Democracy When the People Are Thinking:
Reflections on Deliberative Designs, Micro and Macro

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All over the world democracy is in disarray. Approval ratings for key leaders and institutions are vanishingly low. The public distrusts the policy elites, and the elites fear the angry voices of populism. The very idea of democracy is under threat from supposedly benevolent forms of authoritarianism like the Singapore model or what is held to be the “China model” (Bengardi 2015; Bell 2015), and also by the stealth transformation of democracy via what’s called “competitive authoritarianism” (Levitsky and Way 2002) by which democratic forms are turned into non-democratic processes. Democracy appears to deliver deadlock and these other systems appear to deliver efficient results.

Is the solution more democracy or less democracy? In my view, it depends on what kind of democracy. A certain form of democracy, often invoked, but almost never implemented, could actually help address many of our problems. That form of democracy, which may seem utopian or unrealistic, I call “deliberative democracy by the people themselves.” It seems utopian because we lack institutional designs that would help realize it. There are, however, ways to implement it that are eminently practical.

Consider four forms of democratic practice:

Competitive Democracy
Elite Deliberation
Participatory Democracy
Deliberative Democracy by the People Themselves.

Almost all current systems are some combination of the first three in various admixtures. The fourth is primarily invoked rhetorically. Its actual practice harks back to ancient Athenian institutions and, on occasion, public deliberation in times of fundamental change, sometimes called “constitutional moments” (Ackerman 1991).

Let’s briefly identify these forms in order to highlight what is distinctive about the fourth, which will be our main subject. By Competitive Democracy I mean the notion of democracy based on electoral competition, typically between political parties. Most influentially, this approach was championed by Joseph Schumpeter and more recently by Richard Posner and others (Schumpeter 1950; Posner 2003; Shapiro 2003). This approach to democracy is in fact the one most widely accepted around the world.

On this view democracy is not about collective will formation, formulating and expressing the “will of the people,” but rather, it is just a “competitive struggle for the people’s vote” to use Schumpeter’s famous phrase. Legal guarantees, particularly constitutional ones, are designed to protect against tyranny of the majority. Within that constraint, the key desideratum is competitive elections. On Schumpeter’s view, it is a mythology left over from ill-defined “classical theories” of democracy to expect the will of the people to be meaningful. Electoral competition, without any constraints on whether candidates or parties can mislead or bamboozle the voters to win, is what matters on this view.

Schumpeter argues that we should not expect a “genuine” public will, but rather “a manufactured will.” “The will of the people is the product and not the motive power of the political process.” Further, “the ways in which issues and the popular will are being manufactured is exactly analogous to the ways of commercial advertising.” In fact, he believes that competing parties and interest groups have “infinitely more scope” on public issues than in commercial competition to manufacture the opinions they hope to satisfy (Schumpeter 1950). Competitive democracy, at least on Schumpeterian terms sees little likelihood and little need for deliberation by the people.

Some advocates of competitive democracy add important provisos about liberties of thought, expression and association as well as other due process rights familiar in constitutional democracies. A variant often termed “liberal democracy” is clearly an improvement from the standpoint of key democratic values. It has sometimes been given the name “polyarchy” (Dahl 1971; 1989). However, these additional rights do not adequately address the problem of primary concern here—the problem of collective will formation. The very rights of free expression and association that we cherish in western democracies can be used for the manipulation of public opinion and the spread of disinformation, when it is in someone’s electoral interest (or that of third parties). What is the “will of the people” when the public has been bamboozled or manipulated?

Our republic, in the United States, was born with a different vision from that of modern polyarchies relying on party competition. Deliberation was central, but by representatives, in the indirect “filtration” championed by Madison in his design for the US Constitution. The constitutional convention, the ratifying conventions, the US Senate were all supposed to be small elite bodies that would consider the competing arguments on the merits. They would “refine and enlarge the public views by passing them through the medium of a chosen body of citizens” as Madison famously said in Federalist 10 discussing the role of representatives. Madison held that the public views of such a deliberative body “might better serve justice and the public good than would the views of the people themselves if convened for the purpose.” This position like the last one, avoids embracing mass participation as a value. The passions or interests that might motivate factions are best left un-aroused. The Founders after all, had lived through Shays’ rebellion and had an image of unfiltered mass opinion as dangerous. If only the Athenians had had a Senate, they might not have killed Socrates.¹

If modern legislatures functioned like Madison’s vision of the Senate, there would be far less of a case for new institutions to bring citizen deliberation into law-making. The
representatives would deliberate on behalf of the people. There would not be a deliberative deficit at the legislative level to respond to. But the emergence of political parties, direct election of the Senate and party discipline in legislatures, not only in the US but around the world, has greatly limited the opportunities for deliberation by representatives. They are constrained to follow the “party whips” and only in acts of political courage or when there are explicitly open or free votes of conscience do they get to follow their deliberative preferences rather than the party line.

By Participatory Democracy, I mean an emphasis on mass participation combined with equal counting of votes of those who participate. While many proponents of Participatory Democracy would also like to foster deliberation, the essential components of the position require participation, perhaps prized partly for its educative function (Pateman 1976 and 2012) and equality in considering the views offered or expressed in that participation (even if that expression is by secret ballot). Advocates of Participatory Democracy might also advocate voter handbooks, as did the Progressives, or perhaps new technology for voter information, but the foremost priority is that people should participate, whether or not they become informed or discuss the issues. Many states in the US combine some explicit participatory mechanisms, such as ballot propositions, with representative government. Various mixtures of these forms of democratic practice are common.

A fourth position, which I call Deliberative Democracy, attempts to combine deliberation by the people themselves with an equal consideration of the views that result. One method for implementing this twofold aspiration is the deliberative microcosm chosen by lot, a model whose essential idea goes back to ancient Athens for institutions such as the Council of 500, the nomothetai (legislative commissions), the graphe paranomon and the citizens’ jury. Modern instances of something like this idea include the Citizens’ Assemblies in British Columbia and Ontario and what I call the “Deliberative Poll” (Fishkin 1991, 2009; 2018) a design we will return to below. A second possible method for implementing deliberative democracy by the people themselves would involve some scaled up institution of mass deliberation. Instead of a random sample, it would somehow engage the entire population. Bruce Ackerman and I have discussed designs for such an institution in Deliberation Day (Ackerman and Fishkin 1994).

These four forms of democracy highlight the limited possibilities currently available for deliberative politics and law-making. Competitive democracy does not incentivize deliberation. Candidates do not wish to win the argument on the merits as much as they wish to win the election. If they can do so by distorting or manipulating the argument successfully, many of them are likely to do so. Representatives elected through such processes are looking ahead to the next election while in office. They have only occasional opportunities to deliberate on the merits because of party discipline. Participatory democracy, at least at the scale of ballot propositions is no more deliberative than party competition based mass politics. And the fourth model, deliberative democracy by the people themselves lacks an institutional home for any connection to law-making. The lack of deliberation in our current institutions of competitive, representative and participatory democracy provides an opening for arguments that might institutionalize deliberation.
Efforts at democratic reform have long been entangled in an apparently forced choice between two fundamental values—political equality and deliberation. Around the world, changes in democratic institutions, both formal and informal, have brought "power to the people" but under conditions where the people have little reason or effective incentive to think very much about the power they are supposed to exercise. A vast social science literature documents that the mass public in almost every polity lacks information or even pays much attention to political matters (for an overview see Delli Carpini and Keeter 1997). And when it does, it tends to engage the side of the argument it finds most congenial. The like-minded share information, or mis-information or even congenial but fake information, and never get engaged with the thinking of those they disagree with. Such a public is easily subject to manipulation by the mechanisms of one-sided persuasion developed for advertising and for propaganda. In our long journey of bringing power to the people--through mass primaries, referenda, recall elections, direct election of Senators in the US, public opinion polls and other forms of public consultation--we have empowered a public that generally lacks the information and attention that would be required for applying the value of deliberation in making those choices. We reform politics in the name of democracy, but it is a thin democracy that, even at its best, prizes political equality (equal counting for those who show up) without deliberation. Such a democracy risks substituting the whims of the people for the will of the people and the methods of Madison Avenue for the values of James Madison.

**Four Criteria for Popular Control**

In democracies around the world, policy makers routinely invoke “rule by the people”, but is this more than symbolic? Leaders win elections and claim “mandates” from the people, but in what sense, or to what degree are the people in control of the policies they must live with? Or to what degree is it realistic that they should be? A great deal of research supports the picture of a public that is mostly inattentive, not well informed and only episodically aroused. How can such a public exercise any significant control? Consider further that if leaders manipulate or deceive the public then in what sense is the public exerting control over leaders even when the leaders are doing what the public appears to desire? Or might it be the other way around--leaders exerting control over the public?

