivations behind proposals to confer decisional status on minipublics, so that they can get done what the legislature (perhaps even the judiciary) is demonstrably unable to do with respect to some political issues. As Leib argues in the context of his proposal to create a popular branch of government modeled on minipublics, empowered minipublics 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. What may be less clear is what kind of contribution minipublics could possibly make in those situations if they do not enjoy decisional status. If the citizenry overwhelmingly endorses some political solution already, organizing a minipublic is likely to lead to the same opinion or recommendation that the citizenry already holds, and thus would seem to fulfill no function at all.

However, the fact that minipublics offer 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

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16 The latter include political issues where elected officials have a clear conflict of interest, e.g. choosing among electoral systems or drawing electoral boundaries. Regarding this type of questions, vigilant uses of minipublics would most obviously serve the function of strengthening popular oversight of public officials especially if they were empowered to require public officials to appear before them to testify. See Goodin and Dryzek 2006, 235-36; Dryzek and Niemeyer 2010, 169; Ferenjohn 2008, 196-7 (in Warren, ed. Designing Deliberative Democracy, Conclusion)

dimensions that allegedly 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. Consequently, these claims are important allegations that the citizenry should always carefully consider. For if true, following the political will of the majority in those cases could be extremely harmful. In public political debates of this kind, the contribution of minipublics could be invaluable to the citizenry. For it would force the political system to provide the needed information so that minipublic’s participants can engage in an independent examination of the soundness of the arguments in question. Whatever the minipublics’ conclusions may be, their availability would be a tremendous improvement over the status quo. Indeed, for the citizenry it would be a win-win situation. If the arguments were right, they would have independent evidence that may 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. If such uses of minipublics were institutionalized on a regular basis they would strengthen democratic control in the specific way required by the ideal of a deliberative democracy. On the one hand, they would help improve the quality of public deliberation and thus contribute to the formation of considered public opinion and, on the other, they would strengthen the link between public deliberation and actual political decisions thereby enhancing the responsiveness of the political system to the considered opinions of the citizenry, as the democratic ideal of self-government requires.18

4. Anticipatory Uses of Minipublics19

18 This type of institutional innovation would help overcome a potential limitation of participatory approaches to deliberative democracy that focus on improving the quality of deliberation in the public sphere, as the one I defend here. J. Cohen offers a brief explanation of the main concern with macro deliberative approaches when he discusses two different strategies for increasing deliberation and mass participation: “The first [strategy] aims to join deliberation with mass democracy by promoting citizen deliberation on political matters, in what Habermas calls the ‘informal public sphere’, constituted by networks of associations in civil society...Much of the attractiveness of this view...hinges first upon the deliberativeness of discourse in the public sphere and then upon the strength of the links between such deliberation and the decisions of legislative bodies and administrative agencies. But because dispersed, informal public deliberation and public policy are only loosely linked, a more participatory and deliberative informal public sphere may have little impact on decisions by formal institutions. Citizen participation in the informal public sphere, then, may be of limited political relevance, and the marriage of reason with mass democracy may proceed in splendid isolation from the exercise of power. To be clear: I am not here objecting to this first approach, only pointing to a concern and a possible limitation.” (Cohen 2009, 343-344)

19 I take the idea of anticipatory uses of minipublics from MacKenzie and Warren 2012. However, my participatory interpretation of this use differs from theirs in that I do not consider it to be a trust-based use. According to my interpretation the function of anticipatory uses of minipublics is not for the public to blindly entrust minipublics with the task of reaching a considered public opinion on the political issues in question so that these opinions may then be directly communicated to executive agencies or other public officials. To the contrary, from a participatory
So far, I have considered two different forms of misalignment between majority opinion, public policies, and minipublics’ recommendations. But there is another form of misalignment that can be even more worrisome from a democratic perspective. These are situations when the public does not have any opinion at all about the political issues in question.

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

This type of public ignorance can have very different roots. It may be that the policies in question concern technological innovations with unpredictable consequences so the public does not know what may be at stake. Think of new gene editing technologies such as CRISPR, which may permanently alter the human genome. Or it may be that the reason the public does not know is because the political decisions in question have migrated 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.

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20 See e.g. Perkel 2015.
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 having domestic policy implications that may have severely harmful consequences but which will be much harder to reverse, given the number of countries involved. Transnational negotiations lack the visibility in the domestic public sphere that would be needed to generate a political debate in which citizens could either endorse or reject the policies in question.\textsuperscript{21}

Under current conditions of globalization, inserting minipublics into transnational political processes could have, in my opinion, the highest democratizing impact.\textsuperscript{22} From a participatory perspective, the function of minipublics would not be to directly shape the policies in question, but to enhance visibility on what is at stake in each case so as to enable a proper 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 for impact on citizens’ well-being, fundamental rights and interests is so high that they need to know 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 where the stakes are too high for the citizenry to remain ignorant, minipublics would fulfill the crucial political function of enhancing democratic control. Instead of becoming another shortcut for bypassing the citizenry, minipublics 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 in collective decision-making, as the democratic ideal of self-government requires.

\textsuperscript{21} 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 Rummens 2012, 29-41.

\textsuperscript{22} There are many different institutional ways in which this could be done. One possibility would be to require legislative standing committees overseeing major transnational agreements to convene some form of minipublic in advance of important binding decisions. Their empowerment could vary from merely indicating whether or not public debate is needed to actually setting the agenda on the specific issues in need of public debate (e.g. identifying specific environmental or ethical concerns, establishing proper priorities in light of significant tradeoffs, etc.)