Even when voters sincerely and thoughtfully vote for a package of policies, without manipulation, they are often stuck with elements of the package that can be profoundly unpopular, a pattern Dahl once identified as typical of “minorities rule” rather than majority rule. These are only a few of the obvious challenges facing democratic aspirations in the real world of large-scale modern polities. Before we pursue the constructive remedy proposed here—various doses of what we will call deliberative democracy--we need to get a handle on the current infirmities of the system as we live it now.
Begin with some criteria. While each is so obvious that it hardly requires explicit statement, the challenge is to satisfy all four. Our question is: What would it mean for the members of the mass public actually to have a significant role in ruling themselves? Consider these four criteria for popular control:

**Inclusion:** all adult citizens should be provided with an equal opportunity to participate.

**Choice:** the alternatives for public decision need to be significantly different and realistically available.

**Deliberation:** the people need to be effectively motivated to think about the reasons for and against competing alternatives in a context where they can get good information.

**Impact:** the people’s choices need to have an effect on decisions (such as who governs or what policies get enacted).

**Inclusion.** The history of democratic reform, over a long time horizon, is a story of greater inclusion. In ancient Athens and other ancient democracies, only adult male citizens could vote. Women, *metics* (resident non-citizens), and of course slaves could not. In the US, the boundaries of the franchise have been the subject of great political struggle. Waves of expansion, often following wartime, brought the vote to citizens regardless of property ownership, race, and gender. But the expansion of the franchise to African-Americans in particular drew a fierce reaction: whites re-disenfranchised them under Jim Crow for most of a century, largely through devices such as poll taxes and literacy tests, which purported to promote competent voting and prevent fraud. The question of whether some voters (such as black voters and poor voters) were competent enough to deserve the franchise has been contested—and misused— for most of American history.

John Stuart Mill approached the question from a different angle: he famously argued for wide inclusion, including the equality of women, but also advocated “plural voting” by which more voting power would be given to those who were better qualified. Thus, conceptually, we can separate the baseline question of inclusion from the further question of whether all are included on an equal basis. In the history of democratic reform in the U.S., one of the most consequential moments was the Supreme Court’s intervention in the “one person one vote” cases, which struck down schemes by which small rural populations could elect more representatives than far more populous cities. Such “dilution” questions can arise even where everyone enjoys the same baseline right to vote. Here, however, we will assume inclusion is implemented on a basis of equality for all those given membership in the polity. Still, in almost all societies there will be visitors, resident citizens of other countries, children and others who may not qualify. In the United States, almost all states prevent prisoners from voting, and many also disenfranchise ex-felons long after their sentences are completed. Issues of competence have
sometimes been invoked to rationalize exclusion or some scheme of unequal rights. Here we will assume that inclusion means inclusion of all adult citizens on the basis of equality.

All adult citizens where? Of what? For our discussions here we will take the *boundaries* of the nation state as given. Democratic theory requires a demos, a population that is to be included as members in the democracy. Robert Goodin observes “until we have an electorate we cannot have an election. But that is not just a temporal observation, it is a logical truth.”\(^{11}\) Brian Barry illustrated the difficulty of applying majority rule to try and settle the boundaries of who is to be included by considering the Irish question in the early twentieth century. He inferred likely majorities for conflicting results within the UK as a whole, within Ireland (the whole island), and within the six provinces that became Northern Ireland. The decision as to who is included easily determines the democratic result, not the other way around.\(^{12}\)

If we consider the boundaries of the polity as settled, what is the mode of inclusion for its members? So far we have talked about *who* is included, but not *how*. We have only said “equally.” But equally in what way? The most common form of inclusion by far is the equal right to vote. This form of inclusion ends up employing mass participation as the means for realizing political equality in the mass public. This is encouraging for the realization of two of our three core principles—political equality and participation. But in the large scale nation state, it is very difficult to effectively motivate or incentivize deliberation for the mass public. Each individual citizen is too often subject to rational ignorance and sheer inattention. If I have one vote in millions, I will often tune out or engage only episodically as my individual views will not make any appreciable difference to the outcome.

Much depends on how we interpret the idea of giving everyone an “equal opportunity to participate.” If participation is self-selected, there may be sharp differentials in who takes up the opportunity. In two landmark US studies, Sidney Verba, Kay Schlozman and Henry Brady found a great deal of “participatory distortion”—those who actually participate are “unrepresentative of the rest of the public with respect to some politically relevant characteristic”. (Verba et al 1995 and Schlozman et al 2012. Their desideratum is “that what matters is not that the expression of political voice be universal but that it be representative” (Schlozman et al 2012). Their concern is the “distinctively “upper class accent” of the heavenly chorus which gives voice to the American public.”\(^{13}\) Minorities, the young and the less advantaged tend to participate distinctly less (the rich and more educated and older voters tend to participate distinctly more.) However, depending on the context and the design of political institutions, it is possible that self-selection will have the opposite effect and actually favor the least advantaged. In the “participatory budgeting” pioneered in Porto Alegre, Brazil, and now spread to thousands of cases throughout the world, there is clear evidence that it is the poor who are mobilized to turn out and the middle classes who do not.\(^{14}\) As with voting, the citizens in participatory budgeting all have “equal opportunity” in theory to participate, but the incentives for doing so must be understood in their social context.
The more general lesson is that self-selected participation is virtually certain to be unrepresentative and hence offer a distorted form of inclusion. The people who feel more strongly or who are more engaged with the issues or who are specifically mobilized to turn out will be the ones who participate. One might respond to this challenge with compulsory voting requirements to curb the biases from self-selection. In general this method has its own problems. In Australia, it has greatly increased turnout but it has introduced coercion and has not succeeded in effectively motivating informed voters.\textsuperscript{15} Other strategies are also possible. Instead of penalties there might be creative incentives such as payment or a lottery prize for voting. These are great ideas but they are largely untested.\textsuperscript{16}

The strategy of inclusion we will initially focus on here is random sampling with appropriate incentives for participation. In theory if a good random sample is recruited, in which all members have an equal chance to participate, that is another variant of equal opportunity. The literature on equal opportunity has long included the random draw as at least one of its component parts. Equality of life chances for valued slots in society is a common criterion for equal opportunity for valued positions. If I have an equal chance there is a sense in which I have an equal opportunity.\textsuperscript{17} Most importantly, a good random sample should be free of participatory distortion. It should be representative of the population in its political attitudes and demographics (and the degree to which any given sample achieves this can easily be studied empirically).

How much of a difference does participatory distortion make? While it is an empirical question whether differences in key demographics imply differences in political attitudes (either with, or without, deliberation), it is a key contention of normative theorists that the “politics of presence,” especially inclusion in terms of gender, race and ethnicity, will make a major difference to the viewpoints offered by representatives as well as by voters.\textsuperscript{18} On the other hand, Raymond Wolfinger and Steven Rosenstone famously found little difference between voters and non-voters in their policy attitudes despite the evident differences in demographic factors.\textsuperscript{19} This has been contested since, especially on economic issues.\textsuperscript{20}

From the standpoint of deliberative democracy, the key point would be to probe the hypothetical. Perhaps non-voters offer similar views to those offered by voters even though they are poorer, less educated and include more minorities. Presumably the non-voters have different interests on many issues because their demographics and hence their positions in the socio-economic structure are very different. If they were to engage in a serious deliberation about what to do, we cannot assume that they would uniformly come to the same conclusions as their more well-off fellow citizens. If they think and discuss, if they get their questions answered and become more informed they are likely to change some of their views. For deliberative democracy it becomes a normatively relevant empirical question: what would they think if they
were to engage in the best available conditions for thinking about the specific policy issues in question?

In a given case, their views might—or might not—be different from what they actually do think now. We can only know if we start the deliberations with a good microcosm, as representative as possible in both demographics and attitudes. If we avoid participatory distortion in constructing the microcosm, then engage it in the best practical conditions for extensive deliberation,\textsuperscript{21} then we can arrive at an inference about a key hypothetical—what the people would think if they were really thinking about the issue. If we started with a microcosm that was unrepresentative in both demographics and attitudes, perhaps as unrepresentative as many of our elections, we would not have a plausible basis for drawing the hypothetical inference about what the public—all the public—would think. Certain key interests and viewpoints would be left out (e.g. perhaps the poor or minority groups). The dialogue might well have been different if they were included, one could plausibly argue.

Random sampling is a form of inclusion that can be used to gather the whole population, in microcosm, to the deliberations. It is a gathering of all the relevant viewpoints and interests in their appropriate proportions in the population, under conditions where those who have those viewpoints and interests can engage with each other in dialogue. It is consonant with the idea Mill offered for an ideal parliament, a “congress of opinions:” “where every person in the country may count upon finding somebody who speaks his mind as well or better than he could speak it himself—not to friends and partisans exclusively, but in the face of opponents, to be tested by adverse controversy; where those whose opinion is over-ruled feel satisfied that it is heard and set aside not by a mere act of will but for what are thought superior reasons.”\textsuperscript{22}

As a citizen, I am included in that I can see my viewpoints and interests expressed and defended as well or better than I could myself, in a dialogue with all the competing perspectives. Some may view this as a less effective and tangible form of inclusion.\textsuperscript{23} But it is also substantive, bringing the issues to life. Further, if the deliberating group is a good sample, it will likely be more representative of all the perspectives and interests in the population than would self-selected voting.

Random sampling is a form of inclusion but it is not a form of consent. Bernard Manin argues that selection by lot lost out to election as a form of representation in the birth of modern representative governments because elections can be seen as requiring a kind of consent from the people every time they vote. They provide a continuing source of perceived legitimacy through the tangible act of voting.\textsuperscript{24} While Manin may well be correct in this historical argument, it does not undermine our including random selection as an important, indeed potentially transformative, form of inclusion in the design of deliberative institutions.
Choice. Suppose everyone participates but there is only one choice. Or only one choice that is a realistic possibility with the other choices only a symbolic after-thought creating the illusion of choice. Or suppose there are two choices but they are identical in their policy implications for all practical purposes, like the Tweedle Dum and Tweedle Dee positions sometimes ascribed to American political parties in the 1950s. People cannot exercise meaningful choice if there are no real differences to choose between.

To explore further, even when there are significantly choices, they may not be realistically on offer. Suppose there is a completely dominant party and it tolerates a token opposition that advocates different policies. But there is no realistic possibility that the opposition will ever win. Hence, while it is true that the policies they advocate are undoubtedly significantly different from those of the dominant party, those alternatives are only symbolically available. No real choice is actually being presented to the public. Hence the need for choices that are both significantly different and realistically available.

Where do the choices come from? First let us say that so long as the choices are significantly different and realistically available, the choice criterion is satisfied for the issue at hand. A and B are widely accepted to be significantly different26 and both are realistically on offer so that the people can exercise choice. But why A and B? There will usually be any number of other possibilities that could have been offered and different democratic designs will winnow the choices to a manageable number (not necessarily two) in various ways. Perhaps candidates are running for office and there are primary elections. Or perhaps there is a political convention where party notables in what used to be called “smoke filled rooms” deliberate and bargain to choose the nominee of their party. Perhaps it is an initiative put on the ballot by petition for an up or down vote by the people. Or perhaps it is a referendum authorized by a vote of parliament or by an American state legislature. These are among the common ways that an agenda for decision can be set.

We have stipulated above that ideally, for a “well-ordered deliberative process” there would be a deliberative consultation as part of the agenda setting process. Later we will explore what that could look like and how it could be experimented with. Such a process would give the public greater and more thoughtful control over the choices they are presented with. Deliberative agenda setting is an important area for reform. But even without it, when the people are asked to choose between significantly different and realistic alternatives they are exercising choice on the issue posed.
How do they choose? We need to consider both the mode of expression for each individual’s preference and the decision rule for aggregating those preferences. We will not attempt to stipulate the general solutions to these problems here. But it is worth noting some elements that seem useful for satisfying the values we will discuss—especially those of deliberative democracy. First, the mode of expression. Secret ballot or other forms of confidential expression? Or public voting by which individuals take public responsibility for their positions? John Stuart Mill argued for public voting, common at the time, so that people would take responsibility and have to think about how to justify their votes to others.27 His father, the philosopher James Mill argued that the secret ballot was necessary to protect voters from coercion, particularly poor voters in a vulnerable position who could be told by their landlords or their employers how to vote.28 There is some power to both arguments. However, we see the advantages of secret ballots, or in some deliberative democracy contexts, confidential questionnaires, to help ensure that the expressions of individual judgment are free of social pressure. We want to facilitate the expression of what people really believe, not what they are pressured to express.

Instead of aggregating individual expressions of preference a group or institution could act on the basis of rough consensus or acclamation. “If there are no objections we all agree to X.” But with such a method the individual dissenter must speak up against the social pressures of the majority. That person will likely feel subject to the “spiral of silence” and not object, and a distorted sense of the public views will result.29

Hence there are advantages to the individual expression of preferences in confidential ballots or questionnaires rather than publicly voicing your vote.30 How should these preferences or judgments be aggregated? What can we say about the appropriate decision rules for democratic choice?

In a democratic context, the idea is to see which policies or which options the people most support. Once the boundaries of the community have been established, the argument for majority rule has been canonical since John Locke who argued that the majority was the “greater force.”31 By definition, more people support the majority view than support the minority one.

But for some questions there is also a long tradition of requiring super-majorities rather than simple majorities. Jean-Jacques Rousseau held that "the more grave and important the questions discussed, the nearer should the opinion that is to prevail approach unanimity.”32 However, super-majorities privilege the status quo over change. Unanimity, the strongest possible super-majority rule would give everyone a veto and make new policies nearly impossible.33 While many theories of deliberative democracy prize consensus and seek to
achieve “rationally motivated agreement” they typically leave room for voting by majority where consensus or unanimity is not achieved.

Ultimately, we are interested in which proposed policies or candidates are supported by the preponderance of opinion and what are the reasons the people have for their conclusions. The decision rule for actual decisions (on the continuum from majoritarian to super majoritarian) as well as the voting system to measure it, are matters of institutional design which get entrenched in a given political order and constitutional system. Deliberative democrats are concerned with the representative and thoughtful measurement and expression of the public’s considered judgments. How large a majority should be required for a given kind of decision may vary by constitutional and institutional design for different kinds of issues. There is more of an argument for super majority requirements in constitutional change in order to stimulate additional rounds of deliberation. Policy changes might be more suitable to the majority principle.

A cautionary point is the well-established argument that majority rule can produce voting cycles, opening up democracy to inconsistency and manipulation. While we can only pause momentarily to acknowledge this enormous literature, it is worth noting, first, that the cases of actual voting cycles are, arguably, vanishingly rare. Second, there is reason to think that any thorough going application of deliberative democracy will be even less vulnerable to voting cycles than would non-deliberative democracy. Voting cycles are ruled out if there is an underlying dimension along which the voters can array the alternatives. The dimension might be left to right in the familiar political space. Or it could be some other dimension. People do not need to agree on what should be done but such an ordering clarifies what they are agreeing, or disagreeing, about. Duncan Black in a classic study named this property “single-peakedness.” When this applies, voting cycles are impossible. In a study of deliberation in different contexts and on different issues (with Deliberative Polls) we found that deliberation increased proximity to single-peakedness, creating the (largely) shared dimension that would effectively rule out cycles. This empirical finding is in the spirit of a hypothesis of William Riker, the most influential proponent of the near intractability of the problem in modern democracies. Riker concluded:

“If, by reason of discussion, debate, civic education and political socialization, voters have a common view of the political dimension (as evidenced by single-peakedness), then a transitive outcome is guaranteed.”

If a microcosm deliberates, the confusion and collective inconsistency of the voting cycles can be largely avoided. And if we were to achieve a deliberative society, the problem could likely be avoided for the macro-scale.
Deliberation. The past two decades have witnessed a “deliberative turn in democratic theory”\textsuperscript{41} There has been a surge of interest in “deliberative democracy” in both political theory and empirical work.\textsuperscript{42} What does deliberation add to democracy? What does it add to the evaluation and possible reform of democratic practices? Obviously the performance of democratic institutions could be enhanced in ways that have nothing to do with deliberation. What is the advantage of the deliberative approach? It foregrounds issues that were always a part of democratic theory, but which bring into view the problem of public will formation. Our premise is that democracies ought to make decisions that have some connection to “the will of the people.” But what is the condition of our public will when the public often has low levels of information,\textsuperscript{43} limited attention spans and is the target of so many millions spent by the persuasion industry—on campaigns, elections and issue advocacy?\textsuperscript{44} How different would public opinion—and voting—be if people weighed competing arguments on the basis of good information? If they considered competing candidates, competing parties, competing ballot propositions, or competing policies, all under good conditions for really thinking about the trade-offs posed by those choices?

The root of deliberation is weighing.\textsuperscript{45} And the root idea of deliberative democracy—admittedly a very simple and common sense notion-- is that the people should weigh the arguments, the competing reasons, offered by their fellow citizens under good conditions for expressing and listening to them and considering them on the merits. A democracy designed without successful attention to this kind of public will formation could easily be reduced to a democracy of manipulated sound bites and misled opinions. Even if the elections for candidates, parties or ballot measures are competitive and procedurally fair and even if the people are presented with a choice between significantly different options, it may be no more thoughtful or authentic a choice than one between brands of soap or cigarettes.

The deliberative character of any discussion may be construed as a variable—a property that any given communicative interaction possesses to a greater or lesser degree.\textsuperscript{46} At the far end of this continuum lies a situation in which every argument offered is answered by anyone with a different viewpoint and those arguments are answered in turn with participants weighing all the reasons offered by everyone on the merits. Such an ideal cannot be fully realized in practice because it presumes virtually unlimited discussion. But it suggests a continuum in terms of the completeness or incompleteness with which the arguments offered are responded to.\textsuperscript{47} Such a situation is reminiscent of the famous “ideal speech situation”, a “methodological fiction” Habermas applies not just to politics but to all validity claims.\textsuperscript{48} Habermas’s proposal is a “thought experiment” but there are, he believes, conditions for actual decision procedures that can be realized. Key conditions include exchanges of “inclusive, public” arguments free of external coercion and “free of any internal coercion that could detract from [the participants’] equality. Each [participant] has an equal opportunity to be heard, to introduce topics, to make a contribution, to suggest and criticize proposals.” Without distorting factors such as external or internal coercion, the conclusions would ideally be motivated by the “unforced force of the better
argument”.” While Habermas, building on work by Joshua Cohen, sketches some criteria that should be satisfied by actual decision processes, his institutional proposals have been criticized, even by sympathetic proponents for seeming to leave our current liberal democratic institutions of representative democracy largely in place. He “refuse(s) to elaborate institutional venues of deliberation….he would insist that a theory of deliberative politics cannot determine the details of institutions because these must fit the context, be discussed, shaped, and adopted by a particular group of people with a particular cultural and political history.” So how are we to achieve a deliberative politics of public opinion and will formation? We will return to these questions in the context of “deliberative systems.”

On this continuum of increasing deliberative quality from mere conversation about public issues to an imaginary structured dialogue of near-unlimited duration, we can place “everyday talk in the deliberative system” near the lower, more informal end, and actual dialogues in a structured process meant to engage the public in reasoning under good conditions (the deliberative microcosm or minipublic strategy) somewhat nearer the high end-- but of course still far from purely imaginary dialogues in perfected thought experiments such as might be envisioned in the “ideal speech situation.” Jane Mansbridge insists that “everyday talk” should be judged by the same deliberative standards as highly structured deliberative processes, admitting that they will likely not do as well in fulfilling those expectations.

**Impact.** Thus far we have discussed criteria for including everyone, for their having substantive choices that are realistically available and for their being able to deliberate about those choices. A final criterion for popular control is that their choices should actually make a difference. The people’s choices need to have an effect on what policies are adopted or over who gets chosen for political office. Otherwise there is not effective democratic control.

Are we only interested in a formal connection between the judgments of the public and the policies adopted or the candidates chosen? Habermas emphasizes that the informal processes of public opinion formation can have a major effect on the formal processes of actual decision (public will formation). His observations are much in the spirit of what we saw from Bryce earlier about “government by public opinion.” Many effects of public opinion will operate informally as policy makers adjust and react to their perceptions and interpretations of the public will. Of course, some of what they do will be attempting to lead or manipulate. Leaders who appear to be following opinion may in fact be creating it. Whether or not one considers this leadership or manipulation, it undermines claims to popular control. If leaders appear to be controlled by opinions which they, to at least a degree, are manipulating, then the appearance of public control is to that degree, a façade. Popular control requires impact for the non-manipulated views of the people. Finding and facilitating public spaces where that is possible will be part of the quest of this book. The channels for influence will often be some combination of formal and informal connection.
Athenian Reflections

In re-thinking where democratic reform might go, it is worth pausing to reflect on the design of “the first democracy” (Woodruff 2005). There are positive lessons to be learned not so much from the direct democracy in the Assembly but from other institutions that the Athenians came to employ to cure the mischiefs of what we would now call “populism.” Athens is often pictured primarily in terms of the Assembly where the people made authoritative decisions. In sight of the Acropolis, about 6,000 citizens could fit in an area called the Pnyx, discuss proposed laws and vote on them by show of hands in the Assembly. However, the citizenry of Athens ranged between 30,000 and 60,000 males during the periods of democracy. Women, slaves and metics (legal resident aliens such as Aristotle) could not vote. Hence most of the population, indeed, most of the eligible citizenry, could not vote at any given meeting of the Assembly. Nevertheless, this first democracy set an example for direct rule that has reverberated through the ages.

The picture of Athens as a direct democracy is the one that was familiar to the American founders. Indeed it was the dangers of such a system that helped inspire their ideas of indirect filtration. In Federalist 10, Madison described the dangers of direct democracy in building the case for institutions such as the Senate to control the mischiefs of faction:

“A pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; ... there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual.”

However, after the disasters of the Peloponnesian war with Sparta, the Athenians briefly lost their democracy. When they managed to reinstate it (in 401-2 BC) they devised a number of reforms which emphasized what we are calling deliberative democracy. Some of these institutions claimed earlier vintage, but they were put together in a systematic way with the reforms. It is the redesigned Athenian democracy of the Fourth Century that we want to examine to get a glimpse of deliberative democracy institutionalized.

Mogens Herman Hansen sees a clear motive for the redesign: “The tendency of the reforms is clear: the Athenians wanted to obviate a return to the political crises and military catastrophes of the Peloponnesian War.” The orators could goad the Assembly into hasty or unwise actions, including disastrous wars. The Athenians had learned that “a skillful demagogue could win the citizens to his project irrespective of whether it was really in their interest.” (Hansen 1991).
In the new system, a decree passed by the Assembly could not become a law unless it was approved by the *nomothetai*, a randomly selected sample of citizens who would deliberate for a day, hearing the arguments for and against the proposal. Only if the proposal got majority support by this body could it become a law. Harrison suggests that they had “deliberately invented a perfectly democratic brake to slow down the machine.” It was designed to maintain “the restored order against the possible ill effects of snap votes in the ekklesia” (the Assembly) (Harrison 1955). “A perfectly democratic brake” suggests that instead of restricting their democracy, they had introduced another kind of democratic institution, one that was also democratic but in a different way.

The system now had deliberating microcosms chosen by lot before the Assembly, during the Assembly and after the Assembly. Before the Assembly, only proposals approved by the randomly selected Council of 500 could be considered in the Assembly. During the Assembly, orators had to be mindful that they were subject to a special court, the *Graphe Paranomon*, which could prosecute an illegal or unwise proposal made in the Assembly. The purview of this special court, which also had 500 or more randomly selected members, was broad (and sometimes misused)\(^56\). But the intention was clearly to provide incentives against irresponsible demagogues turning the Assembly to their will. After the Assembly, there was now a clear distinction between mere decrees, which the Assembly could pass, and laws which had to be approved by the *Nomothetai* (Hansen, 1991). This provided a multi-stage process hemmed in before, during and after the meetings of the Assembly, so that the direct democracy was fused with deliberative institutions representing all the people through random sampling.

The reforms were designed to “hedge about” the Assembly with deliberative groups chosen randomly who could ensure more responsible decisions (Grote 2001). The samples were not precisely what modern experts would call random samples, but they seem to have been regarded as such (Sinclair 1988). People had to put themselves on the list from which the random sample would be drawn. But the sense of public duty was widespread among those privileged enough to be male citizens, presumably motivating participation. Participation in all aspects of Athenian self-governance was extraordinary.\(^57\) And the sampling process was taken seriously. In early times the method was to draw beans from a container (Sinclair 1988). But the Athenians perfected the process with an allotment machine, the *kleroterion*, which yielded random samples of those who put themselves on the list. The sampling was conducted in public ceremonies. Some argue that random sampling was an embodiment of equality. Some argue that it was a guarantee against corruption and a method of dispute resolution. Both rationales are relevant for our purposes.

In viewing the system as a whole, there was also another key point: rotation. There were so many opportunities to be selected randomly and so many meetings of the Assembly, that people could take turns “to rule and be ruled by turns” as Aristotle noted in the *Politics*.\(^58\)
Hanson calculates that “something like every third citizen served at least once as a member of the Council” and three quarters of all members had to serve as the rotating head of government for a day. “Simple calculation leads to this astounding result: Every fourth adult male Athenian citizen could say, “I have been 24 hours President of Athens” (Hanson 1991).

Fourth century Athens did not rely entirely on deliberative democracy any more than Fifth Century Athens before it had relied entirely on direct democracy. The reformed design was clearly a mixed system still with a very prominent element of direct democracy. But this system gives the first sustained picture of deliberation playing a key role in popular control of the laws. The people deliberated, they had impact, they made choices. The Athenian system has often been dismissed, like the democracy of the modern town meeting, as something only suitable for small polities. But that limit is most clearly posed by the Assembly. There are only so many thousand who can gather together in a face to face meeting. But the deliberative elements of Athenian democracy do not face the same limitation. The random samples that deliberated could, in theory, scale to much larger populations. It may seem counter-intuitive but we now know from modern statistics that one does not need a larger sample to accurately represent a larger population. The statistical precision with which a random sample can represent a population varies primarily with the size of the sample, not the size of the population. Hence these deliberating microcosms can be applied with credibility to much larger populations than the Athenian demos. The rotation aspect is also in principle replicable, but it would take a design offering numerous opportunities at various levels of government. One might imagine local, state and national deliberations occurring frequently as inputs to government for various kinds of issues. We will return to such questions below, but first look at modern applications of what is essentially an Athenian idea.

Criteria for Modern Applications

Both the merit and the vulnerability of the deliberating microcosm chosen by random sampling is the hypothetical inference—these are the conclusions the population would come to if it could somehow consider the issue in depth under good conditions. The conditions must be credible as good conditions (access to good information and relevant arguments, for example) and the sample must be representative. Consider some criteria for the design of such an effort, criteria building on one or the other of these two basic points—the representativeness of the sample and the “good conditions” for considering the issue:

1) Demographic representativeness
2) Attitudinal representativeness
3) Sample size
4) The opportunity to engage policy arguments for and against proposals for action in an evidence based manner

If these three aspects are satisfied, then we would want to engage such a sample in good conditions for deliberation. The following factors need to be considered:
5) Knowledge gain
6) Opinion change
7) Whether or not distortions in the dialogue are avoided
8) Whether or not there are identifiable reasons for considered judgments after deliberation

These criteria apply to a simple practical method, one that attempts to employ modern social science to fulfill the spirit of an ancient idea of democracy. Gather random samples, not just to ask them their impression of sound bites and headlines as in conventional polling, but rather to engage them in many moderated small group discussions with trained moderators who help them engage with balanced and evidence-based materials. Train the moderators not to give any hint of their own positions. Have advisory committees representing different points of view supervise the briefing materials so that they are really balanced and have the best information available. Have the random sample question competing experts in depth. Ensure that the sample is large enough for statistically meaningful study of its representativeness and of any opinion changes. Situate this convening of a microcosm of the population in a decision process where its conclusions have real consequences. Take a survey in depth both on recruitment and after the deliberations are completed. Add control groups where possible for further comparisons. I call this method “Deliberative Polling” and it has now been used, with various collaborators, more than 100 times in 28 countries (Fishkin 1991, 2009, 2018).

We used it in Texas, beginning in 1996, to consult the public about how to provide electricity in the eight, then-regulated service territories in the state. Should electricity be provided by natural gas, coal, renewable energy or conservation (to cut back the need)? In the eight projects, the percentage of the public willing to pay a bit more on monthly utility bills for the support of renewable energy rose from 52% to 84%. There was a similar increase in support for conservation or “demand side management.” The public utility commission and then the state legislature used these results to make a series of decisions that moved Texas from last to first in wind power among the fifty states. The same process has since been used on a myriad of other public policy issues in 28 countries around the world.

It has been used in Japan to consult the public about the acceptability of options for pension reform and for the energy options facing the country after the Fukushima disaster. It has been used in Bulgaria to clarify whether the public could accept the desegregation of the then Roma-only segregated schools. The willingness to integrate the schools in the Deliberative Poll, was one of several factors supporting integration, which has now been largely accomplished. It was also used in Macau, a Special Administrative Region of China, to clarify options for government involvement in the regulation of the press. After deliberation, the public supported self-regulation instead, a result accepted by the government.

In perhaps the most remarkable case, Mongolia, a competitive democracy with a private property market system, passed a “Law on Deliberative Polling” in 2017. A random sample of
voters must be convened to deliberate about proposals before the Parliament can consider a constitutional amendment. A credible national sample of nearly 700 citizens, representative of the electorate in attitudes and demographics (and selected by the National Statistical Office who do the Census), recently considered 18 proposals over a long weekend. Key proposals supported by members of each of the two main parties went down dramatically. Support for a second chamber of Parliament fell from 61% to 30%. Support for “E lecting the President for a single six-year term, without reelection” dropped from 61.5% to 41% with deliberation. But support for a series of proposals that would guarantee a professional civil service and an independent judiciary had more than 80% support. Dealing with corruption and protecting the independence of the civil service were the people’s top priorities. Consider one simple example. When governments change, the names of ministries can be changed, allowing the government to say that ministry X or Y no longer exists. If a ministry no longer exists, then civil servants can be fired and politicized. The solution the public supported was to put the names of key ministries in the constitution.

When the Parliament reconvenes it has the option under the law to pass the amendment by a 2/3 vote or to send the question to a referendum. After Brexit, there seems little appetite, even in Mongolia to take important issues to decision by referendum. The deliberations of a microcosm offer the judgments of the people without the manipulations and distortions of referendum campaigns.

In Texas, Japan, Macau, Mongolia and other sites, the deliberations of the random sample were an input to established government institutions to make the final decision. But recently in South Korea, the government faced the difficult choice of whether to resume or abandon construction of two partially built nuclear reactors (Shin Gori reactors 5 and 6). The new government of President Moon was generally opposed to nuclear power but abandoning these reactors after so much had been spent on constructing them posed a hard choice. To the surprise of many observers, the government left the final decision to a national Deliberative Poll. After several days of deliberation, the sample of nearly 500 moved to support resumption of the construction by 59.5% to 40.5%. The government is implementing this decision.

When ordinary citizens deliberate in moderated small groups, they actually listen to each other with mutual respect, they make decisions based on the substance of policy choices. They are willing to engage the best information available. By doing so, they can restore legitimacy to democratic decisions. Deliberations with a random sample represent the conclusions of everyone, not just those who are angry enough to be mobilized. Such deliberations offer the public’s considered judgment. Instead of the appearance of public support from propaganda and mobilization, they offer the representative conclusions of the whole country in microcosm.

Some political scientists say it is only a myth, a “folk theory” that the people could be competent enough for self-government (Achen and Bartels 2016). But it depends on our institutions. If for key questions we engage the public under the right conditions, they are
collectively competent to rule themselves. We just need some updates to our operating system for listening to the people.

“Deliberative Systems” and Popular Control
Some recent democratic theory has focused not just on mini-publics, but on “deliberative systems.” This approach has some advantages First, it takes more explicit account of the many conversations in everyday life that people have, some of which may be deliberative in weighing competing arguments expressed from different points of view. What Jane Mansbridge calls “everyday talk” is often deliberative, but sometimes clearly not. It can suffer from all the debilitations of every day discourse that we discussed earlier, especially in the context of competitive democracy and the incentives to manipulate and mislead public opinion. In addition, there is the propensity of the like-minded to consort with each other in their communications rather than with those they disagree with, a propensity made easier by social media. So everyday talk is part of the deliberative system, but it varies greatly in the extent to which it is deliberative. Still, it is important to emphasize that any organized or structured deliberations will take place in a context of many, many other conversations and many other actors with their own incentives. Second, this approach encourages us to step back and look at the political-communication system as a whole to see how well it satisfies criteria from democratic theory, including deliberation. Or, if not the system as a whole, we can look at the entire political communication process within a given substantive domain of policy and weigh both the role of deliberative and non-deliberative elements. Hence the general idea of looking at deliberative systems is a fruitful one.

Mansbridge and her collaborators ask us to consider three functions, four arenas and five pathologies. The three functions of deliberation are to provide information, to promote mutual respect and to provide a method of inclusion (epistemic, ethical and democratic functions, respectively). The four arenas are binding decisions by the state, activities preparing for those binding decisions, informal talk preparing for those binding decisions and talk about other areas of common concern. Clearly in all these arenas there is some deliberation and some of it must serve the functions of providing information, promoting mutual respect and being democratic in terms of inclusion, especially when it opens up to the public.

But how are we to evaluate the operation of such a deliberative system? One suggestion is that we look for whether it is impaired by any of five pathologies. First is the coupling between discussions so tight that a non-deliberative process, such as the decision for the internment of the Japanese in the US in World War II could be carried out without appropriate counter-vailing discussions? Second is the connection between deliberation and the outcome so loose that deliberations lose their impact on the final outcome? Third, is the system so dominated by one or more political figures that contrary perspectives do not really get an airing? Fourth, is there social domination within the discussions so that it is reasonable to question whether the conclusions are being arrived at on the merits? Fifth, is the public sphere so divided and/or fragmented, that deliberation across these divisions becomes impossible?
These five pathologies are real challenges. At bottom I would interpret four of them as impediments to deliberation itself and the remaining, the “loose connection,” as a barrier to the deliberations having impact. The impediments do not prevent all discussion but they distort and raise reasonable questions about whether the public is weighing competing arguments on the merits.

These distinctions and criteria, while useful, do not actually allow us to evaluate the deliberative system as a whole. They focus on components rather than the operation of the overall system. We need criteria to evaluate whether a deliberative system is facilitating a process so that the deliberations of the public play a role in the exercise of choice that has impact. We can use our four criteria for popular control as a way of evaluating deliberative systems. Are the deliberations placed in the system so that they are inclusive? Is there a choice of significantly different alternatives? Can the people effectively deliberate about the reasons for and against the options in a context of good information? Do the deliberations have impact? If a deliberative system facilitates positive answers to these four questions then it is contributing to meaningful popular control.

Outside the protected sphere of a deliberative forum, there are many potential distortions of dialogue: Communication among the like-minded, spread of misinformation, unanswered attempts at manipulation of public opinion, the habits of inattention by most of the public most of the time, the opportunities for the more advantaged to dominate the discussion in the public sphere (sometimes even formalized by the advantages of wealth via campaign finance rules). No wonder theorists such as Nancy Fraser question whether it is possible to “bracket” inequalities (so that discussions proceed on an equal basis). In ordinary life in mass society the public sphere is afflicted with many distortions. Without an institutional context for relatively equal civil and evidence-based discussion, the individual citizen sits isolated, indeed “atomized” in mass society, susceptible to all the ills and limitations of “audience democracy.” Hence we need to think about the strategic placement of deliberative forums such as the DP inside the broader societal processes of discussion and decision.

Consider a project in the United Kingdom in 2010 which attempted to contribute popular input for political reform in the UK. Power2010, a civic initiative supported by the Rowntree Trust, asked the public to contribute reform ideas. 4,000 were submitted. Many overlapped, These were combined into an agenda of 59 possible proposals by an academic team at Southampton University. The idea was that the 57 ideas would be the subject of a Deliberative Poll intended to identify a shorter list of priorities. The deliberators ranked all the proposals. The top 29 proposals with the priority rankings from the Deliberative Poll were made public. This agenda of 29 proposals was then made the subject of an informal public vote. More than 100,000 votes were mobilized. Various organizations and civic groups were asked to get their members to vote. The public voting determined five priorities which were presented to candidates for Parliament in the General Election who were asked to pledge support for them.
The project is notable because it began with a public suggestion process which was turned into an agenda for deliberation by a national sample gathered to London from all over the country. Then the agenda from the Deliberative Poll was taken back to the public. The two day deliberations of the sample occurred over the weekend of January 9-10, 2010.

The weekend deliberations produced surprises. The top proposal was “strengthening parliamentary select committees.” Some of the hot proposals in the public debate such as an English-only Parliament (allowing only MPs from England to vote on matters affecting England) or lowering the voting age to 16 went way down. Support for the Parliamentary Select Committees increased when deliberators realized how constrained MPs were to follow the party line and how they had little chance because of party discipline to think about the merits of the issues—except in Parliamentary Select Committees.

Once the proposals were put to a public vote by voters who were encouraged to vote by various advocacy groups, the populist proposals, such as the English-only Parliament went from the bottom to the top and the Parliamentary Select Committees went from the top to the bottom. The loose connection between these stages took the deliberative process away from any real role in popular control of the outcome. Self selected public voting by a small percentage of the electorate is easily captured by populist mobilization.

We can visualize the chain of connections offered by Power 2010:

\[
\text{Public suggestions } \rightarrow \text{advisory group } \rightarrow \text{Deliberative Poll } \rightarrow \text{public voting } \rightarrow \text{pressure on MPs to commit to agenda}
\]

It is a kind of deliberative system but the deliberative portion is not positioned so that it can have much impact.

Power 2010 was notable for illustrating how crowd-sourcing could generate an initial agenda for deliberation. There is “wisdom in the crowd” for idea generation and this can be especially useful for agenda setting of proposals that can then be rigorously tested with more information and deliberation. This kind of crowd-sourcing should be distinguished from populistic practices informally employing the crowd to decide. We might call this crowd-directing. Candidate Donald Trump was viewed by some commentators as testing his proposals by the crowd reactions to them in large rallies. Through improvisational adjustments to the applause lines, he was, in effect, recreating an ancient form of democracy. Not the Athenian practice of deliberation by random samples. Rather, the Spartans tested candidates by the volume of the applause they generated and had judges who sat in a separate room and impartially judged the volume of the applause. This ancient method of decision is sometimes called “the Shout.” Crowd-sourcing if done well can tap the wisdom of the crowds for idea generation. Crowd-directing can tap the emotional energy of self-selected crowds and will swing the process toward the populism of the cheering masses.

Many other configurations for public involvement in deliberative systems are possible. Consider a case we discussed earlier. Within its limited policy domain, Integrated Resource Planning in
Texas provided a better set of connections for satisfying our criteria for popular control. The links were:


The advisory groups in each of the service territories for the eight then-regulated utilities in Texas consisted of stakeholders for different kinds of energy, for consumer groups, for environmental groups, for the large customers. They were proxies for the interests affected. They formulated policy options to be presented to random samples of the public in the Deliberative Poll. The DP process was public and led, in each case to a public television documentary in the territory, showcasing the process and its results. The results of the DP informed the filing for the company’s Integrated Resource Plan and incorporated the substantial investments in renewable energy and conservation (as well as the preference for natural gas over coal) expressed by the public in the deliberations.

In theory, a company might have resisted incorporating the public’s deliberations. But since the Texas Public Utility (PUC) Commissioners participated in the process as expert panelists and since the PUC staff helped supervise the briefing materials, the companies would have ignored the results at their peril. Hence this was a case in which an advisory role for the public became, in practice, a tight enough connection to provide assurance that the citizen deliberations would have an impact. It is a deliberative system within this policy domain that permitted a substantial measure of popular control over the direction of energy policy for regulated utilities in the state.

However, as we noted in our discussion of popular control, there is the added issue of agenda setting. The Advisory Group process set the agenda for the Texas cases. They presumably provided a method for a number of public concerns to make it on to the agenda but they were still a form of elite deliberation. It is arguable that the agenda setting stage, right at the beginning of the process could have been improved to achieve something closer to full control within this issue domain.

It is worth noting that the deliberative system with which the practice of deliberative democracy arguably began so long ago, the ancient Athenian case, especially in the Fourth Century BC, provides an excellent example of a developed deliberative system that deals with this question as well. It can be pictured thus:

- **Council of 500** –> **Assembly (potentially affected by Graphe Paronomon)** –> **Nomothetai**

The Council is randomly selected from the list provided by the citizenry and sets the agenda for the Assembly. As a microcosm chosen by lot, there is a sense in which it speaks for the people. The Assembly is open to all, but its participants know that illegal or irresponsible proposals can lead to prosecution before the Graphe Paronomon (another randomly selected body of the citizenry). The results of a legislative proposal approved by the Assembly cannot become law without being approved by the Nomothetai, the legislative commission of 500 or so randomly
selected citizens that hears the case for and against the proposed law and then votes by show of hands for the binding, final decision. So a microcosm of the people deliberate, authorize the proposals that can go before the Assembly, the Assembly is open to all citizens, debates the proposals and its proposed laws must be approved by another randomly selected group, the legislative commissions or Nomothetai. Hence there is a good case that the people in microcosm set the agenda, there is broad discussion in the Assembly and then the people in microcosm finally pass the new laws. Inclusion, Choice, Deliberation, Impact. All seem to be satisfied. Some of the inclusion is via the open participation in the Assembly and some of it is via the selection by lot for the Council, the Graphe Paranomon and the Nomothetae. The people are making real choices about new laws and they have impact. The choices are made with carefully constructed deliberative institutions, connected in various ways to the wider conversation in the society.

There is no reason to think that the success of this design had to be limited to the small scale. We can imagine modern applications of the nomothetai idea in the context of the current debate about second chambers selected by lot. Just as the ancient nomothetai, selected by lot had the role of providing a “perfectly democratic brake” on the decisions in the Assembly, a modern mini-public selected by lot could provide a brake on decisions in the Parliament or lower house of a modern nation state. I am not thinking of a fully developed second chamber by lot. Rather, imagine a role parallel to that of the nomothetai, convened briefly to pass judgment on a specific proposed law with the case for and against the proposal deliberated for a weekend on something like the Deliberative Poll model. But which laws? It would not seem practical to convene a new mini-public for every law.

Imagine the challenge if such an institution were inserted into the last stage of decision for a new law in a modern constitutional democracy with competing parties. Suppose there was a requirement that the final decision go to the mini-public for any law that does not pass by two-thirds in the Parliament. If there is merely a majority, but not a super-majority, the people, convened in microcosm have the final say. But if if there is a super-majority in the Parliament, then there is no triggering of the requirement to convene the people. This design would arguably create real incentives for even highly polarized parties to work together. It would also provide a barrier to turbo-charged bare majorities that wish to ram though a proposal without any regard to the other side (s). Placing the deliberations of the people in this position in a deliberative system might provide strong incentives for overcoming polarization among the elites and it would motivate elite deliberation across the aisle in the Parliament. We can picture it thus

Parliament (if 2/3 support) -> passage of legislation

Parliament (if majority support but less than 2/3) -> mini-public for final decision
Perhaps for efficiency the mini-public could be convened when there were a few bills to be considered. The identities of the random sample should not be announced beforehand to protect against bribery or lobbying of ordinary citizens.

This proposal applies to legislation coming out of Parliament. Can we imagine a fully developed deliberative system satisfying our criteria for popular control in a modern, large-scale nation-state for something as momentous as a Presidential election? Can it be accomplished in modern times with the path dependent factor that we now have competitive democracy already instituted in most large scale systems where there might be an interest in democratic reform? A modern large-scale application may need to consider harnessing the incentives for election in competitive democracy to serve the goal of enhancing deliberation by the people.

In speculating about new systems, consider an ambitious but simple scenario for presidential elections in the US. Suppose we combine the pre-primary National Issues Convention (including candidate evaluation) at the beginning with Deliberation Day near the end.

National Issues Convention (with candidate evaluations) -> primary process- > candidate selection -> Deliberation Day -> Election

The “invisible primary” period before Iowa and New Hampshire is the period in the US presidential selection calendar that is most fluid, most open to candidates rising and falling depending on sound bite impressions and early poll results. It is the period when the public usually has the least information about prospective candidates and when impressions are taking shape. A national deliberation by the nation in microcosm, broadcast with both the process and its results on national television (and open to the full range of other media), could serve as an effective agenda setter for the initial winnowing of candidates. It would engage the candidates in substantive dialogue. It would allow the microcosm to question them in depth. Furthermore, it would express considered judgements of the public in a representative way about which candidates had positions and characters that seemed most credible in light of extensive deliberation—both with the candidates and with a national sample engaged in dialogue with each other.

Note this proposed start is national rather than state-by-state. Why not have the deliberation in Iowa or New Hampshire or some other state? While it might be a worthy contribution to have a Deliberative Poll on candidate selection in a single state, one of the pervasive problems is the choice of which state? There is an arbitrary ordering among the states as the process unfolds and this has a distorting effect on the process. A national process needs to reflect the views of the entire electorate and thus to be inclusive equally of voters from around the country. With the state by state sequencing of primaries, states like Iowa and New Hampshire, whose demographics are not representative of the nation, whose issues are also unlikely to be representative of the nation, set the agenda for everyone else by doing the initial winnowing of candidates. One of the merits of random sampling is that it is possible to sample the entire nation
with about the same size sample one would use on a statewide basis. The precision of the statistical estimates depends almost entirely on the size of the sample rather than the size of the population being represented.

If the national deliberation about candidates has impact early, by identifying winners and the reasons for their success, it can provide a degree of deliberation-based popular control in the agenda setting stage of the process. The candidates would be competing for the support of a deliberating sample, not a television audience tuning in to sound bites. Candidates would soon learn that in the dialogue back and forth, they would be expected to offer substance that stands up under questioning. They would risk correction in the contrast with other candidates and the balanced panels of experts on specific topics. Their energy as candidates would still be fueled by electoral competition, by the desire to win, but that energy would be directed at winning in a more deliberative and hopefully, more evidence-based competition. It would not matter whether or not official delegates were awarded as part of this reform. It could be a media event or an official part of the delegate selection process. Iowa and New Hampshire have never loomed large in the calendar because of the delegates selected. Rather they loom large because they are first.

With this new beginning, the rest of the current primary process would play out in the familiar way, state by state until it culminated in nominees for the general election. Our second major suggestion for turning presidential selection into a deliberative system is to have national discussions, on the model of Deliberation Day at the other end, soon before the general election. The premise of Deliberation Day is that the same experience shared by hundreds divided into small groups and gathered into plenary sessions, can be replicated by millions, meeting in very large numbers of small groups and plenary sessions.

There is no technical impediment to Deliberation Day, it is only a question of political will and organization. If citizens can be effectively motivated to participate, there is no reason in principle why the same sorts of results generated by microcosms cannot be generated by macrocosms. There are many variants to the possible design (Ackerman and Fishkin 2004). But if the major party candidates were to lay out their positions on a series of issues (perhaps each candidate suggesting two so there would be between two and four issues in a two candidate final race) an agenda would be created for the deliberations in each locality and in all the innumerable small groups. Imagine small groups and plenary sessions convened in schools and community centers and universities throughout the country. Voters would be assigned to ensure diversity in the small group discussions. Local representatives of the parties could respond to the plenary session questions along with locally organized expert panels to respond to questions from the sample. Balance would be the watchword. In a full day of deliberation, alternating small groups and plenary sessions, substantive issues can be covered in depth. The participants would not need to vote or fill out questionnaires at the end (except perhaps randomly sampled venues monitored for quality control). We could envision exit polls from the Deliberation Day sessions providing substantive results for each state and for the nation as a whole. Such results would provide an immensely strong incentive for the major parties to fully compete in the deliberative process.
Electoral incentives would be harnessed to improve the quality and substance of the public discussion. Instead of instant polls of viewers after a debate, we would get exit polls of citizens who deliberated and came to considered judgments both on the issues and their candidate preferences. It is reasonable to assume within given states that the Deliberation Day exercise would have an enormous impact on the election outcome. For that reason, it would generate enormous coverage before, during and after the Day. In anticipation of such an exercise, we can reasonably imagine that candidates and parties would need to lay the groundwork for their approach. They would need positions that could hold up, not just in a sound bite, but in an extended dialogue in which the costs and benefits of a policy proposal, all its possible implications, could be probed with both defenders and detractors on site to fill in the blanks. The more the process sticks to the DP model writ large, the more we could have confidence that it would facilitate deliberative popular control.

Such an enlargement of our public capacity for mass deliberation would be expensive. Ackerman and I outline specific plans and estimates in Deliberation Day. But the real question is not how much would it cost? Rather, it is how much is it worth? Would it be worth taking seriously the prospect of significant popular control of the presidential election via deliberative processes? To continue with largely non-deliberative elections is to have a democracy of sound bite manipulation and mobilization. It is to put the fate of the nation entirely in the hands of a gigantic tug of war between competing teams without the thought and reflection that could also turn it into a competition of ideas. To give up on “deliberation within elections”—as distinct from “deliberation about elections” for considering reforms—is to take meaningful public will formation out of competitive democracy. Advocates of such a view, such as Dennis Thompson (Thompson 2013), would thereby render the people powerless to engage in meaningful and thoughtful popular control of the policies and leaders they must live with. We would have competition, but the more intense the competition, the more we are in the hands of a mere test of strength between competing teams who are quite happy to bamboozle the public if that will lead to electoral success. Rather than give up on competitive democracy, it might be preferable to do whatever is possible to alter the terms of competition, to make them as substantive as possible for the mass public. Deliberation Day is simply an ambitious version of that logic. If it were conjoined with deliberation at the beginning of the process (with something like Deliberative polling for candidate selection on a national basis) it could be structured into a coherent deliberative system for popular control. Experimentation and evaluation of the elements of such a deliberative system at larger scale is called for.

A key purpose of political theory is to stimulate the political imagination. A key purpose of empirical political science is to assess and evaluate based on the best social science evidence that can be mustered. We need to marry the two if we are to enlarge our democratic possibilities. The kind of deliberative system just outlined may seem utopian, but it is also eminently practical as a goal for deliberative experimentation.
Toward Collective Self-Rule

Deliberative democracy, whether implemented via a microcosm or a macrocosm, provides for a kind of collective self-rule. To the extent it is implemented, we are subject to the laws, policies and leaders chosen by us in a thoughtful collective process. Of course every issue cannot be the subject of deliberation. But there are rhythms of choice and important issues that get on the agenda when the process is engaged—whether through elections, or public commissions, or the agenda for ballot propositions or any of the other arenas we have discussed. When the process is working there are realistically available and distinct choices. We are all in some sense included in the process, the choices of the people on those issues have impact and the public has a context in which it is able, and effectively motivated, to deliberate. Our criteria for popular control can all be satisfied.

It is not unrealistic to expect that the people can rule, in a thoughtful and responsible manner, on at least some important issues some of the time, with the appropriate context and institutional design. To leave us in the hands of the “manufactured” political will lauded by Schumpeter, as the inevitable artifact of competitive democracy, is to rob democracy of its great counter to authoritarian variants, even “benevolent” ones offering reasonably good governance. That great counter is the will of the people, not in myth but in reality. It is not that the people are ruled by some great leader, deity or all-wise group of technocrats who stand above the people to rule over them. It is that the people, at least on some important issues, manage to rule themselves.

A astute readers will see that the import of this argument is a robust defense of what my “realist” political science friends call the “folk theory of democracy.” But the folk theory is only a myth when we have citizens disconnected from institutions that engage them in substantive issues and that can credibly offer them a voice in a context where their voice would matter.

In my experience, it is not that citizens are incompetent, it is that institutions are not enabling. They are not sufficiently user friendly that most citizens would think it worth the effort and reward in terms of impact. It is as if we are connecting them with the wrong operating system. We are stuck with a variant of MS DOS rather than an Apple or Windows system that would allow them to connect with a reasonable level of effort and self-understanding. Innovation is required or the operating system will just lose loyal customers, fall into disuse or be replaced.

A good check list for the folk theory can be found in the disappointments expressed in Voting, the path breaking early empirical study of voters in the 1948 US Presidential campaign. Berelson, Lazarsfeld and McPhee famously went into the study with some expectations for informed and engaged voters, expectations that were all shattered by their empirical study. The realist theory, already championed by Joseph Schumpeter’s skeptical writings about voter competence, and of course that of many others, found empirical confirmation. What were
those expectations? Berelson et al list six: Interest, Discussion, Motivation, Principle, Knowledge and Rationality. Are these so unrealistic? Yes with our current institutions applied to voters in mass society. No, if we consider creating contexts where individuals have incentives not for rational ignorance and inattention, but rather incentives to express their views, listen to others, become informed because they think their voice matters—in small groups of perhaps a dozen, in gatherings of a few hundred (in a DP), or in the context of an election they are focusing on. Our deliberators show interest, they discuss in a civil manner together, they become effectively motivated by a process they find satisfying, they engage their values and principles in thinking about priorities, they become more informed and they make explicit connections between reasons for action and what they think should be done. The reasoning citizen, who can engage with policy or politics, is not a unicorn, but a potential within all of us. We have found such citizens in all six inhabited continents, in highly developed countries as well as in developing countries. In Uganda, China, Japan, Mongolia, Macau as well as the US, Britain, Australia, Brazil, Bulgaria and many others.

I am not claiming that the deliberative processes depicted here are the best possible institutions. With experimentation and innovation they can certainly be improved and deepened. They can also be adapted to various contexts and decision problems. But whatever the precise design, the basic idea of citizens deliberating under good conditions when they think their voice will matter needs to be nurtured, evaluated, improved and expanded in scale. That is the challenge for democratic renewal.

REFERENCES


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1 See for example, Federalist No. 63. For the many uses of this event for anti-democratic argument, see Roberts 1994.

4 These excesses are long-standing. See Jamieson 1993 for compelling cases.

5 “At its best” is an important qualifier, given incentives for vote suppression undermining political equality. See, for example, Overton 2006.


7 See Mogens Herman Hanson, *Polis: An Introduction to the Ancient Greek City State.* Oxford: Oxford University Press, 2006 for an account of what is known about the nearly 1,500 other ancient city states.


9 Mill, *Considerations*, Chapter VIII.

10 In the U.S. Constitution the Senate entrenches these disparities, with many implications for policy making. See Frances E. Lee and Bruce I. Oppenheimer *Sizing up the Senate: The Unequal Consequences of Equal Representation* (Chicago: University of Chicago Press, 1999).


12 Brian Barry “Is Democracy Special?” In Laslett and Fishkin, *Philosophy, Politics and Society, Fifth Series*, pp. 155-96, especially p. 169. For more of these conundrums see Allen Buchanan

13 The metaphor of the chorus is from E.E. Schattsnseider 1960.


15 See, for example, Ian McAllister “Civic Education and Political Knowledge in Australia” Australian Journal of Political Science vol 33 no. 1, pp. 7-23, especially, pp. 17-18.

16 Arizona Voter Reward Proposition 200 in 2006 proposed a one million dollar prize to be awarded each election to a randomly chosen voter. See https://ballotpedia.org/Arizona_Voter_Reward,_Proposition_200_(2006).


21 We will return to the question of good conditions for deliberation below.

22 Mill, Considerations, p. 116. Mill does not propose random selection but does say that such a parliament should be “when properly constituted, a fair sample of every grade of intellect among the people who are entitled to a voice in public affairs.” P. 118. He rejects selecting for the “greatest political minds in the country, from whose opinions little could, with certainty be inferred concerning those of the nation.” P. 118. Here he is moving close to the hypothetical inference we are emphasizing here: what the public would think, (pre and post deliberation).

23 Manin, Representative Government, chapter two.

25 In a similar spirit Manin observes: "It is necessary that individuals have a genuine choice among different alternatives, all of which should seem realistically possible." Bernard Manin “On Legitimacy and Political Deliberation” Bernard Manin, Political Theory, Vol. 15, No. 3 (Aug., 1987), pp. 338-368, see p. 357.

26 What are “significantly different” choices? We can, for the moment, stipulate that when the choices are widely accepted as importantly different that will satisfy the criterion. From different policy perspectives people who advocate very different outcomes can nevertheless agree that something important is at stake in the choice.

27 Mill, Considerations, Chapter X.

Once the community has the consent of the governed “it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority.” Locke does not consider intensity in thinking about which side has the greater force. See Robert A. Dahl *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956) chapter four for an attempt to balance majority rule with intense minority opinion. For a critique, see James Fishkin *Tyranny and Legitimacy: A Critique of Political Theories* (Baltimore: Johns Hopkins University Press, 1979), pp. 14-17.

32 Jean Jacques Rousseau *The Social Contract*, book IV, chapter 2 (New York: Penguin Classics, 1968) p. 154. He also offered another “maxim” on the other side “the swifter the decision the question demands, the smaller the prescribed majority may be allowed to become” p. 154. Further, in *The Government of Poland*, Rousseau cautioned that requiring unanimity or anything close to it could open up voters to coercion. For a comprehensive study of this problem of majorities vs supermajority requirements, see Melissa Schwartzberg *Counting the Many: The Origins and Limits of Supermajority Rule* (Cambridge: Cambridge University Press, 2014)


A problem well known since the Marquis de Condorcet (1743-1794). To take a simple case, if a third of the voters prefers alternatives A to B to C, and a third prefers B to C to A, and the remaining third prefers C to A to B, then majorities voting in pairwise comparisons can produce a cycle from A to B to C and back to A again.
Some of the cases discussed in List et al, cited below, appear to be clean energy vs cheap energy.

Duncan Black *The Theory of Committees and Elections* (Cambridge: Cambridge University Press, 1958). Roughly, if there is an (ordinal) dimension or space and we can locate our preferred positions in that space, and we prefer other alternatives in order based on the distance in terms of orderings from our preferred position, then our preferences are single-peaked. If I am a left-winger I will prefer the left wing position and other alternatives according to how close they are to the left wing position. If I am a right winger, the same will be true from the right. If I am a centrist, I will prefer positions according to how close they are to the center, and so on. (The dimension need not be left/ right in the political sense.) In large-scale societies everyone actually sharing the same dimension is unlikely. Hence researchers have defined proximity to single-peakedness for a population in terms of the proportions who do share the dimension. Proximity to single-peakedness is held to lower the likelihood of cycles.


In Fishkin 2009, I refer to this property as “substantive balance” and include it with some other criteria for the quality of a deliberative process such as the quality of information and the conscientiousness or sincerity with which deliberators participate.

I proposed such a criterion in Fishkin 1991, pp. 36-38.


Grote notes that the graphe paraonomon did not always work as intended. It could degenerate into a forum for personal attacks turning “deliberative into judicial eloquence, and
interweaving the discussion of a law or decree along with a declamatory harangue against the character of its mover.” Grote 2001.

57 When participation flagged, incentives were instituted, which led to criticism that these institutions, especially the juries that were constituted in the same way, were dominated by the poor and the elderly. The propensity of the poor and the elderly to do jury service was satirized by Aristophanes in The Wasps. (Henderson 1988)

58 Aristotle’s Politics 1317b2 cited in Hanson, p. 313.

59 Opinion change is not itself a criterion for success of the deliberations. However, if it occurred rarely then there would be little practical incentive to add this elaborate process on top of conventional polling.

60 These cases are all discussed in further detail in Fishkin 2018.


63 Fraser 1992, pp 1-32.

64 Note the classic discussion of the vulnerabilities of mass society in William Kornhauser (1959). He was concerned with vulnerabilities to “totalitarianism,” but we might make the same case for populism.

65 Manin 1997.

66 For more details see the final report: http://cdd.stanford.edu/2010/final-report-power-2010-countdown-to-a-new-politics/


68 Although he was also interpreted as engineering his applause lines. Henry Farrell “This is how Donald Trump Engineers Applause” Washington Post at:

69 Elster 1989, pp. 35-36.

70 See for example, Callenbach and Phillips (1985). See also Sutherland 2008.

71 Other scenarios might involve advisory group vetted factual background materials created by a commission. But submissions by the candidates themselves, with the timetable allowing for a lot of media fact checking might be the preferred design. For reflections on adapting Deliberation Day to a multi-party format see Deliberation Day pp. 108-112.

72 Achen and Bartels 2016, chapter one.

73 Walter Lippman The Phantom Public and Public Opinion are especially notable.